



State of Wisconsin
2009 - 2010 LEGISLATURE

LRBs0226/1
RPN:bjk:rs

**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2009 ASSEMBLY BILL 524**

January 8, 2010 – Offered by Representative HEBL.

1 **AN ACT** *to renumber* 799.02 (3) (a), (b), (c), (d) and (e); *to renumber and amend*
2 799.02 (1) and 799.02 (3) (intro.); *to amend* 16.007 (6) (a), 799.01 (1) (d) (intro.),
3 799.25 (1), 812.04 (1), 812.35 (2), 814.62 (3) (a), 814.62 (3) (b), 814.62 (3) (d) 2.,
4 814.62 (3) (e), 814.85 (1) (c), 814.86 (1) and 814.86 (1); and *to create* 799.01
5 (1m), 799.02 (1) (b), 799.02 (3) (bc), 799.06 (4), 799.08, 799.23 and 814.62 (5) of
6 the statutes; **relating to:** the jurisdictional amount and court fees in certain
7 small claims actions.

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

8 **SECTION 1.** 16.007 (6) (a) of the statutes is amended to read:
9 16.007 (6) (a) Except as provided in par. (b), whenever the claims board by
10 unanimous vote finds that payment to a claimant of not more than the amount
11 specified in s. 799.01 (1m) (b) is justified, it may order the amount that it finds

1 justified to be paid on its own motion without submission of the claim in bill form to
2 the legislature. The claim shall be paid on a voucher upon the certification of the
3 chairperson and secretary of the board, and shall be charged as provided in sub. (6m).

4 **SECTION 2.** 799.01 (1) (d) (intro.) of the statutes is amended to read:

5 799.01 (1) (d) *Other civil actions.* (intro.) Other civil actions where the amount
6 claimed is ~~\$5,000~~ or less than the amounts specified in sub. (1m), if the actions or
7 proceedings are:

8 **SECTION 3.** 799.01 (1m) of the statutes is created to read:

9 799.01 (1m) (a) If the plaintiff has commenced 20 or fewer actions under sub.
10 (1) (d) within the previous 365 days, the amount claimed may not exceed \$8,000.

11 (b) If the plaintiff has commenced 21 or more actions under sub. (1) (d) within
12 the previous 365 days, the amount claimed may not exceed \$5,000.

13 **SECTION 4.** 799.02 (1) of the statutes is renumbered 799.02 (1) (a) and amended
14 to read:

15 799.02 (1) (a) If Except as provided in par. (b), if a counterclaim or cross
16 complaint is filed, which arises out of the transaction or occurrence that is the subject
17 matter of the plaintiff's claim and which is beyond the limitations of s. 799.01, the
18 person filing the same shall pay the fee prescribed in s. 814.62 (3) (b), and the entire
19 matter shall be tried under chs. 801 to 847 procedure, except that the counterclaim
20 or cross complaint shall be deemed denied and a responsive pleading thereto is not
21 required unless ordered by the court and the requirements for appearance by the
22 parties shall be governed by s. 799.06 (2).

23 **SECTION 5.** 799.02 (1) (b) of the statutes is created to read:

24 799.02 (1) (b) If a counterclaim or cross complaint is filed in an action under
25 s. 799.01 (1) (d), which arises out of the transaction or occurrence that is the subject

1 matter of the plaintiff's claim, and the counterclaim or cross complaint is for more
2 than \$5,000 but not more than \$8,000, the person filing the counterclaim or cross
3 complaint may elect to pay the fee prescribed in s. 814.62 (3) (b), and the entire
4 matter shall be tried under chs. 801 to 847 procedure, except that the counterclaim
5 or cross complaint shall be deemed denied and a responsive pleading is not required
6 unless ordered by the court and the requirements for appearance by the parties shall
7 be governed by s. 799.06 (2).

8 **SECTION 6.** 799.02 (3) (intro.) of the statutes is renumbered 799.02 (3) (am)
9 (intro.) and amended to read:

10 799.02 (3) (am) (intro.) If Except as provided in par (bc), if a counterclaim or
11 cross complaint is filed that is beyond the limitations of s. 799.01, the person filing
12 the counterclaim or cross complaint shall mail a notice to the plaintiff or the
13 plaintiff's attorney, if any, at the address listed on the summons. The notice shall be
14 mailed on the same day the counterclaim or cross complaint is filed and shall inform
15 the plaintiff of all of the following:

16 **SECTION 7.** 799.02 (3) (a), (b), (c), (d) and (e) of the statutes are renumbered
17 799.02 (3) (am) 1., 2., 3., 4. and 5.

18 **SECTION 8.** 799.02 (3) (bc) of the statutes is created to read:

19 799.02 (3) (bc) If a counterclaim or cross complaint is filed in an action under
20 s. 799.01 (1) (d), the counterclaim or cross complaint is for more than \$5,000 but not
21 more than \$8,000, and the person filing the counterclaim or cross complaint elected
22 to pay the fee prescribed in s. 814.62 (3) (b), the person filing the counterclaim or cross
23 complaint shall mail a notice to the plaintiff or the plaintiff's attorney, if any, at the
24 address listed on the summons. The notice shall be mailed on the same day the

1 counterclaim or cross complaint is filed and shall inform the plaintiff of the
2 information specified in par. (am) 1. to 5.

3 **SECTION 9.** 799.06 (4) of the statutes is created to read:

4 799.06 (4) The complaint in an action under s. 799.01 (1) (d) shall contain a
5 statement to the defendant that specifies that the plaintiff has commenced 20 or
6 fewer actions, or more than 20 actions, under s. 799.01 (1) (d) within the previous 365
7 days and that states that if that statement is not true, the court will dismiss the
8 action against the defendant with prejudice and the defendant may be entitled to
9 recovery under s. 799.23.

10 **SECTION 10.** 799.08 of the statutes is created to read:

11 **799.08 Affidavit of actions commenced.** At the time of commencing an
12 action under s. 799.01 (1) (d), the plaintiff shall submit a signed affidavit to the clerk
13 of circuit court specifying that the plaintiff has commenced 20 or fewer actions, or
14 more than 20 actions, under s. 799.01 (1) (d) within the previous 365 days.

15 **SECTION 11.** 799.23 of the statutes is created to read:

16 **799.23 Misrepresentation of small claims actions commenced;**
17 **dismissal and damages.** If a party proves by the preponderance of credible
18 evidence that the affidavit submitted by the plaintiff under s. 799.08 is not true or
19 that the statement made by the plaintiff under s. 799.06 (4) is not true, the court shall
20 dismiss the action with prejudice and order the plaintiff to pay the party damages
21 in the amount of \$250 and reasonable attorney fees.

22 **SECTION 12.** 799.25 (1) of the statutes is amended to read:

23 799.25 (1) FILING FEE. The fee prescribed in s. 814.62 (3) (a) or (5), if paid.

24 **SECTION 13.** 812.04 (1) of the statutes is amended to read:

1 812.04 (1) Upon payment to the clerk of court of the fee prescribed in s. 814.62
2 (1) or (5), the clerk shall issue a garnishee summons together with sufficient copies
3 to the plaintiff or his or her attorney; the summons form may be in blank, but must
4 carry the court seal.

5 **SECTION 14.** 812.35 (2) of the statutes is amended to read:

6 812.35 (2) Upon receipt of the notice under sub. (1) and payment of the fee
7 under s. 814.62 (1) or (5), the clerk of courts shall issue 2 earnings garnishment forms
8 under s. 812.44 (3) for each garnishee. Blank earnings garnishment forms may be
9 issued, but they shall carry the court seal. A circuit court may permit, by rule, the
10 clerk to issue earnings garnishment forms after payment of the fee but before the
11 filing of the notice under sub. (1). That circuit court rule shall require the notice to
12 be filed with the court at a later time, but no later than 5 business days after the date
13 the garnishee is served under sub. (3).

14 **SECTION 15.** 814.62 (3) (a) of the statutes is amended to read:

15 814.62 (3) (a) In a small claims action under ch. 799, at the time of issuance of
16 a summons or other process in a proceeding not commenced by a summons, the
17 plaintiff shall pay to the clerk of court a fee of \$22, except as provided in sub. (5).

18 **SECTION 16.** 814.62 (3) (b) of the statutes is amended to read:

19 814.62 (3) (b) If a counterclaim or cross complaint is filed under s. 799.02 (1),
20 the person filing the same shall pay a fee equal to the difference between the fee
21 under s. 814.61 (1) (a) and the fee paid by the plaintiff under ~~par. (a)~~ this section.

22 **SECTION 17.** 814.62 (3) (d) 2. of the statutes is amended to read:

23 814.62 (3) (d) 2. Of the fees received by the clerk under par. (a) and sub. (5), the
24 county treasurer shall pay \$11.80 to the secretary of administration for deposit in the

1 general fund and shall retain the balance for the use of the county. The secretary of
2 administration shall credit the \$11.80 to the appropriation under s. 20.680 (2) (j).

3 **SECTION 18.** 814.62 (3) (e) of the statutes is amended to read:

4 814.62 (3) (e) If any party files a demand for a jury trial in any action under
5 ch. 799, the party demanding the jury trial shall pay a fee equal to the difference
6 between the fee under s. 814.61 (1) (a) and the fee paid by the plaintiff under ~~par. (a)~~
7 this section, in addition to the fee under s. 814.61 (4).

8 **SECTION 19.** 814.62 (5) of the statutes is created to read:

9 814.62 (5) FEES FOR CERTAIN SMALL CLAIMS ACTIONS. (a) Except as provided in
10 par. (c), if the plaintiff has commenced 20 or fewer actions under s. 799.01 (1) (d)
11 within the previous 365 days, the fee for commencing an action under s. 799.01 (1)
12 (d) shall be equal to 150 percent of the dollar amount specified under sub. (3) (a).

13 (b) If the plaintiff has commenced 21 or more actions under s. 799.01 (1) (d)
14 within the previous 365 days, the fee for commencing an action under s. 799.01 (1)
15 (d) shall be equal to 200 percent of the dollar amount specified under sub. (3) (a).

16 (c) If the plaintiff has commenced 20 or fewer actions under s. 799.01 (1) (d)
17 within the previous 365 days, and the amount claimed is less than \$2,000, the fee for
18 commencing an action under s. 799.01 (1) (d) shall be equal to the dollar amount
19 specified under sub. (3) (a).

20 **SECTION 20.** 814.85 (1) (c) of the statutes is amended to read:

21 814.85 (1) (c) Notwithstanding par. (a), the clerk of circuit court shall charge
22 and collect a \$51 court support services surcharge from any person, including any
23 governmental unit, as defined in s. 108.02 (17), paying a fee under s. 814.62 (3) (a)
24 or (b) or (5), or paying a fee under s. 814.61 (1) (a) or (3) or 814.62 (1) or (2) if the party

1 paying the fee seeks the recovery of money and the amount claimed is equal to or less
2 than the maximum amount under s. 799.01 ~~(1)(d)~~ (1m).

3 **SECTION 21.** 814.86 (1) of the statutes, as affected by 2009 Wisconsin Act 28,
4 section 3240, is amended to read:

5 814.86 (1) Except for an action for a first violation of s. 23.33 (4c) (a) 2., 30.681
6 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed the violation
7 had a blood alcohol concentration of 0.08 or more but less than 0.1 at the time of the
8 violation, or for a violation under s. 343.51 (1m) (b) or a safety belt use violation under
9 s. 347.48 (2m), the clerk of circuit court shall charge and collect a \$21.50 justice
10 information system surcharge from any person, including any governmental unit, as
11 defined in s. 108.02 (17), paying a fee under s. 814.61 (1) (a), (3), or (8) (am), 814.62
12 (1), (2), ~~or (3) (a) or (b), or (5)~~, or 814.63 (1). The justice information system surcharge
13 is in addition to the surcharge listed in sub. (1m).

14 **SECTION 22.** 814.86 (1) of the statutes, as affected by 2009 Wisconsin Act ...
15 (this act), is amended to read:

16 814.86 (1) Except for an action for a first violation of s. 23.33 (4c) (a) 2., 30.681
17 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed the violation
18 had a blood alcohol concentration of 0.08 or more but less than 0.1 at the time of the
19 violation, for a financial responsibility violation under s. 344.62 (2), or for a violation
20 under s. 343.51 (1m) (b) or a safety belt use violation under s. 347.48 (2m), the clerk
21 of circuit court shall charge and collect a \$21.50 justice information system surcharge
22 from any person, including any governmental unit, as defined in s. 108.02 (17),
23 paying a fee under s. 814.61 (1) (a), (3), or (8) (am), 814.62 (1), (2), (3) (a) or (b), or (5),
24 or 814.63 (1). The justice information system surcharge is in addition to the
25 surcharge listed in sub. (1m).

