

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:

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:

Reasonable attorney fees

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	csicilia 10/24/2011	phenry 10/24/2011	_____	lparisi 10/24/2011	lparisi 10/24/2011	
/2	phurley 10/25/2011	csicilia 10/25/2011	jfrantze 10/25/2011	_____	mbarman 10/25/2011	mbarman 10/25/2011	

FE Sent For:

<END>

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:

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:

Reasonable attorney fees

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	csicilia 10/24/2011	phenry 10/24/2011	_____	lparisi 10/24/2011	lparisi 10/24/2011	

FE Sent For:

12 cjs 10/25
11
Jb 10/25
<END>

2011 Set 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:

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:

Reasonable attorney fees

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	1 cjs 10/24 1		_____			

FE Sent For:

<END>

Hurley, Peggy

From: Vebber, Lucas
Sent: Monday, October 24, 2011 3:53 PM
To: Hurley, Peggy
Subject: RE: Drafting Request Amendment

Yes, that sounds good. The Senator would like you to strike the "except as provided" and the 2(c) language, as per your e-mail below.

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

From: Hurley, Peggy
Sent: Monday, October 24, 2011 3:51 PM
To: Vebber, Lucas
Subject: RE: Drafting Request Amendment

Well, sub 2a addresses any action where compensatories are awarded, so I think that necessarily includes those actions where compensatories and non-comps are awarded. If you think it is more clear to include both, though, I can certainly do that.

From: Vebber, Lucas
Sent: Monday, October 24, 2011 3:49 PM
To: Hurley, Peggy
Subject: RE: Drafting Request Amendment

Since Sub 2c would apply to situations where both compensatory and the non-compensatory damages were awarded... would we need to remove that part?

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

From: Hurley, Peggy
Sent: Monday, October 24, 2011 3:47 PM
To: Vebber, Lucas
Subject: RE: Drafting Request Amendment

Hi Lucas,

This language mirrors what is now in sub. (2)(c); do you want me to remove the "Except as provided in par. (c)," from page 3, line 9, and then delete lines 15 to 20?

From: Vebber, Lucas
Sent: Monday, October 24, 2011 3:36 PM
To: Hurley, Peggy
Subject: Drafting Request Amendment

September 2011 Special Session Senate Bill 12:

Peggy,

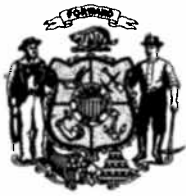
Senator Zipperer has one last amendment for SS SB 12.

Page 3, line 9 strike beginning with "reasonable attorney fees" and through line 10, and replace with: ", the court shall presume that reasonable attorney fees do not exceed 3 times the amount of the compensatory damages awarded, but this presumption may be overcome if the court determines, after considering the factors set forth in sub. (1), that a greater amount is reasonable."

Essentially this will allow a court to exceed the 3x cap, if it determines that would be reasonable.

Thanks,

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



State of Wisconsin
2011 - 2012 LEGISLATURE

September 2011 Special Session



LRB-2670/1
PJH:cmh&cjs:ph

SENATE BILL 12

October 11, 2011 – Introduced by COMMITTEE ON SENATE ORGANIZATION, by request of Governor Scott Walker, Senator Zipperer, and Representative Vos. Referred to Committee on Judiciary, Utilities, Commerce, and Government Operations.

- 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.

1 (k) Whether the fee is fixed or contingent.

2 (L) The complexity of the case.

3 (m) Awards of costs and fees in similar cases.

4 (n) The legitimacy or strength of any defenses or affirmative defenses asserted
5 in the action.

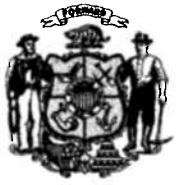
6 (p) Other factors the court deems important or necessary to consider under the
7 circumstances of the case.

8 **(2)** (a) Except as provided in par. (c), in any action in which compensatory
9 damages are awarded, reasonable attorney fees may not exceed 3 times the amount
10 of the compensatory damages awarded.

11 (b) In any action in which compensatory damages are not awarded but
12 injunctive or declaratory relief, rescission or modification, or specific performance is
13 ordered, reasonable attorney fees shall be determined according to the factors set
14 forth in sub. (1).

15 (c) In any action in which compensatory damages are awarded and injunctive
16 or declaratory relief, rescission or modification, or specific performance is ordered,
17 the court shall presume that reasonable attorney fees do not exceed 3 times the
18 amount of the compensatory damages awarded, but this presumption may be
19 overcome if the court determines, after considering the factors set forth in sub. (1),
20 that a greater amount is reasonable.

21 (END)



State of Wisconsin
2011 - 2012 LEGISLATURE

September 2011 Special Session



LRBa1745/1

PJH.....

gs

SENATE AMENDMENT,
TO SENATE BILL 12

bill history
LPS: check component - it should be de/mt/ & sub
today

awarded on

At the locations indicated, amend the bill as follows:

1. Page 3, line 8: delete "Except as provided in par. (c), in" and substitute "In".

2. Page 3, line 9: delete the material beginning with "reasonable" and ending with page 3, line 10 and substitute

no ff

"the court shall presume that reasonable attorney fees do not exceed 3 times the amount of the compensatory damages awarded but this presumption may be overcome if the court determines, after considering the factors set forth in sub. (1), that a greater amount is reasonable."

3. Page 3, line 15: delete lines 15 to 20.

(END)

Hurley, Peggy

From: Vebber, Lucas
Sent: Tuesday, October 25, 2011 8:35 AM
To: Hurley, Peggy
Subject: RE: attorney fees

Yes, 1745. I think it would just be easier as one amendment, the stripes just arrived to the office, I will send them back to you.

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

From: Hurley, Peggy
Sent: Tuesday, October 25, 2011 8:33 AM
To: Vebber, Lucas
Subject: RE: attorney fees

The first version? I can do that - I think you mean LRB 11a1745, but to add this language to that amendment I would need the stripes back. As soon as I get those, I will redraft. Otherwise, if you've already introduced it or you can't get the stripes back to me, I have to do a separate amendment. Just let me know.

Peggy

From: Vebber, Lucas
Sent: Tuesday, October 25, 2011 8:30 AM
To: Hurley, Peggy
Subject: RE: attorney fees

Peggy,

Yes this language would be good.

Could we add that as a #4 to the amendment from yesterday that removed the 3x hard cap?

Thanks,

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

From: Hurley, Peggy
Sent: Tuesday, October 25, 2011 8:29 AM
To: Vebber, Lucas
Subject: attorney fees

Good morning, Lucas!

Would language like this work:

10/25/2011

(3) This section does not abrogate the rights of persons to enter into an agreement for attorney fees and the court shall presume that such an agreement is reasonable. (or: ..."and the court shall uphold such an agreement as reasonable." That is bit more stringent, and may get some resistance, esp in light of things like boilerplate language like we discussed yesterday).

Let me know if that works or if you have any other suggestions.

Peggy Hurley
Legislative Reference Bureau
608 266 8906



State of Wisconsin
2011 - 2012 LEGISLATURE

September 2011 Special Session



LRBa1745/1
PJH:cjs:ph

2
mr

SENATE AMENDMENT,
TO SENATE BILL 12

④ #. Page 2, line 2: delete
"sub. (2)" and substitute
"subs. (2) and (3)"

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

2 1. Page 3, line 8: delete "Except as provided in par. (c), in" and substitute "In".

3 2. Page 3, line 9: delete the material beginning with "reasonable" and ending
4 with "awarded." on line 10 and substitute "the court shall presume that reasonable
5 attorney fees do not exceed 3 times the amount of the compensatory damages
6 awarded but this presumption may be overcome if the court determines, after
7 considering the factors set forth in sub. (1), that a greater amount is reasonable."

8 3. Page 3, line 15: delete lines 15 to 20.

9 (END)

Insert

2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBa1745/lins
PJH:cjs:ph

1
2
3
4
5

INSERT:

~~1.~~ Page 3, line 15: delete lines 15 to 20 and substitute:

“(3) This section does not abrogate the rights of persons to enter into an agreement for attorney fees and the court shall presume that such an agreement is reasonable.”