



State of Wisconsin  
2005 - 2006 LEGISLATURE

LRBs0457/2  
RPN:jld:pg

**ASSEMBLY SUBSTITUTE AMENDMENT 1,  
TO 2005 ASSEMBLY BILL 855**

January 19, 2006 – Offered by Representative GUNDRUM.

1     **AN ACT** *to amend* 767.293 (6), 814.04 (intro.) and 814.29 (3) (a); and *to create*  
2           808.03 (3) and 895.025 of the statutes; **relating to:** damages for frivolous  
3           claims.

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

4           **SECTION 1.** 767.293 (6) of the statutes, as affected by Supreme Court Order  
5           03-06, is amended to read:

6           767.293 (6) Section ~~802.05 (2)~~ 895.025 applies to the filing of an affidavit under  
7           this section.

8           **SECTION 2.** 808.03 (3) of the statutes is created to read:

9           808.03 (3) EXCEPTION. Notwithstanding subs. (1) and (2), a judgment or order  
10          may not be appealed in an action in which a party makes a claim under s. 802.05,  
11          804.12, or 895.025 until the circuit court has ruled on that claim.

1           **SECTION 3.** 814.04 (intro.) of the statutes, as affected by Supreme Court Order  
2 03–06, is amended to read:

3           **814.04 Items of costs.** (intro.) Except as provided in ss. 93.20, 100.30 (5m),  
4 106.50 (6) (i) and (6m) (a), 115.80 (9), 281.36 (2) (b) 1., 767.33 (4) (d), 769.313, ~~802.05~~  
5 895.025, 814.245, 895.035 (4), 895.10 (3), 895.75 (3), 895.77 (2), 895.79 (3), 895.80 (3),  
6 943.212 (2) (b), 943.245 (2) (d) and 943.51 (2) (b), when allowed costs shall be as  
7 follows:

8           **SECTION 4.** 814.29 (3) (a) of the statutes, as affected by Supreme Court Order  
9 03–06, is amended to read:

10           814.29 (3) (a) A request for leave to commence or defend an action, proceeding,  
11 writ of error or appeal without being required to pay fees or costs or to give security  
12 for costs constitutes consent of the affiant and counsel for the affiant that if the  
13 judgment is in favor of the affiant the court may order the opposing party to first pay  
14 the amount of unpaid fees and costs, including attorney fees under ss. 802.05 and,  
15 804.12 (1) (c), and 895.025 and under 42 USC 1988 and to pay the balance to the  
16 plaintiff.

17           **SECTION 5.** 895.025 of the statutes is created to read:

18           **895.025 Damages for maintaining certain claims and counterclaims.**

19           **(1)** A party or a party’s attorney is subject to damages for costs and fees under this  
20 section for commencing, using, or continuing an action, special proceeding,  
21 counterclaim, defense, cross complaint, or appeal to which any of the following  
22 applies:

23           (a) The action, special proceeding, counterclaim, defense, cross complaint, or  
24 appeal was commenced, used, or continued in bad faith, solely for purposes of  
25 harassing or maliciously injuring another.

1           (b) The party or the party's attorney knew, or should have known, that the  
2           action, special proceeding, counterclaim, defense, cross complaint, or appeal was  
3           without any reasonable basis in law or equity and could not be supported by a good  
4           faith argument for an extension, modification, or reversal of existing law.

5           **(2)** Upon either party's motion made at any time during the proceeding or upon  
6           judgment, if a court finds, upon clear and convincing evidence, that sub. (1) (a) or (b)  
7           applies to an action or special proceeding commenced or continued by a plaintiff or  
8           a counterclaim, defense, or cross complaint commenced, used, or continued by a  
9           defendant, the court:

10          (a) May, if the party served with the motion withdraws, or appropriately  
11          corrects, the action, special proceeding, counterclaim, defense, or cross complaint  
12          within 21 days after service of the motion, or within such other period as the court  
13          may prescribe, award to the party making the motion, as damages, the actual costs  
14          of the action, including the actual reasonable attorney fees the party incurred in the  
15          action, including fees incurred in any dispute over the application of this section. In  
16          determining whether to award, and the appropriate amount of, damages under this  
17          paragraph, the court shall take into consideration the timely withdrawal or  
18          correction made by the party served with the motion.

19          (b) Shall, if a withdrawal or correction under par. (a) is not timely made, award  
20          to the party making the motion, as damages, the actual costs incurred by the party  
21          as a result of the action, special proceeding, counterclaim, defense, or cross  
22          complaint, including the actual reasonable attorney fees the party incurred,  
23          including fees incurred in any dispute over the application of this section.

24          **(3)** If an award under this section is affirmed upon appeal, the appellate court  
25          shall, upon completion of the appeal, remand the action to the trial court to award

1 damages to compensate the successful party for the actual reasonable attorneys fees  
2 the party incurred in the appeal.

3 (4) If the appellate court finds that sub. (1) (a) or (b) applies to an appeal, the  
4 appellate court shall, upon completion of the appeal, remand the action to the trial  
5 court to award damages to compensate the successful party for all the actual  
6 reasonable attorneys fees the party incurred in the appeal. An appeal is subject to  
7 this subsection in its entirety if any element necessary to succeed on the appeal is  
8 supported solely by an argument that is described under sub. (1) (a) or (b).

9 (5) The costs and fees awarded under subs. (2) to (4) may be assessed fully  
10 against the party bringing the action, special proceeding, cross complaint, defense,  
11 counterclaim, or appeal or the attorney representing the party, or both, jointly and  
12 severally, or may be assessed so that the party and the attorney each pay a portion  
13 of the costs and fees.

14 (6) This section does not apply to criminal actions, special proceedings, or  
15 appeals. Subsection (4) does not apply to appeals under ss. 809.107 and 809.30.

16 **SECTION 6. Initial applicability.**

17 (1) This act first applies to actions or special proceedings that are commenced  
18 on the effective date of this subsection or that are continued after the effective date  
19 of this subsection.

20

(END)