



2011 BILL

1 **AN ACT** *to create* 814.045 of the statutes; **relating to:** factors for determining
2 the reasonableness of attorney fees.

Analysis by the Legislative Reference Bureau

Under current law, in certain civil actions a court may grant reasonable attorney fees to a prevailing party or may be asked to determine whether attorney fees sought by a party are reasonable. Under this bill, to determine whether to award attorney fees and whether the attorney fees are reasonable, the court must consider several factors.

Under the bill, the factors that the court must consider include the time and labor required by the attorney, the novelty and difficulty of the questions involved, and the complexity of the case; the skills needed to perform the legal service properly; the likelihood that the acceptance of the particular case prevented the attorney from accepting other work; the fee customarily charged in the locality for similar legal services; the amount involved in the legal dispute and the results obtained; the fees granted in similar cases; the time limitations imposed by the client or by the circumstances; the nature and length of the professional relationship with the client; the experience, reputation, and ability of the attorney performing the services; whether the fee is fixed or contingent; and the legitimacy of any defenses raised in the case.

The bill also limits attorney fees to three times the amount of compensatory damages awarded, except in cases where only nonmonetary relief is awarded or in cases involving both compensatory damages and nonmonetary relief. The bill does not place a limit on attorney fees in cases where only nonmonetary relief is awarded,

BILL

so long as the court considers the factors set forth in the bill. In cases where both compensatory damages and nonmonetary relief is awarded, the bill sets forth a presumption that a reasonable attorney fee is not more than three times the amount of compensatory damages awarded, but allows a court to determine that a greater amount is reasonable if the court considers all of the factors set forth in the bill.

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

1 **SECTION 1.** 814.045 of the statutes is created to read:

2 **814.045 Attorney fees; reasonableness. (1)** Subject to sub. (2), in any action
3 involving the award of attorney fees that are not governed by s. 814.04 (1) or
4 involving a dispute over the reasonableness of attorney fees, the court shall, in
5 determining whether to award attorney fees and in determining whether the
6 attorney fees are reasonable, consider all of the following:

7 (a) The time and labor required by the attorney.

8 (b) The novelty and difficulty of the questions involved in the action.

9 (c) The skill requisite to perform the legal service properly.

10 (d) The likelihood that the acceptance of the particular case precluded other
11 employment by the attorney.

12 (e) The fee customarily charged in the locality for similar legal services.

13 (f) The amount of damages involved in the action.

14 (g) The results obtained in the action.

15 (h) The time limitations imposed by the client or by the circumstances of the
16 action.

17 (i) The nature and length of the attorney's professional relationship with his
18 or her client.

19 (j) The experience, reputation, and ability of the attorney.

BILL

- 1 (k) Whether the fee is fixed or contingent.
- 2 (L) The complexity of the case.
- 3 (m) Awards of costs and fees in similar cases.
- 4 (n) The legitimacy or strength of any defenses or affirmative defenses asserted
5 in the action.
- 6 (p) Other factors the court deems important or necessary to consider under the
7 circumstances of the case.
- 8 **(2)** (a) Except as provided in par. (c), in any action in which compensatory
9 damages are awarded, reasonable attorney fees may not exceed 3 times the amount
10 of the compensatory damages awarded.
- 11 (b) In any action in which compensatory damages are not awarded but
12 injunctive or declaratory relief, rescission or modification, or specific performance is
13 ordered, reasonable attorney fees shall be determined according to the factors set
14 forth in sub. (1).
- 15 (c) In any action in which compensatory damages are awarded and injunctive
16 or declaratory relief, rescission or modification, or specific performance is ordered,
17 the court shall presume that reasonable attorney fees do not exceed 3 times the
18 amount of the compensatory damages awarded, but this presumption may be
19 overcome if the court determines, after considering the factors set forth in sub. (1),
20 that a greater amount is reasonable.

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(END)