

2011 DRAFTING REQUEST

Bill

Received: 12/15/2011

Received By: phurley

Wanted: As time permits

Companion to LRB: -3998

For: Rich Zipperer (608) 266-9174

By/Representing: Lucas

May Contact:

Drafter: phurley

Subject: Courts - miscellaneous

Addl. Drafters:

Extra Copies:

Submit via email: YES

Requester's email: Sen.Zipperer@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Default judgments

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	phurley 12/16/2011	wjackson 01/20/2012	jmurphy 01/20/2012	_____	sbasford 01/20/2012	lparisi 02/07/2012	

FE Sent For:

<END>

↳ Not Needed

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/?	phurley	/1 Wlj 1/20	Jm 1/20	wj+jm 4/20/12			

FE Sent For:

<END>

Hurley, Peggy

To: Vebber, Lucas
Subject: RE: Drafting Request

Hi Lucas,

I'll enter that request today and get a draft to your office as soon as possible.

Peggy

From: Vebber, Lucas
Sent: Wednesday, December 14, 2011 4:55 PM
To: Hurley, Peggy
Subject: Drafting Request

Hi Peggy,

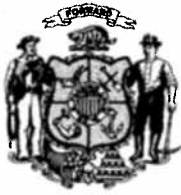
Senator Zipperer would like a bill drafted.

Specifically this bill would modify §806.02 of the statutes related to the default judgment rule. This bill would modify that statute to make a default judgment available to not only plaintiffs, but also to counterclaimants and cross claimants.

Let me know if you need anything further.

Thanks,

Lucas Vebber
Office of Senator Rich Zipperer
33rd Senate District
(608) 266-9174



WJ

2011 BILL

Today
if possible.

~~12/6/11~~
1-9-12 soon

Gen Cat

1 AN ACT ...; relating to: default judgments in certain civil claims, counterclaims,
2 and cross claims.

Analysis by the Legislative Reference Bureau

Under current law, a plaintiff who files a civil lawsuit against a defendant may obtain a default judgment against the defendant if, after being properly served with the litigation papers, the default fails to respond properly and within the appropriate time. When entering a default judgment against a defendant, the court is required to determine that the defendant was properly served, that the court has proper jurisdiction over the defendant, that the defendant did not join any issue of law or fact, and that the time for joining an issue has expired. Upon making these determinations and entering a default judgment against the defendant, the court may require the plaintiff to submit proof of his or her damages and may award such damages to the plaintiff.

Under current law, a defendant in a civil lawsuit may file a counterclaim against the plaintiff and, under certain circumstances, a plaintiff or a defendant may declare a cross claim against a coparty to a civil action.

BILL

Under this bill, a default judgment may be entered against a counterdefendant or cross defendant in the same manner and upon the same showings as may be entered against a defendant under current law.

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

1 **SECTION 1.** 802.07 (5) of the statutes is amended to read:

2 802.07 (5) SEPARATE TRIALS; SEPARATE JUDGMENTS. If the court orders separate
3 trials as provided in s. 805.05 (2), judgment on a counterclaim or cross claim may be
4 rendered in accordance with s. 806.01 (2) or 806.02 when the court has jurisdiction
5 so to do, even if the claims of the opposing party have been dismissed or otherwise
6 disposed of.

7 History: Sup. Ct. Order, 67 Wis. 2d 585, 628 (1975); 1975 c. 218; Sup. Ct. Order, 104 Wis. 2d xi; 1987 a. 256; 2007 a. 97.

8 **SECTION 2.** 806.02 (1d) of the statutes is created to read:

9 806.02 (1d) In this section:

10 (a) "Counterdefendant" means a person against whom a counterclaim is filed
11 pursuant to s. 802.07 (1), (2), or (4).

12 (b) "Cross defendant" means a person against whom a cross claim is filed
13 pursuant to s. 802.07 (3) or (4).

14 **SECTION 3.** 806.02 (1) of the statutes is renumbered 806.02 (1m) and amended
15 to read:

16 806.02 (1m) A default judgment may be rendered as provided in ^{this subsection and} subs. (1) ~~(1m)~~ (2)
17 to (4) if no issue of law or fact has been joined and if the time for joining issue has
18 expired. Any defendant, counterdefendant, or cross defendant ^{plain space} appearing in an
19 action shall be entitled to notice of motion for judgment.

20 **SECTION 4.** 806.02 (2) of the statutes is amended to read:

BILL

1 806.02 (2) After filing the complaint and proof of service of the summons on one
2 or more of the defendants, counterdefendants, or cross defendants and an affidavit
3 that the defendant, counterdefendant, or cross defendant is in default for failure to
4 join issue, the plaintiff, counterclaimant or cross claimant may move for judgment
5 according to the demand of the complaint, counterclaim or cross claim. If the amount
6 of money sought was excluded from the demand for judgment, as required under s.
7 802.02 (1m), the court shall require the plaintiff, counter claimant, or cross claimant
8 to specify the amount of money claimed and provide that information to the court and
9 to the other parties prior to the court rendering judgment. If proof of any fact is
10 necessary for the court to give judgment, the court shall receive the proof.

11 **SECTION 5.** 806.02 (3) of the statutes is amended to read:

12 806.02 (3) If a defendant, counterdefendant, or cross defendant fails to appear
13 in an action within the time fixed in s. 801.09 the court shall, before entering a
14 judgment against such defendant, counterdefendant, or cross defendant, require
15 proof of service of the summons in the manner required by s. 801.10 and, in addition,
16 shall require further proof as follows:

17 (a) Where a personal claim is made against the defendant, counterdefendant,
18 or cross defendant, the court shall require proof by affidavit or other evidence, to be
19 made and filed, of the existence of any fact not shown by the complaint, counterclaim,
20 or cross claim which is needed to establish grounds for personal jurisdiction over the
21 defendant, counterdefendant, or cross defendant. The court may require such
22 additional proof as the interests of justice require.

23 (b) Where no personal claim is made against the defendant, counterdefendant,
24 or cross defendant, the court shall require such proofs, by affidavit or otherwise, as
25 are necessary to show the court's jurisdiction has been invoked over the status,

BILL**SECTION 5**

1 property, or thing which is the subject of the action. The court may require such
2 additional proof as the interests of justice require.

3 **SECTION 6.** 806.02 (4) of the statutes is amended to read:

4 806.02 (4) In an action on express contract for recovery of a liquidated amount
5 of money only, the plaintiff, counterclaimant or cross claimant may file with the clerk
6 proof of personal service of the summons on one or more of the defendants,
7 counterdefendants, or cross defendants and an affidavit that the defendant,
8 counterdefendant, or cross defendant is in default for failure to join issue. The clerk
9 shall render and enter judgment against the defendants, counterdefendants, or cross
10 defendants who are in default for the amount demanded in the complaint. Leaving
11 the summons at the abode of a defendant, counterdefendant, or cross defendant is
12 not personal service within the meaning of this subsection.

13 **SECTION 7.** 806.02 (5) of the statutes is amended to read:

14 806.02 (5) A default judgment may be rendered against any defendant,
15 counterdefendant, or cross defendant who has appeared in the action but who fails
16 to appear at trial. If proof of any fact is necessary for the court to render judgment,
17 the court shall receive the proof.

18 **History:** Sup. Ct. Order, 67 Wis. 2d 585, 716 (1975); Sup. Ct. Order, 73 Wis. 2d xxxi (1976); Sup. Ct. Order, 82 Wis. 2d ix (1978); Sup. Ct. Order, 101 Wis. 2d xi (1981);
Sup. Ct. Order, 109 Wis. 2d xiii (1982); 1987 a. 256.

(END)

Parisi, Lori

From: Vebber, Lucas
Sent: Tuesday, February 07, 2012 4:11 PM
To: LRB.Legal
Subject: Draft Review: LRB 11-3637/1 Topic: Default judgments

Please Jacket LRB 11-3637/1 for the SENATE.