

2009 ASSEMBLY BILL 122

March 4, 2009 – Introduced by Representatives HEBL, STASKUNAS, TURNER and TOWNSEND, cosponsored by Senators TAYLOR and RISSER, by request of Wisconsin Judicial Council. Referred to Committee on Judiciary and Ethics.

1 **AN ACT** *to renumber and amend* 808.10; *to amend* 809.62 (3) (intro.); *to*
2 *repeal and recreate* 809.24 (4), 809.32 (4) and 809.62 (1m); and *to create*
3 808.10 (2) and 809.32 (5) of the statutes; **relating to:** appellate time limits and
4 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 The bill establishes revised time limits within which a petition may be filed, amended, or withdrawn, and within which an opposing party may respond, following the court of appeals determination of the motion for reconsideration.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 an attorney who was appointed to represent a client 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

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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 a 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 of the court of appeals
4 is reviewable by the supreme court only upon a petition for review granted by the
5 supreme court. The Except as provided in sub. (2) and ss. 809.32 (5) and 809.62 (1m),
6 the petition for review shall be filed in the supreme court within 30 days of the date
7 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.** If a motion for
10 reconsideration is filed in the court of appeals under s. 809.24 (1) within 20 days after
11 the date of a decision of the court of appeals, the 30–day time period to file the petition
12 for review starts on the date the court of appeals determines the motion for

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1 reconsideration by filing an order denying the motion for reconsideration or an
2 amended decision.

3 **SECTION 3.** 809.24 (4) of the statutes is repealed and recreated to read:

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

6 **SECTION 4.** 809.32 (4) of the statutes is repealed and recreated to read:

7 809.32 (4) NO-MERIT PETITION FOR REVIEW. (a) *Petition and supplemental*
8 *petition.* If a fully briefed appeal is taken to the court of appeals and the attorney is
9 of the opinion that a petition for review in the supreme court under s. 809.62 would
10 be frivolous and without any arguable merit, the attorney shall advise the person of
11 the reasons for this opinion and that the person has the right to file a petition for
12 review. If requested by the person, the attorney shall file a petition satisfying the
13 requirements of s. 809.62 (2) (d) and (f), and the person shall file a supplemental
14 petition satisfying the requirements of s. 809.62 (2) (a), (b), (c), and (e).

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

18 (c) *Responses time limit.* Except as provided in sub. (5), an opposing party may
19 file a response to the petition and supplemental petition as provided in s. 809.62 (3)
20 within 14 days after the service of the supplemental petition.

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

22 809.32 (5) NO-MERIT PETITION FOR REVIEW; EFFECT OF MOTION FOR
23 RECONSIDERATION. (a) *Petition.* If a motion for reconsideration has been timely filed
24 in the court of appeals under s. 809.24 (1), no party may file a petition or a

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1 supplemental petition in the supreme court until after the court of appeals issues an
2 order denying the motion for reconsideration or an amended decision.

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

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

20 (d) *Responses.* If a motion for reconsideration is denied and a petition for review
21 or a supplemental petition had been filed before the motion for reconsideration was
22 filed, and if the time for filing a response to the petition or supplemental petition had
23 not expired when the motion for reconsideration was filed, a response to the petition
24 or the supplemental petition may be filed within 14 days of the order denying the
25 motion for reconsideration. If a supplemental petition is filed under par. (b), the

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1 responding party may file a response to the supplemental petition within 14 days
2 after service of the supplemental petition. After the petitioning party files the notice
3 affirming or withdrawing the pending petition or supplemental petition or an
4 amendment to the pending petition or supplemental petition under par. (c), the
5 responding party must file a response to the notice or amendment within 14 days
6 after service of the notice or amendment. The response to the notice or amendment
7 may be an affirmation of the responding party's earlier response or a new response.

8 **SECTION 6.** 809.62 (1m) of the statutes is repealed and recreated to read:

9 **809.62 (1m) GENERAL RULE; TIME LIMITS.** (a) A party may file with the supreme
10 court a petition for review of an adverse decision of the court of appeals pursuant to
11 s. 808.10.

12 (b) If a motion for reconsideration has been timely filed in the court of appeals
13 under s. 809.24 (1), no party may file a petition for review in the supreme court until
14 after the court of appeals issues an order denying the motion for reconsideration or
15 an amended decision.

16 (c) If a motion for reconsideration is denied and a petition for review had been
17 filed before the motion for reconsideration was filed, and if the time for filing a
18 response to the petition had not expired when the motion for reconsideration was
19 filed, a response to the petition may be filed within 14 days of the order denying the
20 motion for reconsideration.

21 (d) If the court of appeals files an amended decision in response to the motion
22 for reconsideration under s. 809.24 (1), any party who filed a petition for review prior
23 to the filing of the motion for reconsideration must file with the clerk of the supreme
24 court a notice affirming the pending petition, a notice withdrawing the pending

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1 petition, or an amendment to the pending petition within 14 days after the date of
2 the filing of the court of appeals' amended decision.

3 (e) After the petitioning party files a notice affirming or withdrawing the
4 pending petition or an amendment to the pending petition under par. (d), the
5 responding party must file a response to the notice or amendment within 14 days
6 after service of the notice or amendment. The response may be an affirmation of the
7 responding party's earlier response or a new response.

8 **SECTION 7.** 809.62 (3) (intro.) of the statutes is amended to read:

9 809.62 (3) RESPONSE TO PETITION. (intro.) Except as provided in sub. (1m) and
10 s. 809.32 (4) and (5), an opposing party may file a response to the petition within 14
11 days after the service of the petition. If filed, the response may contain any of the
12 following:

13 **SECTION 8. Initial applicability.**

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

16 **SECTION 9. Effective date.**

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

19 (END)