

2007 DRAFTING REQUEST

Bill

Received: **01/16/2007**

Received By: **rnelson2**

Wanted: **As time permits**

Identical to LRB:

For: **Glenn Grothman (608) 266-7513**

By/Representing: **Regina**

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

Drafter: **rnelson2**

May Contact:

Addl. Drafters:

Subject: **Courts - torts**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Grothman@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Frivolous damages

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>
/?							
/1	rnelson2 01/17/2007	jdye 02/14/2007	rschluet 02/14/2007	_____	cdurst 02/14/2007	cdurst 03/02/2007	

FE Sent For: *none*

<END>

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rnelson2

1 2/14 jld

2/14/07
JF
<END>

FE Sent For:

Nelson, Robert P.

From: Kolbow, Regina
Sent: Tuesday, January 16, 2007 10:13 AM
To: Nelson, Robert P.
Subject: Bill Draft

Dear Robert,

Senator Grothman would like a redraft of 2005-2006 SENATE BILL 501, but draft it as ASA 1 (which passed in both houses). He would like this as soon as possible.

Sincerely,

Regina Kolbow

Legislative Assistant
Office of Senator Glenn Grothman
Office: 608-266-7513
Fax: 608-282-3560
regina.kolbow@legis.state.wi.us



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-1518/PT 1

RPN: a:...

2/14 cmh

Jld

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

2007 Bill

Gen

1 AN ACT ...; relating to: damages for frivolous claims. ✓

Analysis by the Legislative Reference Bureau

* a Under current law, every document submitted to the court must be signed by the party or, if the party has an attorney, by the attorney. By signing the document, current law provides that the person is certifying that the document is not presented for any improper purpose, such as to harass or cause unnecessary delay, that the claims made in the document are warranted by existing law or a nonfrivolous extension, modification, or reversal of the law, that the facts presented in the document are likely to have evidentiary support, and that any factual denials in the document are warranted by evidence or, if so identified, reasonably based on a lack of information or belief. Currently, if the court determines that any of these conditions are not met, the court may impose an appropriate sanction on the responsible attorney or party. Under current law, the sanction is what is sufficient to deter repetition of the conduct, and may include payment of the reasonable attorney fees or other expenses resulting from the improper conduct. Monetary sanctions cannot be awarded against a represented party for making a claim that is not based on existing law or a nonfrivolous extension or modification of law, and before any monetary sanctions may be awarded by the court, the court must issue an order to show cause regarding the dismissal or settlement of the claim. *

Under this bill, in civil actions, a party or his or her attorney is subject to damages for costs and fees for beginning, using, or continuing an action if that is done solely for the purpose of harassing or maliciously injuring another and the party or attorney knew that there was no reasonable basis in law for the conduct or no good faith argument for an extension, modification, or reversal of the law. ✓ The bill allows

a party to an action to ask the court by motion to determine if another party has violated these provisions, and if, by clear and convincing evidence, the court so finds, the court may do one of the following: ✓

1. If the offending party withdraws or corrects the improper conduct within ✓21 days or a time set by the court, award the moving party the actual costs incurred as a result of the conduct, including reasonable attorney fees, taking into consideration the offending party's mitigating conduct. ✓

2. If the offending party does not timely withdraw or correct the improper conduct, award the moving party the actual costs incurred as a result of the conduct, including reasonable attorney fees. ✓

Under the bill, if an award of costs for violating these provision^s is affirmed on appeal, the appellate court is required to send the action to the lower court to award the damages necessary to compensate the successful party for the actual reasonable attorney fees incurred in the appeal. In addition, if the appellate court finds that a party has committed a violation of one of these provisions in an appeal, the appellate court must, after completion of the appeal, send the action back to the lower court to award the damages necessary to compensate the offended party for the actual reasonable attorney fees incurred in the appeal. ✓ *

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

1 **SECTION 1.** 230.85 (3) (b) ✓ of the statutes is amended to read:

2 230.85 (3) (b) If, after hearing, the division of equal rights finds that the
3 respondent did not engage in or threaten a retaliatory action it shall order the
4 complaint dismissed. The division of equal rights shall order the employee's
5 appointing authority to insert a copy of the findings and orders into the employee's
6 personnel file and, if the respondent is a natural person, order the respondent's
7 appointing authority to insert such a copy into the respondent's personnel file. If the
8 division of equal rights finds by unanimous vote that the employee filed a frivolous
9 complaint it may order payment of the respondent's reasonable actual attorney fees
10 and actual costs. Payment may be assessed against either the employee or the
11 employee's attorney, or assessed so that the employee and the employee's attorney

1 each pay a portion. To find a complaint frivolous the division of equal rights must
2 find that s. 802.05 (2) or 895.044 has been violated.

3 History: 1983 a. 409; 1991 a. 39; 2003 a. 33; Sup. Ct. Order No. 03-06A, 2005 WI 86, 280 wis. 2d xiii.

3 SECTION 2. 802.10 (7) of the statutes is amended to read:

4 802.10 (7) SANCTIONS. Violations of a scheduling or pretrial order are subject
5 to ss. 802.05, 804.12 and, 805.03, and 895.044.

6 History: Sup. Ct. Order, 67 Wis. 2d 585, 634 (1975); 1975 c. 218; Sup. Ct. Order, 82 Wis. 2d ix (1978); 1979 c. 32 s. 92 (4); 1979 c. 89, 177; 1981 c. 289; 1985 a. 29 s. 3202 (23); Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1993 a. 486; Sup. Ct. Order No. 95-04, 191 Wis. 2d xxi (1995); 1999 a. 150 s. 672; 2001 a. 30 s. 108; 2005 a. 387.

6 SECTION 3. 809.103 (2) (a) of the statutes is amended to read:

7 809.103 (2) (a) Is frivolous, as determined under s. 802.05 (2) or 895.044.

8 History: 1997 a. 133; Sup. Ct. Order No. 03-06A, 2005 WI 86, 280 Wis. 2d xiii.

8 SECTION 4. 814.04 (intro.) of the statutes is amended to read:

9 814.04 Items of costs. (intro.) Except as provided in ss. 93.20, 100.195 (5m)

10 (b), 100.30 (5m), 106.50 (6) (i) and (6m) (a), 115.80 (9), 281.36 (2) (b) 1., 767.553 (4)

11 (d), 769.313, ~~814.025~~, 802.05, ~~814.245~~, 895.035 (4), 895.044, 895.506, 895.443 (3),

12 895.444 (2), 895.445 (3), 895.446 (3), 943.212 (2) (b), 943.245 (2) (d), 943.51 (2) (b),

13 and 995.10 (3), when allowed costs shall be as follows:

NOTE: NOTE: Section 814.04 (intro.) is shown as affected eff. 4-1-07 by Supreme Court Order 03-06 and 4 acts of the 2005 Wisconsin legislature and as merged by the revisor under s. 13.93 (2) (c). Prior to 4-1-07, it reads as follows. The single-bracketed language was erroneously inserted by and the double-bracketed language erroneously omitted from 2005 Wis. Act 155. Corrective legislation is pending. NOTE:

14 814.04 Items of costs. Except as provided in ss. 93.20, 100.30 (5m), 106.50 (6) (i) and (6m) (a), 115.80 (9), 281.36 (2) (b) 1., 767.553 (4) (d), 769.313, [814.025], 802.05,
15 [[814.245]], 895.035 (4), 895.506, 895.443 (3), 895.444 (2), 895.445 (3), 895.446 (3), 943.212 (2) (b), 943.245 (2) (d), 943.51 (2) (b), and 995.10 (3), when allowed costs shall
16 be as follows:

History: Sup. Ct. Order, 50 Wis. 2d vii (1971); 1971 c. 141; Sup. Ct. Order, 67 Wis. 2d 585, 761, 780 (1975); Stats. 1975 s. 814.04; 1977 c. 209; 1979 c. 110 s. 60 (13); 1979 c. 271, 355; 1981 c. 123, 317; 1985 a. 52, 311; 1987 a. 348; 1991 a. 39, 65, 189, 295; 1993 a. 98, 326, 486, 490, 491; 1995 a. 24, 27, 133, 149, 262, 417; 1997 a. 55, 164, 254; 1999 a. 32, 82, 122, 190; 2001 a. 6, 16; 2003 a. 138; Sup. Ct. Order No. 03-06A, 2005 WI 86, 280 Wis. 2d xiii; 2005 a. 155, 325; 2005 a. 443 s. 265; 2005 a. 458; s. 13.93 (2) (c).

17 SECTION 5. 814.29 (3) (a) of the statutes is amended to read:

18 814.29 (3) (a) A request for leave to commence or defend an action, proceeding,
19 writ of error or appeal without being required to pay fees or costs or to give security
20 for costs constitutes consent of the affiant and counsel for the affiant that if the
21 judgment is in favor of the affiant the court may order the opposing party to first pay
22 the amount of unpaid fees and costs, including attorney fees under ss. 802.05 and,

1 804.12 (1) (c), and 895.044 ✓ and under 42 USC 1988 and to pay the balance to the
2 plaintiff.

History: Sup. Ct. Order, 67 Wis. 2d 585, 761 (1975); Stats. 1975 s. 814.29; 1981 c. 317; 1983 a. 538; 1989 a. 31; Sup. Ct. Order No. 93-15, 179 Wis. 2d xxxi; 1993 a. 490; 1995 a. 27, 201; 1997 a. 133; Sup. Ct. Order No. 03-06A, 2005 WI 86, 280 Wis. 2d xiii; 2005 a. 22.

3 **SECTION 6.** 895.044 of the statutes is created to read:

4 (END)

Insert 4-3 ✓

1 **SECTION 3.** 814.04 (intro.) of the statutes, as affected by Supreme Court Order
2 03-06, is amended to read:

3 **814.04 Items of costs.** (intro.) Except as provided in ss. 93.20, 100.30 (5m),
4 106.50 (6) (i) and (6m) (a), 115.80 (9), 281.36 (2) (b) 1., 767.33 (4) (d), 769.313, 802.05
5 895.025, 814.245, 895.035 (4), 895.10 (3), 895.75 (3), 895.77 (2), 895.79 (3), 895.80 (3),
6 943.212 (2) (b), 943.245 (2) (d) and 943.51 (2) (b), when allowed costs shall be as
7 follows:

8 **SECTION 4.** 814.29 (3) (a) of the statutes, as affected by Supreme Court Order
9 03-06, is amended to read:

10 814.29 (3) (a) A request for leave to commence or defend an action, proceeding,
11 writ of error or appeal without being required to pay fees or costs or to give security
12 for costs constitutes consent of the affiant and counsel for the affiant that if the
13 judgment is in favor of the affiant the court may order the opposing party to first pay
14 the amount of unpaid fees and costs, including attorney fees under ss. 802.05 and,
15 804.12 (1) (c), and 895.025 and under 42 USC 1988 and to pay the balance to the
16 plaintiff.

17 **SECTION 5.** 895.025 of the statutes is created to read:

18 ~~895.025~~ ⁴⁴ **Damages for maintaining certain claims and counterclaims.**

19 (1) A party or a party's attorney is subject to damages for costs and fees under this
20 section for commencing, using, or continuing an action, special proceeding,
21 counterclaim, defense, cross complaint, or appeal to which any of the following
22 applies: ✓

23 (a) The action, special proceeding, counterclaim, defense, cross complaint, or
24 appeal was commenced, used, or continued in bad faith, solely for purposes of
25 harassing or maliciously injuring another. ✓

insert
4-3

↓

1 (b) The party or the party's attorney knew, or should have known, that the
2 action, special proceeding, counterclaim, defense, cross complaint, or appeal was
3 without any reasonable basis in law or equity and could not be supported by a good
4 faith argument for an extension, modification, or reversal of existing law. ✓

5 (2) Upon either party's motion made at any time during the proceeding or upon
6 judgment, if a court finds, upon clear and convincing evidence, that sub. (1) (a) or (b)
7 applies to an action or special proceeding commenced or continued by a plaintiff or
8 a counterclaim, defense, or cross complaint commenced, used, or continued by a
9 defendant, the court:

10 (a) May, if the party served with the motion withdraws, or appropriately
11 corrects, the action, special proceeding, counterclaim, defense, or cross complaint
12 within 21 ✓ days after service of the motion, or within such other period as the court
13 may prescribe, award to the party making the motion, as damages, the actual costs
14 incurred by the party as a result of the action, special proceeding, counterclaim,
15 defense, or cross complaint, including the actual reasonable attorney fees the party
16 incurred, including fees incurred in any dispute over the application of this ✓ section.
17 In determining whether to award, and the appropriate amount of, damages under
18 this ✓ paragraph, the court shall take into consideration the timely withdrawal or
19 correction made by the party served with the motion.

20 (b) Shall, if a withdrawal or correction under par. (a) ✓ is not timely made, award
21 to the party making the motion, as damages, the actual costs incurred by the party
22 as a result of the action, special proceeding, counterclaim, defense, or cross
23 complaint, including the actual reasonable attorney fees the party incurred,
24 including fees incurred in any dispute over the application of this ✓ section.

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insert
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cont
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1 (2m) If a party makes a motion under sub. (2), a copy of that motion and a notice
2 of the date of the hearing on that motion shall be served on any party who is not
3 represented by counsel only by personal service or by sending the motion to the party
4 by registered mail.

5 (3) If an award under this section is affirmed upon appeal, the appellate court
6 shall, upon completion of the appeal, remand the action to the trial court to award
7 damages to compensate the successful party for the actual reasonable attorney fees
8 the party incurred in the appeal.

9 (4) If the appellate court finds that sub. (1) (a) or (b) applies to an appeal, the
10 appellate court shall, upon completion of the appeal, remand the action to the trial
11 court to award damages to compensate the successful party for all the actual
12 reasonable attorney fees the party incurred in the appeal. An appeal is subject to
13 this subsection in its entirety if any element necessary to succeed on the appeal is
14 supported solely by an argument that is described under sub. (1) (a) or (b).

15 (5) The costs and fees awarded under subs. (2) to (4) may be assessed fully
16 against the party bringing the action, special proceeding, cross complaint, defense,
17 counterclaim, or appeal or the attorney representing the party, or both, jointly and
18 severally, or may be assessed so that the party and the attorney each pay a portion
19 of the costs and fees.

20 (6) This section does not apply to criminal actions or civil forfeiture actions.
21 Subsection (4) does not apply to appeals under s. 809.107, 809.30, or 974.05 or to
22 appeals of civil forfeiture actions.

23 SECTION 6. Initial applicability.



1 (1) This act first applies to actions or special proceedings that are commenced
2 or continued after the effective date of this subsection. ✓

3

~~(END)~~

~~(END INS 4-3)~~

SECTION #. Effective date of this act takes effect on the first day of the 4th month beginning after publication. (#)

(end ins 4-3)

Basford, Sarah

From: Kolbow, Regina
Sent: Friday, March 02, 2007 2:42 PM
To: LRB.Legal
Subject: Draft Review: LRB 07-1518/1 Topic: Frivolous damages

Please Jacket LRB 07-1518/1 for the SENATE.

Sincerely,

Regina Kolbow

Legislative Assistant
Office of Senator Glenn Grothman
Office: 608-266-7513
Fax: 608-282-3560
regina.kolbow@legis.state.wi.us