SENATE BILL 464 (LRB -4065)

An Act to renumber 757.69 (8); to renumber and amend 813.125 (2); to amend 813.06, 813.12 (2) (a), 813.12 (3) (aj), 813.12 (3) (c), 813.12 (4) (aj), 813.12 (5m), 813.122 (2), 813.123 (2) (a), 813.125 (3) (c) and 813.125 (5m); and to create 757.69 (8) (b), 767.338, 813.12 (5) (a) 4., 813.12 (5g), 813.122 (6) (a) 5., 813.123 (6) (d), 813.125 (2) (b), 813.125 (2g), 813.125 (2m), 813.125 (3) (d), 813.125 (3) (e), 813.125 (4) (aj), 813.125 (5) (a) 4., 813.125 (5g) (c), 813.125 (5g) (d) and 813.126 of the statutes; relating to: temporary restraining orders and injunctions. (FE)

2010

01-22.	S.	Introduced by Senators **Taylor**, **Erpenbach**, **Robson**, **Darling**, **Lassa**, **Risser**, **Hansen**, **A. Lasee**, **Coggs** and **Olsen**; cosponsored by Representatives **Hraychuck**, **Parisi**, **Roys**, **Staskunas**, **Dexter**, **Suder**, **Berceau**, **Turner**, **Danou**, **Van Roy**, **Kaufert**, **Townsend**, **Milroy**, **Sinicki**, **Bies** and **A. Williams**.	
01-22.	S.	Read first time and referred to committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing	499
02-01.	S.	Senator Lassa withdrawn as a coauthor	533
02-04.	S.	Public hearing held.	
02-24.	S.	Executive action taken.	
02-25.	S.	Report introduction and adoption of Senate Amendment 1 to Senate Substitute Amendment 1 recommended by committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing, Ayes 5, Noes 0 **(LRB a1609)**	591
02-25.	S.	Report introduction and adoption of Senate Substitute Amendment 1 recommended by committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing, Ayes 5, Noes 0 **(LRB s0296)**	591
02-25.	S.	Report passage as amended recommended by committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing, Ayes 5, Noes 0	591
02-25.	S.	Available for scheduling.	
02-25.	S.	Senate amendment 2 to Senate substitute amendment 1 offered by Senator Taylor **(LRB a1673)**	590
02-25.	S.	Placed on calendar 3-2-2010 pursuant to Senate Rule 18(1)	591
02-26.	S.	Removed from calendar of 3-2-2010 by committee on Senate Organization, Ayes 5, Noes 0	597
02-26.	S.	Available for scheduling.	
03-11.	S.	Fiscal estimate received.	
04-08.	S.	Placed on calendar 4-13-2010 pursuant to Senate Rule 18(1)	681
04-13.	S.	Read a second time.	
04-13.	S.	Senate amendment 1 to Senate substitute amendment 1 **adopted**.	
04-13.	S.	Senate amendment 2 to Senate substitute amendment 1 **adopted**.	
04-13.	S.	Senate substitute amendment 1 **adopted**.	
04-13.	S.	Ordered to a third reading.	
04-13.	S.	Rules suspended.	
04-13.	S.	Read a third time and **passed**.	
04-13.	S.	Ordered immediately messaged.	
04-13.	A.	Received from Senate	807
04-13.	A.	Read first time and referred to committee on Rules	808
04-13.	A.	Made a special order of business at 11:29 A.M. on 4-15-2010 pursuant to Assembly Resolution 22	824
04-15.	A.	Read a second time.	
04-15.	A.	Ordered to a third reading.	
04-15.	A.	Rules suspended.	
04-15.	A.	Read a third time and **concurred in**.	
04-15.	A.	Ordered immediately messaged.	
04-16.	S.	Received from Assembly concurred in.	

MB

2009
ENROLLED BILL

09en S B-464

ADOPTED DOCUMENTS:

☐ Orig ☐ Engr S SubAmdt 1 09 S 0296/1

Amendments to above (if none, write "NONE"): SA1 — a 1609/1
SA2 — a 1673/1

Corrections - show date (if none, write "NONE"): None

Topic Rel

4-17-10
Date

Enrolling Drafter

State of Wisconsin
2009 – 2010 LEGISLATURE

LRBs0296/1
RPN:jld:md

SENATE SUBSTITUTE AMENDMENT 1,

TO 2009 SENATE BILL 464

February 25, 2010 – Offered by COMMITTEE ON JUDICIARY, CORRECTIONS, INSURANCE, CAMPAIGN FINANCE REFORM, AND HOUSING.

AN ACT ***to renumber and amend*** 813.125 (2); ***to amend*** 813.12 (2) (a), 813.12 (5m), 813.122 (2), 813.123 (2) (a) and 813.125 (5m); and ***to create*** 813.12 (5) (a) 4., 813.12 (5g), 813.122 (6) (a) 5., 813.123 (6) (d), 813.125 (2) (b), 813.125 (2g), 813.125 (2m), 813.125 (3) (d), 813.125 (3) (e), 813.125 (4) (aj), 813.125 (5) (a) 4., 813.125 (5g) (c), 813.125 (5g) (d) and 813.126 of the statutes; **relating to:** temporary restraining orders and injunctions.

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

SECTION 1. 813.12 (2) (a) of the statutes is amended to read:

813.12 **(2)** (a) No action under this section may be commenced by complaint and summons. An action under this section may be commenced only by a petition described under sub. (5) (a). The action commences with service of the petition upon the respondent if a copy of the petition is filed before service or promptly after service. If the judge or a circuit court commissioner extends the time for a hearing under sub.

1 (3) (c) and the petitioner files an affidavit with the court stating that personal service
2 by the sheriff or a private server under s. 801.11 (1) (a) or (b) was unsuccessful
3 because the respondent is avoiding service by concealment or otherwise, the judge
4 or circuit court commissioner shall inform the petitioner that he or she may serve the
5 respondent by publication of a summary of the petition as a class 1 notice, under ch.
6 985, and by mailing or sending a facsimile if the respondent's post–office address or
7 facsimile number is known or can with due diligence be ascertained. The mailing or
8 sending of a facsimile may be omitted if the post–office address or facsimile number
9 cannot be ascertained with due diligence. A summary of the petition published as
10 a class 1 notice shall include the name of the respondent and of the petitioner, notice
11 of the temporary restraining order, and notice of the date, time, and place of the
12 hearing regarding the injunction. <u>The court shall inform the petitioner in writing</u>
13 <u>that, if the petitioner chooses to have the documents in the action served by the</u>
14 <u>sheriff, the petitioner should contact the sheriff to verify the proof of service of the</u>
15 <u>petition.</u>

16 **SECTION 2.** 813.12 (5) (a) 4. of the statutes is created to read:

17 813.12 **(5)** (a) 4. If the petitioner knows of any other court proceeding in which
18 the petitioner is a person affected by a court order or judgment that includes
19 provisions regarding contact with the respondent, any of the following that are
20 known by the petitioner:

21 a. The name or type of the court proceeding.

22 b. The date of the court proceeding.

23 c. The types of provisions regarding contact between the petitioner and
24 respondent.

25 **SECTION 3.** 813.12 (5g) of the statutes is created to read:

813.12 **(5g)** STIPULATION. If the parties enter into a stipulation to convert a petition under this section to a petition for a temporary restraining order or injunction under s. 813.125, the court may not approve that stipulation unless all of the following occur:

(a) Either or both parties submit an oral request on the record for the conversion explaining why the conversion of the petition is requested.

(b) The court addresses the petitioner personally and determines that the petitioner entered into the stipulation voluntarily and with an understanding of the differences between the orders issued under subs. (4) and (4m) and s. 813.125 (4) and (4m).

SECTION 4. 813.12 (5m) of the statutes is amended to read:

813.12 **(5m)** CONFIDENTIALITY OF VICTIM'S ADDRESS. The petition under sub. (5) and the court order under sub. (3) or (4) ~~shall~~ may not disclose the address of the alleged victim. The petitioner shall provide the clerk of circuit court with the petitioner's address when he or she files a petition under this section. The clerk shall maintain the petitioner's address in a confidential manner.

SECTION 5. 813.122 (2) of the statutes is amended to read:

813.122 **(2)** COMMENCEMENT OF ACTION AND RESPONSE. No action under this section may be commenced by complaint and summons. An action under this section may be commenced only by a petition described under sub. (6) (a). The action commences with service of the petition upon the respondent if a copy of the petition is filed before service or promptly after service. ~~The~~ Notwithstanding s. 803.01 (3) (a), the child victim or a parent, stepparent or legal guardian of the child victim may be a petitioner under this section. Section 813.06 does not apply to an action under this section. The respondent may respond to the petition either in writing before or

at the hearing on the issuance of the injunction or orally at that hearing. The court shall inform the petitioner in writing that, if the petitioner chooses to have the documents in the action served by the sheriff, the petitioner should contact the sheriff to verify the proof of service of the petition.

SECTION 6. 813.122 (6) (a) 5. of the statutes is created to read:

813.122 **(6)** (a) 5. If the petitioner knows of any other court proceeding in which the petitioner is a person affected by a court order or judgment that includes provisions regarding contact with the respondent, any of the following that are known by the petitioner:

a. The name or type of the court proceeding.

b. The date of the court proceeding.

c. The types of provisions regarding contact between the petitioner and respondent.

SECTION 7. 813.123 (2) (a) of the statutes is amended to read:

813.123 **(2)** (a) No action under this section may be commenced by complaint and summons. An action under this section may be commenced only by a petition described under sub. (6). The action commences with service of the petition upon the respondent if a copy of the petition is filed before service or promptly after service. The individual at risk, any person acting on behalf of an individual at risk, an elder–adult–at–risk agency, or an adult–at–risk agency may be a petitioner under this section. If the petition is filed by a person other than the individual at risk, the petitioner shall serve a copy of the petition on the individual at risk. Section 813.06 does not apply to an action under this section. The respondent may respond to the petition either in writing before or at the hearing on the issuance of the injunction or orally at that hearing. The court shall inform the petitioner in writing that, if the

petitioner chooses to have the documents in the action served by the sheriff, the petitioner should contact the sheriff to verify the proof of service of the petition.

SECTION 8. 813.123 (6) (d) of the statutes is created to read:

813.123 **(6)** (d) If the petitioner knows of any other court proceeding in which the petitioner is a person affected by a court order or judgment that includes provisions regarding contact with the respondent, any of the following that are known by the petitioner:

1. The name or type of the court proceeding.

2. The date of the court proceeding.

3. The type of provisions regarding contact between the petitioner and respondent.

SECTION 9. 813.125 (2) of the statutes is renumbered 813.125 (2) (a) and amended to read:

813.125 **(2)** (a) An action under this section may be commenced by filing a petition described under sub. (5) (a). No action under this section may be commenced by service of summons. The action commences with service of the petition upon the respondent if a copy of the petition is filed before service or promptly after service. If the judge or a circuit court commissioner extends the time for a hearing under sub. (3) (c) and the petitioner files an affidavit with the court stating that personal service by the sheriff or a private server under s. 801.11 (1) (a) or (b) was unsuccessful because the respondent is avoiding service by concealment or otherwise, the judge or circuit court commissioner shall inform the petitioner that he or she may serve the respondent by publication of a summary of the petition as a class 1 notice, under ch. 985, and by mailing or sending a facsimile if the respondent's post–office address or facsimile number is known or can with due diligence be ascertained. The mailing or

sending of a facsimile may be omitted if the post–office address or facsimile number cannot be ascertained with due diligence. A summary of the petition published as a class 1 notice shall include the name of the respondent and of the petitioner, notice of the temporary restraining order, and notice of the date, time, and place of the hearing regarding the injunction. The court shall inform the petitioner in writing that, if the petitioner chooses to have the documents in the action served by the sheriff, the petitioner should contact the sheriff to verify the proof of service of the petition. Section 813.06 does not apply to an action under this section.

SECTION 10. 813.125 (2) (b) of the statutes is created to read:

813.125 **(2)** (b) Notwithstanding s. 803.01 (3) (a), a child, as defined in s. 813.122 (1) (b), or a parent, stepparent, or legal guardian of a child may be a petitioner under this section.

SECTION 11. 813.125 (2g) of the statutes is created to read:

813.125 **(2g)** APPOINTMENT OF GUARDIAN AD LITEM. The court or circuit court commissioner, on its or his or her own motion, or on the motion of any party, may appoint a guardian ad litem for a child who is the petitioner under this section when justice so requires.

INS. 5A 2

SECTION 12. 813.125 (2m) of the statutes is created to read:

813.125 **(2m)** TWO-PART PROCEDURE. If the fee under s. 814.61 (1) for filing a petition under this section is waived under s. 814.61 (1) (e), the procedure for an action under this section is in 2 parts. First, if the petitioner requests a temporary restraining order the court shall issue or refuse to issue that order. Second, the court shall hold a hearing under sub. (4) on whether to issue an injunction, which is the final relief. If the court issues a temporary restraining order, the order shall set forth

1 the date for the hearing on an injunction. If the court does not issue a temporary
2 restraining order, the date for the hearing shall be set upon motion by either party.
3 **SECTION 13.** 813.125 (3) (d) of the statutes is created to read:
4 813.125 **(3)** (d) The judge or circuit court commissioner shall advise the
5 petitioner of the right to serve the respondent the petition by published notice if with
6 due diligence the respondent cannot be served as provided under s. 801.11 (1) (a) or
7 (b). The clerk of circuit court shall assist the petitioner with the preparation of the
8 notice and filing of the affidavit of printing.
9 **SECTION 14.** 813.125 (3) (e) of the statutes is created to read:
10 813.125 **(3)** (e) The judge or circuit court commissioner may not dismiss or deny
11 granting a temporary restraining order because of the existence of a pending action
12 or of any other court order that bars contact between the parties, nor due to the
13 necessity of verifying the terms of an existing court order.
14 **SECTION 15.** 813.125 (4) (aj) of the statutes is created to read:
15 813.125 **(4)** (aj) The judge or circuit court commissioner may not dismiss or
16 deny granting an injunction because of the existence of a pending action or of any
17 other court order that bars contact between the parties, nor due to the necessity of
18 verifying the terms of an existing court order.
19 **SECTION 16.** 813.125 (5) (a) 4. of the statutes is created to read:
20 813.125 **(5)** (a) 4. If the petitioner knows of any other court proceeding in which
21 the petitioner is a person affected by a court order or judgment that includes
22 provisions regarding contact with the respondent, any of the following that are
23 known by the petitioner:
24 a. The name or type of the court proceeding.
25 b. The date of the court proceeding.

c. The type of provisions regarding contact between the petitioner and respondent.

SECTION 17. 813.125 (5g) (c) of the statutes is created to read:

813.125 **(5g)** (c) If an order is issued under this section, upon request by the petitioner the court or circuit court commissioner shall order the sheriff to accompany the petitioner and assist in placing him or her in physical possession of his or her residence or to otherwise assist in executing or serving the temporary restraining order or injunction. The petitioner may, at the petitioner's expense, use a private process server to serve papers on the respondent.

SECTION 18. 813.125 (5g) (d) of the statutes is created to read:

813.125 **(5g)** (d) The issuance of an order or injunction under sub. (3) or (4) is enforceable despite the existence of any other criminal or civil order restricting or prohibiting contact.

SECTION 19. 813.125 (5m) of the statutes is amended to read:

813.125 **(5m)** CONFIDENTIALITY OF VICTIM'S ADDRESS. The petition under sub. (5) and the court order under sub. (3) or (4) ~~shall~~ may not disclose the address of the alleged victim. The petitioner shall provide the clerk of circuit court with the petitioner's address when he or she files a petition under this section. The clerk shall maintain the petitioner's address in a confidential manner.

SECTION 20. 813.126 of the statutes is created to read:

813.126 New hearing. If a party seeks to have the judge conduct a hearing de novo under s. 757.69 (8) of a determination, order, or ruling entered by a court commissioner in an action under s. 813.12, 813.122, 813.123, or 813.125, including a denial of a request for a temporary restraining order, the motion requesting the hearing must be filed with the court within 15 days after the circuit court

INS. SA 1

1 commissioner issued the determination, order, or ruling. The court shall hold the de
2 novo hearing within 30 days after the motion requesting the hearing is filed with the
3 court unless the court finds good cause for an extension.

4 **SECTION 21. Initial applicability.**

5 (1) This act first applies to petitions filed with the circuit court on the effective
6 date of this subsection.

7 **SECTION 22. Effective date.**

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

10 **(END)**

State of Wisconsin
2009 – 2010 LEGISLATURE

LRBa1609/1
RPN:jld:jf

SENATE AMENDMENT 1,

TO SENATE SUBSTITUTE AMENDMENT 1,

TO 2009 SENATE BILL 464

February 25, 2010 – Offered by COMMITTEE ON JUDICIARY, CORRECTIONS, INSURANCE, CAMPAIGN FINANCE REFORM, AND HOUSING.

At the locations indicated, amend the substitute amendment as follows:

1. Page 8, line 25: delete "15" and substitute "30".

(END)

SA 1

State of Wisconsin
2009 – 2010 LEGISLATURE

LRBa1673/1
RPN:bjk:ph

SENATE AMENDMENT 2,
TO SENATE SUBSTITUTE AMENDMENT 1,
TO 2009 SENATE BILL 464

February 25, 2010 – Offered by Senator TAYLOR.

At the locations indicated, amend the substitute amendment as follows:

1. Page 6, line 16: delete "the petitioner" and substitute "a party".

(END)

SA2