



**WISCONSIN LEGISLATIVE COUNCIL
AMENDMENT MEMO**

2005 Senate Bill 501	Assembly Substitute Amendment 1
<i>Memo published: March 8, 2006</i>	<i>Contact: Don Dyke, Chief of Legal Services (266-0292)</i>

Assembly Substitute Amendment 1 makes the following changes to Senate Bill 501*:

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). 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.

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.

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.

* The change made by Senate Amendment 1 is included in the Assembly substitute.

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.

Legislative History

Assembly Substitute Amendment 1 was offered by Representative Gundrum. The Assembly adopted the amendment by a voice vote. The Assembly concurred in the proposal, as amended, by a vote of Ayes, 58; Noes, 36; paired, 2.

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