



State of Wisconsin  
2009 - 2010 LEGISLATURE

LRBs0296/1  
RPN:jld:md

**SENATE SUBSTITUTE AMENDMENT 1,  
TO 2009 SENATE BILL 464**

February 25, 2010 – Offered by COMMITTEE ON JUDICIARY, CORRECTIONS, INSURANCE,  
CAMPAIGN FINANCE REFORM, AND HOUSING.

1     **AN ACT** *to renumber and amend* 813.125 (2); *to amend* 813.12 (2) (a), 813.12  
2           (5m), 813.122 (2), 813.123 (2) (a) and 813.125 (5m); and *to create* 813.12 (5) (a)  
3           4., 813.12 (5g), 813.122 (6) (a) 5., 813.123 (6) (d), 813.125 (2) (b), 813.125 (2g),  
4           813.125 (2m), 813.125 (3) (d), 813.125 (3) (e), 813.125 (4) (aj), 813.125 (5) (a) 4.,  
5           813.125 (5g) (c), 813.125 (5g) (d) and 813.126 of the statutes; **relating to:**  
6           temporary restraining orders and injunctions.

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

7           **SECTION 1.** 813.12 (2) (a) of the statutes is amended to read:  
8           813.12 **(2)** (a) No action under this section may be commenced by complaint and  
9           summons. An action under this section may be commenced only by a petition  
10          described under sub. (5) (a). The action commences with service of the petition upon  
11          the respondent if a copy of the petition is filed before service or promptly after service.  
12          If the judge or a circuit court commissioner extends the time for a hearing under sub.

1 (3) (c) and the petitioner files an affidavit with the court stating that personal service  
2 by the sheriff or a private server under s. 801.11 (1) (a) or (b) was unsuccessful  
3 because the respondent is avoiding service by concealment or otherwise, the judge  
4 or circuit court commissioner shall inform the petitioner that he or she may serve the  
5 respondent by publication of a summary of the petition as a class 1 notice, under ch.  
6 985, and by mailing or sending a facsimile if the respondent's post-office address or  
7 facsimile number is known or can with due diligence be ascertained. The mailing or  
8 sending of a facsimile may be omitted if the post-office address or facsimile number  
9 cannot be ascertained with due diligence. A summary of the petition published as  
10 a class 1 notice shall include the name of the respondent and of the petitioner, notice  
11 of the temporary restraining order, and notice of the date, time, and place of the  
12 hearing regarding the injunction. The court shall inform the petitioner in writing  
13 that, if the petitioner chooses to have the documents in the action served by the  
14 sheriff, the petitioner should contact the sheriff to verify the proof of service of the  
15 petition.

16 **SECTION 2.** 813.12 (5) (a) 4. of the statutes is created to read:

17 813.12 (5) (a) 4. If the petitioner knows of any other court proceeding in which  
18 the petitioner is a person affected by a court order or judgment that includes  
19 provisions regarding contact with the respondent, any of the following that are  
20 known by the petitioner:

21 a. The name or type of the court proceeding.

22 b. The date of the court proceeding.

23 c. The types of provisions regarding contact between the petitioner and  
24 respondent.

25 **SECTION 3.** 813.12 (5g) of the statutes is created to read:

1           813.12 **(5g)** STIPULATION. If the parties enter into a stipulation to convert a  
2 petition under this section to a petition for a temporary restraining order or  
3 injunction under s. 813.125, the court may not approve that stipulation unless all of  
4 the following occur:

5           (a) Either or both parties submit an oral request on the record for the  
6 conversion explaining why the conversion of the petition is requested.

7           (b) The court addresses the petitioner personally and determines that the  
8 petitioner entered into the stipulation voluntarily and with an understanding of the  
9 differences between the orders issued under subs. (4) and (4m) and s. 813.125 (4) and  
10 (4m).

11           **SECTION 4.** 813.12 (5m) of the statutes is amended to read:

12           813.12 **(5m)** CONFIDENTIALITY OF VICTIM'S ADDRESS. The petition under sub. (5)  
13 and the court order under sub. (3) or (4) ~~shall~~ may not disclose the address of the  
14 alleged victim. The petitioner shall provide the clerk of circuit court with the  
15 petitioner's address when he or she files a petition under this section. The clerk shall  
16 maintain the petitioner's address in a confidential manner.

17           **SECTION 5.** 813.122 (2) of the statutes is amended to read:

18           813.122 **(2)** COMMENCEMENT OF ACTION AND RESPONSE. No action under this  
19 section may be commenced by complaint and summons. An action under this section  
20 may be commenced only by a petition described under sub. (6) (a). The action  
21 commences with service of the petition upon the respondent if a copy of the petition  
22 is filed before service or promptly after service. The **Notwithstanding s. 803.01 (3)**  
23 (a), the child victim or a parent, stepparent or legal guardian of the child victim may  
24 be a petitioner under this section. Section 813.06 does not apply to an action under  
25 this section. The respondent may respond to the petition either in writing before or

1 at the hearing on the issuance of the injunction or orally at that hearing. The court  
2 shall inform the petitioner in writing that, if the petitioner chooses to have the  
3 documents in the action served by the sheriff, the petitioner should contact the  
4 sheriff to verify the proof of service of the petition.

5 **SECTION 6.** 813.122 (6) (a) 5. of the statutes is created to read:

6 813.122 **(6)** (a) 5. If the petitioner knows of any other court proceeding in which  
7 the petitioner is a person affected by a court order or judgment that includes  
8 provisions regarding contact with the respondent, any of the following that are  
9 known by the petitioner:

10 a. The name or type of the court proceeding.

11 b. The date of the court proceeding.

12 c. The types of provisions regarding contact between the petitioner and  
13 respondent.

14 **SECTION 7.** 813.123 (2) (a) of the statutes is amended to read:

15 813.123 **(2)** (a) No action under this section may be commenced by complaint  
16 and summons. An action under this section may be commenced only by a petition  
17 described under sub. (6). The action commences with service of the petition upon the  
18 respondent if a copy of the petition is filed before service or promptly after service.  
19 The individual at risk, any person acting on behalf of an individual at risk, an  
20 elder-adult-at-risk agency, or an adult-at-risk agency may be a petitioner under  
21 this section. If the petition is filed by a person other than the individual at risk, the  
22 petitioner shall serve a copy of the petition on the individual at risk. Section 813.06  
23 does not apply to an action under this section. The respondent may respond to the  
24 petition either in writing before or at the hearing on the issuance of the injunction  
25 or orally at that hearing. The court shall inform the petitioner in writing that, if the

1 petitioner chooses to have the documents in the action served by the sheriff, the  
2 petitioner should contact the sheriff to verify the proof of service of the petition.

3 **SECTION 8.** 813.123 (6) (d) of the statutes is created to read:

4 813.123 (6) (d) If the petitioner knows of any other court proceeding in which  
5 the petitioner is a person affected by a court order or judgment that includes  
6 provisions regarding contact with the respondent, any of the following that are  
7 known by the petitioner:

- 8 1. The name or type of the court proceeding.
- 9 2. The date of the court proceeding.
- 10 3. The type of provisions regarding contact between the petitioner and  
11 respondent.

12 **SECTION 9.** 813.125 (2) of the statutes is renumbered 813.125 (2) (a) and  
13 amended to read:

14 813.125 (2) (a) An action under this section may be commenced by filing a  
15 petition described under sub. (5) (a). No action under this section may be commenced  
16 by service of summons. The action commences with service of the petition upon the  
17 respondent if a copy of the petition is filed before service or promptly after service.  
18 If the judge or a circuit court commissioner extends the time for a hearing under sub.  
19 (3) (c) and the petitioner files an affidavit with the court stating that personal service  
20 by the sheriff or a private server under s. 801.11 (1) (a) or (b) was unsuccessful  
21 because the respondent is avoiding service by concealment or otherwise, the judge  
22 or circuit court commissioner shall inform the petitioner that he or she may serve the  
23 respondent by publication of a summary of the petition as a class 1 notice, under ch.  
24 985, and by mailing or sending a facsimile if the respondent's post-office address or  
25 facsimile number is known or can with due diligence be ascertained. The mailing or

1 sending of a facsimile may be omitted if the post-office address or facsimile number  
2 cannot be ascertained with due diligence. A summary of the petition published as  
3 a class 1 notice shall include the name of the respondent and of the petitioner, notice  
4 of the temporary restraining order, and notice of the date, time, and place of the  
5 hearing regarding the injunction. The court shall inform the petitioner in writing  
6 that, if the petitioner chooses to have the documents in the action served by the  
7 sheriff, the petitioner should contact the sheriff to verify the proof of service of the  
8 petition. Section 813.06 does not apply to an action under this section.

9 **SECTION 10.** 813.125 (2) (b) of the statutes is created to read:

10 813.125 (2) (b) Notwithstanding s. 803.01 (3) (a), a child, as defined in s.  
11 813.122 (1) (b), or a parent, stepparent, or legal guardian of a child may be a  
12 petitioner under this section.

13 **SECTION 11.** 813.125 (2g) of the statutes is created to read:

14 813.125 (2g) APPOINTMENT OF GUARDIAN AD LITEM. The court or circuit court  
15 commissioner, on its or his or her own motion, or on the motion of any party, may  
16 appoint a guardian ad litem for a child who is the petitioner under this section when  
17 justice so requires.

18 **SECTION 12.** 813.125 (2m) of the statutes is created to read:

19 813.125 (2m) TWO-PART PROCEDURE. If the fee under s. 814.61 (1) for filing a  
20 petition under this section is waived under s. 814.61 (1) (e), the procedure for an  
21 action under this section is in 2 parts. First, if the petitioner requests a temporary  
22 restraining order the court shall issue or refuse to issue that order. Second, the court  
23 shall hold a hearing under sub. (4) on whether to issue an injunction, which is the  
24 final relief. If the court issues a temporary restraining order, the order shall set forth

1 the date for the hearing on an injunction. If the court does not issue a temporary  
2 restraining order, the date for the hearing shall be set upon motion by either party.

3 **SECTION 13.** 813.125 (3) (d) of the statutes is created to read:

4 813.125 (3) (d) The judge or circuit court commissioner shall advise the  
5 petitioner of the right to serve the respondent the petition by published notice if with  
6 due diligence the respondent cannot be served as provided under s. 801.11 (1) (a) or  
7 (b). The clerk of circuit court shall assist the petitioner with the preparation of the  
8 notice and filing of the affidavit of printing.

9 **SECTION 14.** 813.125 (3) (e) of the statutes is created to read:

10 813.125 (3) (e) The judge or circuit court commissioner may not dismiss or deny  
11 granting a temporary restraining order because of the existence of a pending action  
12 or of any other court order that bars contact between the parties, nor due to the  
13 necessity of verifying the terms of an existing court order.

14 **SECTION 15.** 813.125 (4) (aj) of the statutes is created to read:

15 813.125 (4) (aj) The judge or circuit court commissioner may not dismiss or  
16 deny granting an injunction because of the existence of a pending action or of any  
17 other court order that bars contact between the parties, nor due to the necessity of  
18 verifying the terms of an existing court order.

19 **SECTION 16.** 813.125 (5) (a) 4. of the statutes is created to read:

20 813.125 (5) (a) 4. If the petitioner knows of any other court proceeding in which  
21 the petitioner is a person affected by a court order or judgment that includes  
22 provisions regarding contact with the respondent, any of the following that are  
23 known by the petitioner:

24 a. The name or type of the court proceeding.

25 b. The date of the court proceeding.

1 c. The type of provisions regarding contact between the petitioner and  
2 respondent.

3 **SECTION 17.** 813.125 (5g) (c) of the statutes is created to read:

4 813.125 (5g) (c) If an order is issued under this section, upon request by the  
5 petitioner the court or circuit court commissioner shall order the sheriff to  
6 accompany the petitioner and assist in placing him or her in physical possession of  
7 his or her residence or to otherwise assist in executing or serving the temporary  
8 restraining order or injunction. The petitioner may, at the petitioner's expense, use  
9 a private process server to serve papers on the respondent.

10 **SECTION 18.** 813.125 (5g) (d) of the statutes is created to read:

11 813.125 (5g) (d) The issuance of an order or injunction under sub. (3) or (4) is  
12 enforceable despite the existence of any other criminal or civil order restricting or  
13 prohibiting contact.

14 **SECTION 19.** 813.125 (5m) of the statutes is amended to read:

15 813.125 (5m) CONFIDENTIALITY OF VICTIM'S ADDRESS. The petition under sub. (5)  
16 and the court order under sub. (3) or (4) ~~shall~~ may not disclose the address of the  
17 alleged victim. The petitioner shall provide the clerk of circuit court with the  
18 petitioner's address when he or she files a petition under this section. The clerk shall  
19 maintain the petitioner's address in a confidential manner.

20 **SECTION 20.** 813.126 of the statutes is created to read:

21 **813.126 New hearing.** If a party seeks to have the judge conduct a hearing  
22 de novo under s. 757.69 (8) of a determination, order, or ruling entered by a court  
23 commissioner in an action under s. 813.12, 813.122, 813.123, or 813.125, including  
24 a denial of a request for a temporary restraining order, the motion requesting the  
25 hearing must be filed with the court within 15 days after the circuit court



1 commissioner issued the determination, order, or ruling. The court shall hold the de  
2 novo hearing within 30 days after the motion requesting the hearing is filed with the  
3 court unless the court finds good cause for an extension.

4 **SECTION 21. Initial applicability.**

5 (1) This act first applies to petitions filed with the circuit court on the effective  
6 date of this subsection.

7 **SECTION 22. Effective date.**

8 (1) This act takes effect on the first day of the 4th month beginning after  
9 publication.

10 (END)