



2007 SENATE BILL 418

January 25, 2008 – Introduced by Senator TAYLOR, cosponsored by Representative BIES, by request of Wisconsin Judicial Council. Referred to Committee on Judiciary, Corrections, and Housing.

1 **AN ACT** *to renumber and amend* 808.10; *to amend* 809.62 (1) (intro.) and
2 809.62 (3); *to repeal and recreate* 809.24 (4) and 809.32 (4); and *to create*
3 808.10 (2), 809.32 (5) and 809.62 (1m) of the statutes; **relating to:** appellate
4 time limits and procedure.

Analysis by the Legislative Reference Bureau

Current law requires that a person seeking supreme court review of an adverse court of appeals decision file a petition for review within 30 days of the court of appeals decision. Current law also provides a procedure for seeking reconsideration of a court of appeals decision, but does not toll the time to file a petition for review while the motion for reconsideration is pending. This bill tolls the time for filing a petition for review while a timely motion for reconsideration is pending in the court of appeals. The bill establishes revised time limits within a petition may be filed, amended, or withdrawn, and within which an opposing party may respond, following the court of appeals determination of the motion for reconsideration.

Under current law, if the attorney in a case appealed to the court of appeals is of the opinion that a petition for review in the supreme court would be frivolous, he or she must advise his or her client of the reasons for that opinion and that the client may file a petition for review. If the client decides to appeal to the supreme court, the attorney shall file a petition for review that includes the facts and procedural status of the case, the dispositions of the case in the lower courts, and an appendix containing the judgments, orders, findings of fact, conclusions of law, and other decisions necessary for an understanding of the petition. The client files a

SENATE BILL 418

supplemental petition containing the statement of the issues and arguments in the case. The petition and supplemental petition must be filed in the supreme court within 30 days after the decision or order of the court of appeals.

This bill prohibits the filing of a petition or supplemental petition in the supreme court until after the court of appeals issues a response to a timely motion for reconsideration of its decision or order. If a person filed a petition or supplemental petition in the supreme court before the court of appeals issued a response to a timely motion for reconsideration, the bill requires the person to file a notice affirming, withdrawing, or amending the pending petition or supplemental petition, within 14 days after the court of appeals decision. If a petition or supplemental petition in the supreme court was made before the court of appeals issued response to a motion for reconsideration, and that motion was denied, the bill allows the other party 14 days after the court of appeals denial to file a response to the petition or supplemental petition. The bill gives that party the same 14-day period to respond to a petition or supplemental petition filed after the motion for reconsideration was denied, or after the petition or supplemental petition was affirmed or amended in response to an amended court of appeals decision, after reconsideration.

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.** 808.10 of the statutes is renumbered 808.10 (1) and amended to
2 read:

3 808.10 (1) PETITION FOR REVIEW; TIME LIMIT. A decision or order of the court of
4 appeals is reviewable by the supreme court only upon a petition for review granted
5 by the supreme court. The Except as provided in sub. (2) and ss. 809.32 (5) and 809.62
6 (1m), the petition for review shall be filed in the supreme court within 30 days of the
7 date of the decision of the court of appeals.

8 **SECTION 2.** 808.10 (2) of the statutes is created to read:

9 808.10 (2) TOLLING PENDING COURT OF APPEALS RECONSIDERATION. (a) Filing of
10 a motion for reconsideration in the court of appeals under s. 809.24 (1) within 20 days
11 after the date of a decision of the court of appeals tolls the time for filing a petition
12 for review in the supreme court.

SENATE BILL 418

1 (b) If the motion for reconsideration is filed in the court of appeals before any
2 petition for review is filed in the supreme court, the 30-day time period to file the
3 petition for review starts on the date on which the court of appeals determines the
4 motion for reconsideration by filing an order denying the motion for reconsideration
5 or an amended decision.

6 **SECTION 3.** 809.24 (4) of the statutes is repealed and recreated to read:

7 809.24 (4) No motion for reconsideration of a court of appeals decision issued
8 under s. 809.105 or 809.107 is permitted.

9 **SECTION 4.** 809.32 (4) of the statutes is repealed and recreated to read:

10 809.32 (4) NO-MERIT PETITION FOR REVIEW; PETITIONS. (a) *Petition and*
11 *supplemental petition.* If a fully briefed appeal is taken to the court of appeals and
12 the attorney is of the opinion that a petition for review in the supreme court under
13 s. 809.62 would be frivolous and without any arguable merit, the attorney shall
14 advise the person of the reasons for this opinion and that the person has the right
15 to file a petition for review. If requested by the person, the attorney shall file a
16 petition satisfying the requirements of s. 809.62 (2) (d) and (f) and the person shall
17 file a supplemental petition satisfying the requirements of s. 809.62 (2) (a), (b), (c),
18 and (e).

19 (b) *Time limit.* Except as provided in sub. (5) and s. 808.10, the petition and
20 supplemental petition shall both be filed within 30 days after the date of the decision
21 or order of the court of appeals.

22 (c) *Responses time limit.* Except as provided in sub. (5), an opposing party may
23 file a response to the petition and supplemental petition within 14 days after the
24 service of the supplemental petition.

25 **SECTION 5.** 809.32 (5) of the statutes is created to read:

SENATE BILL 418

1 809.32 (5) NO-MERIT PETITION FOR REVIEW; EFFECT OF MOTION FOR
2 RECONSIDERATION. (a) *Petition.* If a motion for reconsideration is timely filed in the
3 court of appeals under s. 809.24 (1), no party may file a petition or a supplemental
4 petition in the supreme court until after the court of appeals issues an order denying
5 the motion for reconsideration or an amended decision.

6 (b) *Supplemental petition.* If a motion for reconsideration in the court of
7 appeals under s. 809.24 (1) is denied and a petition for review was filed before the
8 motion for reconsideration was filed, and if the time for filing a supplemental petition
9 under this subsection had not expired when the motion for reconsideration was filed,
10 the supplemental petition may be filed within 14 days after the filing of the order
11 denying the motion for reconsideration or within the time remaining to file the
12 supplemental petition at the time that the motion for reconsideration was filed,
13 whichever is greater.

14 (c) *Notice affirming, withdrawing, or amending pending petition or*
15 *supplemental petition.* If the court of appeals files an amended decision in response
16 to the motion for reconsideration under s. 809.24 (1), any party who filed a petition
17 for review or a supplemental petition for review under this subsection prior to the
18 filing of the motion for reconsideration must file with the clerk of the supreme court
19 a notice affirming the pending petition or supplemental petition, a notice
20 withdrawing the pending petition or supplemental petition, or an amendment to the
21 pending petition or supplemental petition within 14 days after the date of the filing
22 of the court of appeals' amended decision.

23 (d) *Responses.* If a motion for reconsideration is denied and a petition for review
24 or a supplemental petition had been filed before the motion for reconsideration was
25 filed, and if the time for filing a response to the petition or supplemental petition had

SENATE BILL 418

1 not expired when the motion for reconsideration was filed, a response to the petition
2 or the supplemental petition may be filed within 14 days of the order denying the
3 motion for reconsideration. If a supplemental petition is filed under par. (b), the
4 responding party may file a response to the supplemental petition within 14 days
5 after service of the supplemental petition. After the petitioning party files the notice
6 affirming or withdrawing the pending petition or supplemental petition or an
7 amendment to the pending petition or supplemental petition under par. (c), the
8 responding party must file a response to the notice or amendment within 14 days
9 after service of the notice or amendment. The response to the notice or amendment
10 may be an affirmation of the responding party's earlier response or a new response.

11 **SECTION 6.** 809.62 (1) (intro.) of the statutes is amended to read:

12 809.62 (1) (intro.) A party may file with the supreme court a petition for review
13 of an adverse decision of the court of appeals pursuant to s. 808.10 ~~within 30 days~~
14 ~~of the date of the decision of the court of appeals.~~ Supreme court review is a matter
15 of judicial discretion, not of right, and will be granted only when special and
16 important reasons are presented. The following, while neither controlling nor fully
17 measuring the court's discretion, indicate criteria that will be considered:

18 **SECTION 7.** 809.62 (1m) of the statutes is created to read:

19 809.62 (1m) (a) If a motion for reconsideration is timely filed in the court of
20 appeals under s. 809.24 (1), no party may file a petition for review in the supreme
21 court until after the court of appeals issues an order denying the motion for
22 reconsideration or an amended decision.

23 (b) If a motion for reconsideration is denied and a petition for review had been
24 filed before the motion for reconsideration was filed, and if the time for filing a
25 response to the petition had not expired when the motion for reconsideration was

SENATE BILL 418**SECTION 7**

1 filed, a response to the petition may be filed within 14 days of the order denying the
2 motion for reconsideration.

3 (c) If the court of appeals files an amended decision in response to the motion
4 for reconsideration under s. 809.24 (1), any party who filed a petition for review prior
5 to the filing of the motion for reconsideration must file with the clerk of the supreme
6 court a notice affirming the pending petition, a notice withdrawing the pending
7 petition, or an amendment to the pending petition within 14 days after the date of
8 the filing of the court of appeals' amended decision.

9 (d) After the petitioning party files a notice affirming or withdrawing the
10 pending petition or an amendment to the pending petition under par. (c), the
11 responding party must file a response to the notice or amendment within 14 days
12 after service of the notice or amendment. The response may be an affirmation of the
13 responding party's earlier response or a new response.

14 **SECTION 8.** 809.62 (3) of the statutes is amended to read:

15 809.62 (3) Except as provided in sub. (1m) and s. 809.32 (4) and (5), an opposing
16 party may file a response to the petition within 14 days after the service of the
17 petition.

18 **SECTION 9. Effective date.**

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

21 (END)