



2009 SENATE BILL 352

October 16, 2009 – Introduced by Senators ERPENBACH, WIRCH, HOLPERIN, OLSEN, SCHULTZ and HANSEN, cosponsored by Representatives HEBL, SHERMAN, BERCEAU and POPE-ROBERTS. Referred to Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing.

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

Analysis by the Legislative Reference Bureau

Under current law, a person may bring a small claims action in the circuit court for a money judgment, attachment, garnishment, or to enforce a lien, only if the amount claimed is not more than \$5,000. Under this bill, if the person bringing the action has commenced 20 or fewer actions in small claims for a money judgment, attachment, garnishment, or to enforced a lien, within the previous 365 days, the amount claimed may not exceed \$10,000. If the person bringing the action has commenced more than 20 such actions in small claims within the previous 365 days, the bill limits the amount claimed to not more than \$5,000.

Currently, the fee for filing a small claims action in the circuit court is \$22, with some exceptions, including for garnishment actions, if a counterclaim or cross complaint is filed, or if a demand for a trial is made. Under this bill, if the person bringing the action has commenced 20 or fewer actions in small claims for a money judgment, attachment, or to enforce a lien, within the previous 365 days, the person must pay a filing fee equal to 150 percent of the regular fee; \$33. If the person bringing the action has commenced 21 or more actions in small claims for a money

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judgment, attachment, or to enforce a lien, within the previous 365 days, the person must pay a filing fee equal to 200 percent of the regular fee; \$44.

Under the bill, if a party proves that a person commencing a small claims action in the circuit court for a money judgment, attachment, garnishment, or to enforce a lien misrepresented the number of such actions the person commenced, the court is required to award the party damages of \$250 and reasonable attorney fees.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 16.007 (6) (a) of the statutes is amended to read:

2 16.007 (6) (a) Except as provided in par. (b), whenever the claims board by
3 unanimous vote finds that payment to a claimant of not more than the amount
4 specified in s. 799.01 (1m) (b) is justified, it may order the amount that it finds
5 justified to be paid on its own motion without submission of the claim in bill form to
6 the legislature. The claim shall be paid on a voucher upon the certification of the
7 chairperson and secretary of the board, and shall be charged as provided in sub. (6m).

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

9 799.01 (1) (d) *Other civil actions.* (intro.) Other civil actions where the amount
10 claimed is \$5,000 or less than the amounts specified in sub. (1m), if the actions or
11 proceedings are:

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

13 799.01 (1m) (a) If the plaintiff has commenced 20 or fewer actions under sub.
14 (1) (d) within the previous 365 days, the amount claimed may not exceed \$10,000.

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

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

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

7 **SECTION 5.** 799.08 of the statutes is created to read:

8 **799.08 Affidavit of actions commenced.** At the time of commencing an
9 action under s. 799.01 (1) (d), the plaintiff shall submit a signed affidavit to the clerk
10 of circuit court specifying that the plaintiff has commenced 20 or fewer actions, or
11 more than 20 actions, under s. 799.01 (1) (d) within the previous 365 days.

12 **SECTION 6.** 799.23 of the statutes is created to read:

13 **799.23 Misrepresentation of small claims actions commenced;**
14 **dismissal and damages.** If a party proves by the preponderance of credible
15 evidence that the affidavit submitted by the plaintiff under s. 799.08 is not true or
16 that the statement made by the plaintiff under s. 799.06 (4) is not true, the court shall
17 dismiss the action with prejudice and order the plaintiff to pay the party damages
18 in the amount of \$250 and reasonable attorney fees.

19 **SECTION 7.** 799.25 (1) of the statutes is amended to read:

20 799.25 (1) FILING FEE. The fee prescribed in s. 814.62 (3) (a) or (5), if paid.

21 **SECTION 8.** 812.04 (1) of the statutes is amended to read:

22 812.04 (1) Upon payment to the clerk of court of the fee prescribed in s. 814.62
23 (1) or (5), the clerk shall issue a garnishee summons together with sufficient copies
24 to the plaintiff or his or her attorney; the summons form may be in blank, but must
25 carry the court seal.

SENATE BILL 352**SECTION 9**

1 **SECTION 9.** 812.35 (2) of the statutes is amended to read:

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

10 **SECTION 10.** 814.62 (3) (a) of the statutes is amended to read:

11 814.62 (3) (a) In a small claims action under ch. 799, at the time of issuance of
12 a summons or other process in a proceeding not commenced by a summons, the
13 plaintiff shall pay to the clerk of court a fee of \$22, except as provided in sub. (5).

14 **SECTION 11.** 814.62 (3) (b) of the statutes is amended to read:

15 814.62 (3) (b) If a counterclaim or cross complaint is filed under s. 799.02 (1),
16 the person filing the same shall pay a fee equal to the difference between the fee
17 under s. 814.61 (1) (a) and the fee paid by the plaintiff under ~~par. (a)~~ this section.

18 **SECTION 12.** 814.62 (3) (d) 2. of the statutes is amended to read:

19 814.62 (3) (d) 2. Of the fees received by the clerk under par. (a) and sub. (5), the
20 county treasurer shall pay \$11.80 to the secretary of administration for deposit in the
21 general fund and shall retain the balance for the use of the county. The secretary of
22 administration shall credit the \$11.80 to the appropriation under s. 20.680 (2) (j).

23 **SECTION 13.** 814.62 (3) (e) of the statutes is amended to read:

24 814.62 (3) (e) If any party files a demand for a jury trial in any action under
25 ch. 799, the party demanding the jury trial shall pay a fee equal to the difference

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1 between the fee under s. 814.61 (1) (a) and the fee paid by the plaintiff under ~~par. (a)~~
2 this section, in addition to the fee under s. 814.61 (4).

3 **SECTION 14.** 814.62 (5) of the statutes is created to read:

4 814.62 (5) FEES FOR CERTAIN SMALL CLAIMS ACTIONS. (a) If the plaintiff has
5 commenced 20 or fewer actions under s. 799.01 (1) (d) within the previous 365 days,
6 the fee for commencing an action under s. 799.01 (1) (d) shall be equal to 150 percent
7 of the dollar amount specified under sub. (3) (a).

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

11 **SECTION 15.** 814.85 (1) (c) of the statutes is amended to read:

12 814.85 (1) (c) Notwithstanding par. (a), the clerk of circuit court shall charge
13 and collect a \$51 court support services surcharge from any person, including any
14 governmental unit, as defined in s. 108.02 (17), paying a fee under s. 814.62 (3) (a)
15 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
16 paying the fee seeks the recovery of money and the amount claimed is equal to or less
17 than the maximum amount under s. 799.01 ~~(1) (d)~~ (1m).

18 **SECTION 16.** 814.86 (1) of the statutes, as affected by 2009 Wisconsin Act 28,
19 section 3240, is amended to read:

20 814.86 (1) Except for an action for a first violation of s. 23.33 (4c) (a) 2., 30.681
21 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed the violation
22 had a blood alcohol concentration of 0.08 or more but less than 0.1 at the time of the
23 violation, or for a violation under s. 343.51 (1m) (b) or a safety belt use violation under
24 s. 347.48 (2m), the clerk of circuit court shall charge and collect a \$21.50 justice
25 information system surcharge from any person, including any governmental unit, as

SENATE BILL 352**SECTION 16**

1 defined in s. 108.02 (17), paying a fee under s. 814.61 (1) (a), (3), or (8) (am), 814.62
2 (1), (2), ~~or (3) (a) or (b), or (5)~~, or 814.63 (1). The justice information system surcharge
3 is in addition to the surcharge listed in sub. (1m).

4 **SECTION 17.** 814.86 (1) of the statutes, as affected by 2009 Wisconsin Act ...
5 (this act), is amended to read:

6 814.86 (1) Except for an action for a first violation of s. 23.33 (4c) (a) 2., 30.681
7 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed the violation
8 had a blood alcohol concentration of 0.08 or more but less than 0.1 at the time of the
9 violation, for a financial responsibility violation under s. 344.62 (2), or for a violation
10 under s. 343.51 (1m) (b) or a safety belt use violation under s. 347.48 (2m), the clerk
11 of circuit court shall charge and collect a \$21.50 justice information system surcharge
12 from any person, including any governmental unit, as defined in s. 108.02 (17),
13 paying a fee under s. 814.61 (1) (a), (3), or (8) (am), 814.62 (1), (2), (3) (a) or (b), or (5),
14 or 814.63 (1). The justice information system surcharge is in addition to the
15 surcharge listed in sub. (1m).

16 **SECTION 18. Nonstatutory provisions.**

17 (1) For the purpose of counting the number of actions commenced under section
18 799.01 (1m) of the statutes, as affected by this act, actions commenced before the
19 effective date of this subsection do not count.

20 **SECTION 19. Initial applicability.**

21 (1). This act first applies to actions commenced on the effective date of this
22 subsection.

23 **SECTION 20. Effective dates.** This act takes effect on the first day of the 4th
24 month beginning after publication, except as follows:

