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Reform Bill Would Lower Debilitating Litigation Costs for Wisconsin Businesses and Government

Business groups across Wisconsin and the nation applaud the efforts of Reps. Born and Nygren and Sens. Tiffany and Craig that build on Wisconsin's past tort reform successes. Among other reforms, their legislation (AB 773/SB 645) addresses the most pressing civil litigation challenge – escalating transactional costs relating to discovery.

The heart of this litigation reform initiative is aligning Wisconsin's civil procedures for discovery and class actions to the corresponding federal rules. The modernization of these court procedures, mostly aimed at costly discovery practices, will reduce litigation costs for small and large businesses, as well as state and local governments who must spend taxpayers' dollars responding to abusive discovery practices.

Uniformity between the state and federal rules makes it easier for both plaintiffs and defendants. It enhances predictability and provides judges with a larger body of case law upon which to draw. This is particularly helpful to Wisconsin Circuit Court judges.

These common-sense discovery reforms will do the following:

- Make it clear that both courts and parties have an obligation to pursue the just, speedy, and inexpensive resolution of each case.
- Establish cost-benefit and proportionality requirements for discovery to prevent litigants from abusing the discovery process to leverage a higher potential settlement or engage in a "fishing expedition."
- Put on hold discovery and other proceedings pending the court's decision on a motion to dismiss or other dispositive motions, protecting parties from costly discovery in cases that may be dismissed or where refinement of the pleadings may clarify the allegations and scope of relevant discovery.
- Provide notice of third-party litigation financing, if the financier has a right to receive compensation that is contingent on and sourced from the outcome of the action. Such third party finance can increase the cost of litigation and cause suits to be brought that would not otherwise have been financially justified.
- Limit discovery of electronically stored information (ESI) to address the escalating volume of ESI that is now one of the most significant discovery-related costs.
- Unless otherwise stipulated or ordered by the court, limit discovery to 25 interrogatories, 10 depositions, none of which may exceed 7 hours in duration, and a look-back period of not more than 5 years prior to the accrual of the cause of action.

Reforms relating to class action litigation include:

- Align Wisconsin's class action statute with Federal Rule 23. This will provide needed specificity, clarity, and consistency not found under Wisconsin's current law. Wisconsin's current one-sentence class action statute is essentially identical to the 1849 Field Code. After 168 years, it's time for an upgrade. We would be the 48th state to do so.
- Provide a nondiscretionary right to an interlocutory appeal of class certification orders by both plaintiffs and defendants. This is a vital ruling that makes or breaks the case. It should be appealable before other aspects of the case proceed.
- Preclude "no-injury" class actions by requiring the type and scope of injury of the representative parties be typical of the type and scope of injuries of the class.
- Require that the class of consumers eligible to make a claim be "ascertainable" by requiring the members of the class be objectively verifiable by reliable and feasible means.

Other reforms in this legislation will:

- Regulate lawsuit lending that provides money to consumers with repayment of the money derived from the consumer's proceeds from the dispute (e.g., a judgment or settlement). There are times when reasonable settlement amounts that would otherwise be agreed upon between plaintiff and defense counsel are rejected because the injured party is "under water" to lawsuit lenders. The regulation of the industry will protect vulnerable Wisconsin consumers from lawsuit lenders that sometimes prey on those injured and unable to work or who may otherwise have substantial medical bills.
- Reset statute of limitations – the maximum period that one can wait before filing a lawsuit – for certain civil litigation. The revised limits will bring consistency among Wisconsin liability laws and align us better with other states that have significantly lower limits. These lower time limits will promote efficiency and reduce burdens and costs on the state and businesses forced to investigate distant claims.
- Prohibit the Department of Revenue from entering into a contingent fee agreement with third parties to engage in an audit relating to Wisconsin's unclaimed property law. State unclaimed property laws, when fairly and appropriately enforced, serve several important functions. But private auditors working under contingency fee arrangements have taken an increasingly aggressive approach to the interpretation and enforcement of unclaimed property laws, which in turn, increases the costs of doing business in Wisconsin.
- Adjust the interest rate insurers must pay on overdue claims from 12 percent to the prime loan rate plus one percent. In doing so, this rate will mirror interest rates on general judgments and allow the rates to self-adjust consistent with markets.

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