



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2005 Assembly Bill 855

**Assembly Substitute
Amendment 1 (and Assembly
Amendments 2, 3, and 5
to the Substitute)**

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Assembly Substitute Amendment 1, as amended by Assembly Amendments 2, 3, and 5, makes the following changes to Assembly Bill 855:

1. Makes the imposition of damages by the court discretionary if the party served with the motion withdraws or appropriately corrects the offending claim within 21 days after service of the motion (or within such other period the court prescribes). See page 3, lines 10 to 18. In determining whether to award, and the appropriate amount of, damages in this situation, the court is to take into consideration the timely withdrawal or correction.

If there is no timely withdrawal or correction, the imposition of damages by the court remains mandatory. See page 3, lines 19 to 23.

2. Links costs and fees that may or must be awarded as damages to those costs and fees incurred by the moving party “as a result of” the offending claim. See page 3, lines 20 to 22 and the material inserted by Assembly Amendment 2 to the substitute amendment. (The language inserted by the simple amendment is language inadvertently left out of the substitute amendment.)

Under the bill, the damages to be awarded are the “actual costs of the action,” which may be broader than the actual costs incurred “as a result of” the offending claim.

3. Provides that new s. 895.025 does not apply to criminal actions or civil forfeiture actions. Further provides that the provision on appeals contained in sub. (4) of proposed s. 895.025 does not apply to appeals in civil forfeiture actions or to appeals under s. 809.107, 809.30, or 974.05 (appeals in termination of parental rights proceedings, criminal proceedings, juvenile proceedings, mental health act proceedings, and protective placement proceedings). Cf. current s. 809.25 (3) (a), Stats. See page 4, lines 14 and 15, as affected by Assembly Amendment 3.

4. Provides that when a party makes a frivolous claim motion, a copy of that motion and a notice of the date of the hearing on that motion shall be served on any party who is not represented by counsel only by personal service or by sending the motion to the party by registered mail. See Assembly Amendment 5.

5. Amends the initial applicability clause to read: “This act first applies to actions or special proceedings that are commenced or continued after the effective date” See Assembly Amendment 3, item 2. In the bill, the clause reads: “This act first applies to actions or special proceedings that are commenced on the effective date . . . or that are continued after the effective date”

Legislative History

Assembly Substitute Amendment 1 was offered by Representative Gundrum. Assembly Amendment 2 to the substitute amendment was offered by the Assembly Committee on Judiciary; Assembly Amendment 3 to the substitute was offered by Representative Gundrum; and Assembly Amendment 5 was offered by Representatives Albers and Gundrum. The Assembly adopted all amendments by a voice vote. The Assembly passed the proposal, as amended, by a vote of Ayes, 61; Noes, 36; paired, 2.

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