

2011 DRAFTING REQUEST

Senate Amendment (SA-SB451)

Received: **02/20/2012**

Received By: **phurley**

Wanted: **As time permits**

Companion to LRB:

For: **Rich Zipperer (608) 266-9174**

By/Representing: **Lucas**

May Contact:

Drafter: **phurley**

Subject: **Courts - miscellaneous**

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Submit via email: **YES**

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

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Service on counterclaims and crossclaims

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 02/22/2012	jdye 02/22/2012	rschluet 02/22/2012	_____	ggodwin 02/22/2012	ggodwin 02/22/2012	

FE Sent For:

<END>

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222m

FE Sent For:

<END>

Hurley, Peggy

From: Vebber, Lucas
Sent: Monday, February 20, 2012 10:18 AM
To: Hurley, Peggy
Subject: SB 451 Amendment

Hi Peggy,

Senator Zipperer would like to have an amendment drafted for SB 451. It would be technical in nature, and would be for Section 4 and 6 of the bill.

Those sections provide that a counter defendant or cross defendant is required to serve a summons when filing the counter claim/cross claim – however when making such a filing they are not required to serve with a summons, they only need to serve by mail to the plaintiff or cross defendant's attorney.

I think just changing some of the wording around can ensure that the bill is not placing added burdens regarding the necessity of a summons that are not currently present.

Thanks,
Lucas

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



2011 SENATE BILL 451

February 9, 2012 - Introduced by Senator ZIPPERER, cosponsored by Representatives T. LARSON, SPANBAUER, ENDSLEY and CRAIG. Referred to Committee on Judiciary, Utilities, Commerce, and Government Operations.

1 **AN ACT** *to renumber and amend* 806.02 (1); *to amend* 802.07 (5), 806.02 (2),
2 806.02 (3), 806.02 (4) and 806.02 (5); and *to create* 806.02 (1d) of the statutes;
3 **relating to:** default judgments in certain civil claims, counterclaims, and cross
4 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 defendant 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.

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.

SENATE BILL 451

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 **SECTION 2.** 806.02 (1) of the statutes is renumbered 806.02 (1m) and amended
8 to read:

9 806.02 (1m) A default judgment may be rendered as provided in this subsection
10 and subs. (1) (2) to (4) if no issue of law or fact has been joined and if the time for
11 joining issue has expired. Any defendant, counterdefendant, or cross defendant
12 appearing in an action shall be entitled to notice of motion for judgment.

13 **SECTION 3.** 806.02 (1d) of the statutes is created to read:

14 806.02 (1d) In this section:

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

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

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

20 806.02 (2) After filing the complaint and proof of service of the summons on one
21 or more of the defendants, counterdefendants, or cross defendants and an affidavit
22 that the defendant, counterdefendant, or cross defendant is in default for failure to
23 join issue, the plaintiff, counterclaimant, or cross claimant may move for judgment

where required or proof of mailing

SENATE BILL 451

1 according to the demand of the complaint, ~~counterclaim, or cross claim~~. If the
2 amount of money sought was excluded from the demand for judgment, as required
3 under s. 802.02 (1m), the court shall require the plaintiff, ~~counterclaimant, or cross~~
4 ~~claimant~~ to specify the amount of money claimed and provide that information to the
5 court and to the other parties prior to the court rendering judgment. If proof of any
6 fact is necessary for the court to give judgment, the court shall receive the proof.

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

8 806.02 (3) If a defendant, ~~counterdefendant, or cross defendant~~ fails to appear
9 in an action within the time fixed in s. 801.09 the court shall, before entering a
10 judgment against such defendant, ~~counterdefendant, or cross defendant~~, require
11 proof of service of the summons in the manner required by s. 801.10 and, in addition,
12 shall require further proof as follows:

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

19 (b) Where no personal claim is made against the defendant, ~~counterdefendant,~~
20 ~~or cross defendant~~, the court shall require such proofs, by affidavit or otherwise, as
21 are necessary to show the court's jurisdiction has been invoked over the status,
22 property, or thing which is the subject of the action. The court may require such
23 additional proof as the interests of justice require.

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

SENATE BILL 451

*1. where required,
or proof of mailing*

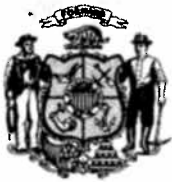
1 806.02 (4) In an action on express contract for recovery of a liquidated amount
2 of money only, the plaintiff, counterclaimant, or cross claimant may file with the
3 clerk proof of personal service of the summons on one or more of the defendants,
4 counterdefendants, or cross defendants and an affidavit that the defendant,
5 counterdefendant, or cross defendant is in default for failure to join issue. The clerk
6 shall render and enter judgment against the defendants, counterdefendants, or cross
7 defendants who are in default for the amount demanded in the complaint. Leaving
8 the summons at the abode of a defendant, counterdefendant, or cross defendant is
9 not personal service within the meaning of this subsection.

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

11 806.02 (5) A default judgment may be rendered against any defendant,
12 counterdefendant, or cross defendant who has appeared in the action but who fails
13 to appear at trial. If proof of any fact is necessary for the court to render judgment,
14 the court shall receive the proof.

(END)

*— find stats re:
filing cross or
court ≠
serve summons.
= mail*



State of Wisconsin
2011 - 2012 LEGISLATURE



LRBa2391/1

PJH:.....

Jld

SENATE AMENDMENT,
TO 2011 SENATE BILL 451

Friday, please

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

2 1. Page 2, line 20: delete the material beginning with that line and ending with

3 "cross claim" on page 3, line 1, and substitute:

4 "806.02 (2) After filing the complaint and proof of service of the summons on

5 one or more of the defendants and an affidavit that the defendant is in default for

6 failure to join issue, the plaintiff may move for judgment according to the demand

7 of the complaint. After filing the counterclaim or crossclaim and proof of mailing to

8 one or more of the counterdefendants or cross defendants and an affidavit that the

9 counterdefendant or cross defendant is in default for failure to join issue, the

10 counterclaimant or cross claimant may move for judgment according to the demand

11 of the counterclaim or cross claim."

12 2. Page 4, line 1: delete lines 1 to 9 and substitute:

1 "806.02 (4) In an action on express contract for recovery of a liquidated amount
2 of money only, the plaintiff may file with the clerk proof of personal service of the
3 summons on one or more of the defendants and an affidavit that the defendant is in
4 default for failure to join issue. A counterclaimant or cross claimant [✓] may file with
5 the clerk proof ^{check Δ} of mailing to one or more of the counterdefendants or cross defendants
6 and an affidavit that the counterdefendant or cross defendant is in default for failure
7 to join issue. The clerk shall render and enter judgment against the defendants,
8 counterdefendants, or cross defendants who are in default for the amount demanded
9 in the complaint. Leaving the summons at the abode of a defendant is not personal
10 service within the meaning of this subsection." [✓]

11

(END)