

2009 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB524)

Received: 01/07/2010

Received By: rnelson2

Wanted: Today

Identical to LRB:

For: Gary Hebl (608) 266-7678

By/Representing: Kate

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.Hebl@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Jurisdictional amount and fees in small claims

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>
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FE Sent For:

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1710

FE Sent For:

<END>

Nelson, Robert P.

From: Battiato, Kate
Sent: Thursday, January 07, 2010 12:34 PM
To: Nelson, Robert P.
Subject: Substitute Amendment Request for AB 524

Hi Bob,

Rep. Hebl would like to request 2 separate substitute amendments to AB 524 which accomplish the following:

- 1) Lower the jurisdictional limit for persons filing 20 or fewer claims in a 365 day period from \$10,000 to \$8,000.
- 2) Includes the counter claims provision established in 09a1243/3.

The second substitute amendment should also include the information above, but in addition include the information in 091248/2 with the following wording changes:

- 1) Delete section 1.
- 2) After the word plaintiff in line 6, delete "is an individual and".

Thanks,
Kate

Kate Battiato
Office of State Representative Gary Hebl
(608) 266-7678



FROM
S02241

LRBs02241
RPN:bjk:ph

Q
Stays

*Wanted this
afternoon*

**ASSEMBLY SUBSTITUTE AMENDMENT,
TO 2009 ASSEMBLY BILL 524**

SA

Insert

reger.

1 **AN ACT** *to renumber* 799.02 (3) (a), (b), (c), (d) and (e); *to renumber and amend*
2 799.02 (1) and 799.02 (3) (intro.); *to amend* 16.007 (6) (a), 799.01 (1) (d) (intro.),
3 799.25 (1), 812.04 (1), 812.35 (2), 814.62 (3) (a), 814.62 (3) (b), 814.62 (3) (d) 2.,
4 814.62 (3) (e), 814.85 (1) (c), 814.86 (1) and 814.86 (1); and *to create* 799.01
5 (1m), 799.02 (1) (b), 799.02 (3) (bc), 799.06 (4), 799.08, 799.23 and 814.62 (5) of
6 the statutes; **relating to:** the jurisdictional amount and court fees in certain
7 small claims actions.

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

8 **SECTION 1.** 16.007 (6) (a) of the statutes is amended to read:
9 16.007 (6) (a) Except as provided in par. (b), whenever the claims board by
10 unanimous vote finds that payment to a claimant of not more than the amount
11 specified in s. 799.01 (1m) (b) is justified, it may order the amount that it finds
12 justified to be paid on its own motion without submission of the claim in bill form to

1 the legislature. The claim shall be paid on a voucher upon the certification of the
2 chairperson and secretary of the board, and shall be charged as provided in sub. (6m).

3 **SECTION 2.** 799.01 (1) (d) (intro.) of the statutes is amended to read:

4 799.01 (1) (d) *Other civil actions.* (intro.) Other civil actions where the amount
5 claimed is ~~\$5,000 or less~~ than the amounts specified in sub. (1m), if the actions or
6 proceedings are:

7 **SECTION 3.** 799.01 (1m) of the statutes is created to read:

8 799.01 (1m) (a) If the plaintiff has commenced 20 or fewer actions under sub.
9 (1) (d) within the previous 365 days, the amount claimed may not exceed \$8,000.

10 (b) If the plaintiff has commenced 21 or more actions under sub. (1) (d) within
11 the previous 365 days, the amount claimed may not exceed \$5,000.

12 **SECTION 4.** 799.02 (1) of the statutes is renumbered 799.02 (1) (a) and amended
13 to read:

14 799.02 (1) (a) If Except as provided in par. (b), if a counterclaim or cross
15 complaint is filed, which arises out of the transaction or occurrence that is the subject
16 matter of the plaintiff's claim and which is beyond the limitations of s. 799.01, the
17 person filing the same shall pay the fee prescribed in s. 814.62 (3) (b), and the entire
18 matter shall be tried under chs. 801 to 847 procedure, except that the counterclaim
19 or cross complaint shall be deemed denied and a responsive pleading thereto is not
20 required unless ordered by the court and the requirements for appearance by the
21 parties shall be governed by s. 799.06 (2).

22 **SECTION 5.** 799.02 (1) (b) of the statutes is created to read:

23 799.02 (1) (b) If a counterclaim or cross complaint is filed in an action under
24 s. 799.01 (1) (d), which arises out of the transaction or occurrence that is the subject
25 matter of the plaintiff's claim, and the counterclaim or cross complaint is for more

1 than \$5,000 but not more than \$8,000, the person filing the counterclaim or cross
2 complaint may elect to pay the fee prescribed in s. 814.62 (3) (b), and the entire
3 matter shall be tried under chs. 801 to 847 procedure, except that the counterclaim
4 or cross complaint shall be deemed denied and a responsive pleading is not required
5 unless ordered by the court and the requirements for appearance by the parties shall
6 be governed by s. 799.06 (2).

7 **SECTION 6.** 799.02 (3) (intro.) of the statutes is renumbered 799.02 (3) (am)
8 (intro.) and amended to read:

9 799.02 (3) (am) (intro.) If Except as provided in par (bc), if a counterclaim or
10 cross complaint is filed that is beyond the limitations of s. 799.01, the person filing
11 the counterclaim or cross complaint shall mail a notice to the plaintiff or the
12 plaintiff's attorney, if any, at the address listed on the summons. The notice shall be
13 mailed on the same day the counterclaim or cross complaint is filed and shall inform
14 the plaintiff of all of the following:

15 **SECTION 7.** 799.02 (3) (a), (b), (c), (d) and (e) of the statutes are renumbered
16 799.02 (3) (am) 1., 2., 3., 4. and 5.

17 **SECTION 8.** 799.02 (3) (bc) of the statutes is created to read:

18 799.02 (3) (bc) If a counterclaim or cross complaint is filed in an action under
19 s. 799.01 (1) (d), the counterclaim or cross complaint is for more than \$5,000 but not
20 more than \$8,000, and the person filing the counterclaim or cross complaint elected
21 to pay the fee prescribed in s. 814.62 (3) (b), the person filing the counterclaim or cross
22 complaint shall mail a notice to the plaintiff or the plaintiff's attorney, if any, at the
23 address listed on the summons. The notice shall be mailed on the same day the
24 counterclaim or cross complaint is filed and shall inform the plaintiff of the
25 information specified in par. (am) 1. to 5.

1 **SECTION 9.** 799.06 (4) of the statutes is created to read:

2 799.06 (4) The complaint in an action under s. 799.01 (1) (d) shall contain a
3 statement to the defendant that specifies that the plaintiff has commenced 20 or
4 fewer actions, or more than 20 actions, under s. 799.01 (1) (d) within the previous 365
5 days and that states that if that statement is not true, the court will dismiss the
6 action against the defendant with prejudice and the defendant may be entitled to
7 recovery under s. 799.23.

8 **SECTION 10.** 799.08 of the statutes is created to read:

9 **799.08 Affidavit of actions commenced.** At the time of commencing an
10 action under s. 799.01 (1) (d), the plaintiff shall submit a signed affidavit to the clerk
11 of circuit court specifying that the plaintiff has commenced 20 or fewer actions, or
12 more than 20 actions, under s. 799.01 (1) (d) within the previous 365 days.

13 **SECTION 11.** 799.23 of the statutes is created to read:

14 **799.23 Misrepresentation of small claims actions commenced;**
15 **dismissal and damages.** If a party proves by the preponderance of credible
16 evidence that the affidavit submitted by the plaintiff under s. 799.08 is not true or
17 that the statement made by the plaintiff under s. 799.06 (4) is not true, the court shall
18 dismiss the action with prejudice and order the plaintiff to pay the party damages
19 in the amount of \$250 and reasonable attorney fees.

20 **SECTION 12.** 799.25 (1) of the statutes is amended to read:

21 799.25 (1) **FILING FEE.** The fee prescribed in s. 814.62 (3) (a) or (5), if paid.

22 **SECTION 13.** 812.04 (1) of the statutes is amended to read:

23 812.04 (1) Upon payment to the clerk of court of the fee prescribed in s. 814.62
24 (1) or (5), the clerk shall issue a garnishee summons together with sufficient copies

1 to the plaintiff or his or her attorney; the summons form may be in blank, but must
2 carry the court seal.

3 **SECTION 14.** 812.35 (2) of the statutes is amended to read:

4 812.35 (2) Upon receipt of the notice under sub. (1) and payment of the fee
5 under s. 814.62 (1) or (5), the clerk of courts shall issue 2 earnings garnishment forms
6 under s. 812.44 (3) for each garnishee. Blank earnings garnishment forms may be
7 issued, but they shall carry the court seal. A circuit court may permit, by rule, the
8 clerk to issue earnings garnishment forms after payment of the fee but before the
9 filing of the notice under sub. (1). That circuit court rule shall require the notice to
10 be filed with the court at a later time, but no later than 5 business days after the date
11 the garnishee is served under sub. (3).

12 **SECTION 15.** 814.62 (3) (a) of the statutes is amended to read:

13 814.62 (3) (a) In a small claims action under ch. 799, at the time of issuance of
14 a summons or other process in a proceeding not commenced by a summons, the
15 plaintiff shall pay to the clerk of court a fee of \$22, except as provided in sub. (5).

16 **SECTION 16.** 814.62 (3) (b) of the statutes is amended to read:

17 814.62 (3) (b) If a counterclaim or cross complaint is filed under s. 799.02 (1),
18 the person filing the same shall pay a fee equal to the difference between the fee
19 under s. 814.61 (1) (a) and the fee paid by the plaintiff under par. (a) this section.

20 **SECTION 17.** 814.62 (3) (d) 2. of the statutes is amended to read:

21 814.62 (3) (d) 2. Of the fees received by the clerk under par. (a) and sub. (5), the
22 county treasurer shall pay \$11.80 to the secretary of administration for deposit in the
23 general fund and shall retain the balance for the use of the county. The secretary of
24 administration shall credit the \$11.80 to the appropriation under s. 20.680 (2) (j).

25 **SECTION 18.** 814.62 (3) (e) of the statutes is amended to read:

1 814.62 (3) (e) If any party files a demand for a jury trial in any action under
2 ch. 799, the party demanding the jury trial shall pay a fee equal to the difference
3 between the fee under s. 814.61 (1) (a) and the fee paid by the plaintiff under ~~par. (a)~~
4 this section, in addition to the fee under s. 814.61 (4).

5 SECTION 19. 814.62 (5) of the statutes is created to read:

*Except as provided
in par. (c) if*

6 814.62 (5) FEES FOR CERTAIN SMALL CLAIMS ACTIONS. (a) ~~If~~ the plaintiff has
7 commenced 20 or fewer actions under s. 799.01 (1) (d) within the previous 365 days,
8 the fee for commencing an action under s. 799.01 (1) (d) shall be equal to 150 percent
9 of the dollar amount specified under sub. (3) (a).

10 (b) If the plaintiff has commenced 21 or more actions under s. 799.01 (1) (d)
11 within the previous 365 days, the fee for commencing an action under s. 799.01 (1)

(d) shall be equal to 200 percent of the dollar amount specified under sub. (3) (a).

*12
insert
613*

SECTION 20. 814.85 (1) (c) of the statutes is amended to read:

14 814.85 (1) (c) Notwithstanding par. (a), the clerk of circuit court shall charge
15 and collect a \$51 court support services surcharge from any person, including any
16 governmental unit, as defined in s. 108.02 (17), paying a fee under s. 814.62 (3) (a)
17 or (b) or (5), or paying a fee under s. 814.61 (1) (a) or (3) or 814.62 (1) or (2) if the party
18 paying the fee seeks the recovery of money and the amount claimed is equal to or less
19 than the maximum amount under s. 799.01 ~~(1) (d)~~ (1m).

20 SECTION 21. 814.86 (1) of the statutes, as affected by 2009 Wisconsin Act 28,
21 section 3240, is amended to read:

22 814.86 (1) Except for an action for a first violation of s. 23.33 (4c) (a) 2., 30.681
23 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed the violation
24 had a blood alcohol concentration of 0.08 or more but less than 0.1 at the time of the
25 violation, or for a violation under s. 343.51 (1m) (b) or a safety belt use violation under

1 s. 347.48 (2m), the clerk of circuit court shall charge and collect a \$21.50 justice
2 information system surcharge from any person, including any governmental unit, as
3 defined in s. 108.02 (17), paying a fee under s. 814.61 (1) (a), (3), or (8) (am), 814.62
4 (1), (2), ~~or (3) (a) or (b),~~ or (5), or 814.63 (1). The justice information system surcharge
5 is in addition to the surcharge listed in sub. (1m).

6 **SECTION 22.** 814.86 (1) of the statutes, as affected by 2009 Wisconsin Act
7 (this act), is amended to read:

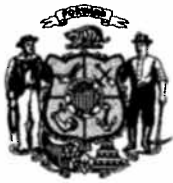
8 814.86 (1) Except for an action for a first violation of s. 23.33 (4c) (a) 2., 30.681
9 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed the violation
10 had a blood alcohol concentration of 0.08 or more but less than 0.1 at the time of the
11 violation, for a financial responsibility violation under s. 344.62 (2), or for a violation
12 under s. 343.51 (1m) (b) or a safety belt use violation under s. 347.48 (2m), the clerk
13 of circuit court shall charge and collect a \$21.50 justice information system surcharge
14 from any person, including any governmental unit, as defined in s. 108.02 (17),
15 paying a fee under s. 814.61 (1) (a), (3), or (8) (am), 814.62 (1), (2), (3) (a) or (b), or (5),
16 or 814.63 (1). The justice information system surcharge is in addition to the
17 surcharge listed in sub. (1m).

18 **SECTION 23. Nonstatutory provisions.**

19 (1) For the purpose of counting the number of actions commenced under section
20 799.01 (1m) of the statutes, as affected by this act, actions commenced before the
21 effective date of this subsection do not count.

22 **SECTION 24. Initial applicability.**

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



ASSEMBLY AMENDMENT,
TO 2009 ASSEMBLY BILL 524

insert 6-12

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 3, line 10: after "plaintiff" insert "is or is not an individual, the amount
3 claimed, and that the plaintiff".

4 **2.** Page 5, line 4: delete "If" and substitute "Except as provided in par. (c), if".

5 **3.** Page 5, line 10: after that line insert:

6 (c) If the plaintiff is an individual and has commenced 20 or fewer actions
7 under s. 799.01 (1) (d) within the previous 365 days, and the amount claimed is less
8 than \$2,000, the fee for commencing an action under s. 799.01 (1) (d) shall be equal
9 to the dollar amount specified under sub. (3) (a).

10

(END)