

2011 Se1 DRAFTING REQUEST

Senate Amendment (SA-SB12)

Received: 10/24/2011

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

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:

Fee shifting

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 10/24/2011	kfollett 10/24/2011	phenry 10/24/2011	_____	lparisi 10/24/2011	lparisi 10/24/2011	
	phurley 10/25/2011	kfollett 10/25/2011		_____			
/2			jfrantze 10/25/2011	_____	lparisi 10/25/2011	lparisi 10/25/2011	

FE Sent For:

<END>

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FE Sent For:

12/5/11
10/25/11

10/25

<END>

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/1	phurley 10/24/2011	lrb_editor					
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11/5 f
10/24
by phurley
X
<END>

FE Sent For:

Hurley, Peggy

From: Vebber, Lucas
Sent: Monday, October 24, 2011 2:06 PM
To: Hurley, Peggy
Subject: Amendments for drafting

Hi Peggy,

Senator Zipperer has two amendments that he would like drafted for September 2011 Special Session Senate Bill 12, related to the reasonableness of attorney fees.

Amendment 1:

- Strike all of Sub.2 of the bill (related to capping attorney fees at 3x for compensatory damages). Page 3, Lines 8-20.
- Add a new Sub.2 that states the hourly rate used in calculating a reasonable attorney fee can be no more than 3x the hourly rate paid to private local attorneys under the State Public Defender (Wis. Stat. § 977.08 (4m))

Amendment 2:

- Add a new section (Sub.3 to the original) that amends 807.01 with the changes in italics below:
- 807.01(1)
 - After issue is joined but at least 20 days before the trial, the defendant may serve upon the plaintiff a written offer to allow judgment to be taken against the defendant for the sum, or property, or to the effect therein specified, with costs. If the plaintiff accepts the offer and serves notice thereof in writing, before trial and within 10 days after receipt of the offer, the plaintiff may file the offer, with proof of service of the notice of acceptance, and the clerk must thereupon enter judgment accordingly. If notice of acceptance is not given, the offer cannot be given as evidence nor mentioned on the trial. If the offer of judgment is not accepted and the plaintiff fails to recover a more favorable judgment *then that which, including accrued prejudgment interest and costs, could have been awarded on the day of the offer of settlement*, the plaintiff shall not recover costs but defendant shall recover costs ~~to be computed on the demand of the complaint, as though it were successful as the plaintiff.~~
- 807.01(3)
 - After issue is joined but at least 20 days before trial, the plaintiff may serve upon the defendant a written offer of settlement for the sum, or property, or to the effect therein specified, with costs. If the defendant accepts the offer and serves notice thereof in writing, before trial and within 10 days after receipt of the offer, the defendant may file the offer, with proof of service of the notice of acceptance, with the clerk of court. *If the accepted offer is for a sum of money, the sum shall be paid within 15 days of acceptance, or the plaintiff may, at their option, either request judgment upon the settlement agreement or void the agreement. If notice of acceptance is given, and the settlement sum is not paid within 15 days, the offer and its acceptance shall be admitted as evidence at trial, if offered by the Plaintiff.* If notice of acceptance is not given, the offer cannot be given as evidence nor mentioned on the trial. If the offer of settlement is not accepted and the plaintiff recovers a more favorable judgment, the plaintiff shall recover double the amount of the taxable costs.
- 807.01(4)
 - If there is an offer of settlement by a party under this section which is not accepted and the party recovers a judgment, *less prejudgment interest and costs accrued after the date of the offer of settlement*, which is greater than or equal to the amount specified in the offer of settlement the party is entitled to interest at the annual rate of 12% on the amount recovered from the date of the offer of settlement until the amount is paid to the *appropriate party, or into court as security for the judgment pending disposition and any appeal.* *Interest under this section is in addition to any other compensation allowed by law or contract, but in lieu of interest computed under ss. 814.04 (4) and 815.05 (8). Taxable Costs under this section include attorneys*

fees awarded by statute, contract, or common law. In any offer made under this section, the offerer may include a provision that the costs specified in the offer may be determined by the court, after acceptance.

Please draft these as soon as possible.

Thank you,

Lucas

Lucas Vebber

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



State of Wisconsin
2011 - 2012 LEGISLATURE

September 2011 Special Session



LRB-3107/1
PJH:cmh&cjs:rs

ASSEMBLY BILL 12

October 11, 2011 – Introduced by COMMITTEE ON ASSEMBLY ORGANIZATION, by request of Governor Scott Walker, Representative Vos, and Senator Zipperer. Referred to Committee on Judiciary and Ethics.

- 1 **AN ACT to create** 814.045 of the statutes; **relating to:** factors for determining
2 the reasonableness of attorney fees.

Analysis by the Legislative Reference Bureau

Under current law, in certain civil actions a court may grant reasonable attorney fees to a prevailing party or may be asked to determine whether attorney fees sought by a party are reasonable. Under this bill, to determine whether to award attorney fees and whether the attorney fees are reasonable, the court must consider several factors.

Under the bill, the factors that the court must consider include the time and labor required by the attorney, the novelty and difficulty of the questions involved, and the complexity of the case; the skills needed to perform the legal service properly; the likelihood that the acceptance of the particular case prevented the attorney from accepting other work; the fee customarily charged in the locality for similar legal services; the amount involved in the legal dispute and the results obtained; the fees granted in similar cases; the time limitations imposed by the client or by the circumstances; the nature and length of the professional relationship with the client; the experience, reputation, and ability of the attorney performing the services; whether the fee is fixed or contingent; and the legitimacy of any defenses raised in the case.

The bill also limits attorney fees to three times the amount of compensatory damages awarded, except in cases where only nonmonetary relief is awarded or in cases involving both compensatory damages and nonmonetary relief. The bill does not place a limit on attorney fees in cases where only nonmonetary relief is awarded,

so long as the court considers the factors set forth in the bill. In cases where both compensatory damages and nonmonetary relief is awarded, the bill sets forth a presumption that a reasonable attorney fee is not more than three times the amount of compensatory damages awarded, but allows a court to determine that a greater amount is reasonable if the court considers all of the factors set forth in the bill.

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

1 **SECTION 1.** 814.045 of the statutes is created to read:

2 **814.045 Attorney fees; reasonableness.** (1) Subject to sub. (2), in any action
3 involving the award of attorney fees that are not governed by s. 814.04 (1) or
4 involving a dispute over the reasonableness of attorney fees, the court shall, in
5 determining whether to award attorney fees and in determining whether the
6 attorney fees are reasonable, consider all of the following:

7 (a) The time and labor required by the attorney.

8 (b) The novelty and difficulty of the questions involved in the action.

9 (c) The skill requisite to perform the legal service properly.

10 (d) The likelihood that the acceptance of the particular case precluded other
11 employment by the attorney.

12 (e) The fee customarily charged in the locality for similar legal services.

13 (f) The amount of damages involved in the action.

14 (g) The results obtained in the action.

15 (h) The time limitations imposed by the client or by the circumstances of the
16 action.

17 (i) The nature and length of the attorney's professional relationship with his
18 or her client.

19 (j) The experience, reputation, and ability of the attorney.



State of Wisconsin
2011 - 2012 LEGISLATURE

September 2011 Special Session



LRBa1744/1

PJH:...

ef

SENATE AMENDMENT ,
TO SENATE BILL 12

*Done
K. J. J.*

At the locations indicated, amend the bill as follows:

1. Page 2, line 1: before that line insert:

“SECTION 1d. 807.015 of the statutes is created to read:

807.015 Settlement offers; fee shifting cases. (1) This section applies to any action brought pursuant to ss. 93.20, 100.195 (5m) (b), 100.30 (5m), 106.50 (6) (i) and (6m) (a), 111.397 (2) (a), 115.80 (9), 281.36 (2) (b) 1., 767.553 (4) (d), 769.313, 802.05, 814.245, 895.035 (4), 895.044, 895.443 (3), 895.444 (2), 895.445 (3), 895.446 (3), 895.506, 943.212 (2) (b), 943.245 (2) (d), 943.51 (2) (b), and 995.10 (3).

(2) After issue is joined but at least 20 days before the trial, the defendant may serve upon the plaintiff a written offer to allow judgment to be taken against the defendant for the sum, or property, or to the effect therein specified, with costs. If the plaintiff accepts the offer and serves notice thereof in writing, before trial and within 10 days after receipt of the offer, the plaintiff may file the offer, with proof of

service of the notice of acceptance, and the clerk must thereupon enter judgment accordingly. If notice of acceptance is not given, the offer cannot be given as evidence nor mentioned on the trial. If the offer of judgment is not accepted and the plaintiff fails to recover a more favorable judgment, including prejudgment interest and costs incurred by the plaintiff up to the date the offer was made, the plaintiff shall not recover costs but defendant shall recover costs as would be payable to a prevailing plaintiff.

(3) After issue is joined but at least 20 days before trial, the defendant may serve upon the plaintiff a written offer that if the defendant fails in the defense the damages be assessed at a specified sum. If the plaintiff accepts the offer and serves notice thereof in writing before trial and within 10 days after receipt of the offer and prevails upon the trial, either party may file proof of service of the offer and acceptance and the damages will be assessed accordingly. If notice of acceptance is not given, the offer cannot be given as evidence nor mentioned on the trial. If the offer is not accepted and if damages assessed in favor of the plaintiff do not exceed the damages offered, neither party shall recover costs.

(4) After issue is joined but at least 20 days before trial, the plaintiff may serve upon the defendant a written offer of settlement for the sum, or property, or to the effect therein specified, with costs. If the defendant accepts the offer and serves notice thereof in writing, before trial and within 10 days after receipt of the offer, the defendant may file the offer, with proof of service of the notice of acceptance, with the clerk of court. If notice of acceptance is not given, the offer cannot be given as evidence nor mentioned on the trial. If the offer of settlement is not accepted and the plaintiff recovers a more favorable judgment, the plaintiff shall recover double the amount of the taxable costs.

X (5) If there is an offer of settlement by a party under this section which is not accepted and the party recovers a judgment, less prejudgment interest and costs accrued after the date of the offer of settlement, which is greater than or equal to the amount specified in the offer of settlement, the party is entitled to interest at the annual rate of 12^{the percent}% on the amount recovered from the date of the offer of settlement until the amount is paid to the appropriate party or to the court as security for the judgment pending disposition and any appeal. Interest under this section is in addition to any other compensation allowed by law or contract, but in lieu of interest computed under ss. 814.04 (4) and 815.05 (8). Taxable costs under this section include attorney fees awarded by statute, contract, or common law. In any offer made under this section, the offerer may include a provision that the costs specified in the offer may be determined by the court after acceptance of the offer.

(6) Subsections (2) to (5) apply to offers which may be made by any party to any other party who demands a judgment or setoff against the offering party."

X 2. Page 2, line 1: delete "SECTION (1)" and substitute "SECTION (IM)".

(END)

D-Note

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBa1744/1dn

PJH...*g-f*

Date

Lucas,

X Please review this draft to ensure that it is consistent with your intent. As we discussed, this draft creates a new section that applies only to offers of settlement in cases that are brought pursuant to statutes that allow fee-shifting. I lifted the statutory references from s. 814.04 (intro.); please review carefully to make sure that list includes all of the statutes you want to include.

The new section incorporates s. 807.01 (1) and (4) with the changes we discussed. It also includes s. 807.01 (2), (3), and (5) unchanged from current law. Please let me know if you would like anything redrafted.

Peggy Hurley
Legislative Attorney
Phone: (608) 266-8906
E-mail: peggy.hurley@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBa1744/1dn
PJH:kjf:ph

October 24, 2011

Lucas,

Please review this draft to ensure that it is consistent with your intent. As we discussed, this draft creates a new section that applies only to offers of settlement in cases that are brought pursuant to statutes that allow fee shifting. I lifted the statutory references from s. 814.04 (intro.); please review carefully to make sure that list includes all of the statutes you want to include.

The new section incorporates s. 807.01 (1) and (4) with the changes we discussed. It also includes s. 807.01 (2), (3), and (5) unchanged from current law. Please let me know if you would like anything redrafted.

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Legislative Attorney
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E-mail: peggy.hurley@legis.wisconsin.gov



State of Wisconsin
2011 - 2012 LEGISLATURE

September 2011 Special Session



LRBa1744/1
PJH:kjf:ph

SENATE AMENDMENT ,
TO SENATE BILL 12

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

2 **1.** Page 2, line 1: before that line insert:

3 “SECTION 1d. 807.015 of the statutes is created to read:

4 **807.015 Settlement offers; fee shifting cases.** (1) This section applies to
5 any action brought pursuant to ss. 93.20, 100.195 (5m) (b), 100.30 (5m), 106.50 (6)
6 (i) and (6m) (a), 111.397 (2) (a), 115.80 (9), 281.36 (2) (b) 1., 767.553 (4) (d), 769.313,
7 802.05, 814.245, 895.035 (4), 895.044, 895.443 (3), 895.444 (2), 895.445 (3), 895.446
8 (3), 895.506, 943.212 (2) (b), 943.245 (2) (d), 943.51 (2) (b), and 995.10 (3).

9 (2) After issue is joined but at least 20 days before the trial, the defendant may
10 serve upon the plaintiff a written offer to allow judgment to be taken against the
11 defendant for the sum, or property, or to the effect therein specified, with costs. If
12 the plaintiff accepts the offer and serves notice thereof in writing, before trial and
13 within 10 days after receipt of the offer, the plaintiff may file the offer, with proof of

1 service of the notice of acceptance, and the clerk must thereupon enter judgment
2 accordingly. If notice of acceptance is not given, the offer cannot be given as evidence
3 nor mentioned on the trial. If the offer of judgment is not accepted and the plaintiff
4 fails to recover a more favorable judgment, including prejudgment interest and costs
5 incurred by the plaintiff up to the date the offer was made, the plaintiff shall not
6 recover costs but defendant shall recover costs as would be payable to a prevailing
7 plaintiff.

8 (3) After issue is joined but at least 20 days before trial, the defendant may
9 serve upon the plaintiff a written offer that if the defendant fails in the defense the
10 damages be assessed at a specified sum. If the plaintiff accepts the offer and serves
11 notice thereof in writing before trial and within 10 days after receipt of the offer and
12 prevails upon the trial, either party may file proof of service of the offer and
13 acceptance and the damages will be assessed accordingly. If notice of acceptance is
14 not given, the offer cannot be given as evidence nor mentioned on the trial. If the offer
15 is not accepted and if damages assessed in favor of the plaintiff do not exceed the
16 damages offered, neither party shall recover costs.

17 (4) After issue is joined but at least 20 days before trial, the plaintiff may serve
18 upon the defendant a written offer of settlement for the sum, or property, or to the
19 effect therein specified, with costs. If the defendant accepts the offer and serves
20 notice thereof in writing, before trial and within 10 days after receipt of the offer, the
21 defendant may file the offer, with proof of service of the notice of acceptance, with the
22 clerk of court. If notice of acceptance is not given, the offer cannot be given as
23 evidence nor mentioned on the trial. If the offer of settlement is not accepted and the
24 plaintiff recovers a more favorable judgment, the plaintiff shall recover double the
25 amount of the taxable costs.



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September 2011 Special Session



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TO SENATE BILL 12

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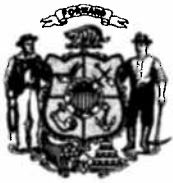
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State of Wisconsin
2011 - 2012 LEGISLATURE

September 2011 Special Session



LRBa1744/1
PJH:kjf:ph

2

RMN

SENATE AMENDMENT,
TO SENATE BILL 12

a statute that permits or requires a court to award attorney fees to a prevailing party.

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

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