

# State of Wisconsin



2009 Assembly Bill 122

Date of enactment: **June 19, 2009**

Date of publication\*: **July 3, 2009**

## 2009 WISCONSIN ACT 25

AN ACT *to renumber and amend* 808.10; *to amend* 809.62 (3) (intro.); *to repeal and recreate* 809.24 (4), 809.32 (4) and 809.62 (1m); and *to create* 808.10 (2) and 809.32 (5) of the statutes; **relating to:** appellate time limits and procedure.

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

**SECTION 1.** 808.10 of the statutes is renumbered 808.10 (1) and amended to read:

808.10 (1) PETITION FOR REVIEW; TIME LIMIT. A decision of the court of appeals is reviewable by the supreme court only upon a petition for review granted by the supreme court. ~~The Except as provided in sub. (2) and ss. 809.32 (5) and 809.62 (1m), the~~ petition for review shall be filed in the supreme court within 30 days of the date of the decision of the court of appeals.

**SECTION 2.** 808.10 (2) of the statutes is created to read:

808.10 (2) TOLLING PENDING COURT OF APPEALS RECONSIDERATION. If a motion for reconsideration is filed in the court of appeals under s. 809.24 (1) within 20 days after the date of a decision of the court of appeals, the 30-day time period to file the petition for review starts on the date the court of appeals determines the motion for reconsideration by filing an order denying the motion for reconsideration or an amended decision.

**SECTION 3.** 809.24 (4) of the statutes is repealed and recreated to read:

809.24 (4) No motion for reconsideration of a court of appeals decision issued under s. 809.105 or 809.107 is permitted.

**SECTION 4.** 809.32 (4) of the statutes is repealed and recreated to read:

809.32 (4) NO-MERIT PETITION FOR REVIEW. (a) *Petition and supplemental petition.* If a fully briefed appeal is taken to the court of appeals and the attorney is of the opinion that a petition for review in the supreme court under s. 809.62 would be frivolous and without any arguable merit, the attorney shall advise the person of the reasons for this opinion and that the person has the right to file a petition for review. If requested by the person, the attorney shall file a petition satisfying the requirements of s. 809.62 (2) (d) and (f), and the person shall file a supplemental petition satisfying the requirements of s. 809.62 (2) (a), (b), (c), and (e).

(b) *Time limit.* Except as provided in sub. (5) and s. 808.10, the petition and supplemental petition shall both be filed within 30 days after the date of the decision or order of the court of appeals.

(c) *Responses time limit.* Except as provided in sub. (5), an opposing party may file a response to the petition and supplemental petition as provided in s. 809.62 (3) within 14 days after the service of the supplemental petition.

**SECTION 5.** 809.32 (5) of the statutes is created to read:

809.32 (5) NO-MERIT PETITION FOR REVIEW; EFFECT OF MOTION FOR RECONSIDERATION. (a) *Petition.* If a motion

\* Section 991.11, WISCONSIN STATUTES 2007-08 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

for reconsideration has been timely filed in the court of appeals under s. 809.24 (1), no party may file a petition or a supplemental petition in the supreme court until after the court of appeals issues an order denying the motion for reconsideration or an amended decision.

(b) *Supplemental petition.* If a motion for reconsideration in the court of appeals under s. 809.24 (1) is denied and a petition for review was filed before the motion for reconsideration was filed, and if the time for filing a supplemental petition under this subsection had not expired when the motion for reconsideration was filed, the supplemental petition may be filed within 14 days after the filing of the order denying the motion for reconsideration or within the time remaining to file the supplemental petition at the time that the motion for reconsideration was filed, whichever is greater.

(c) *Notice affirming, withdrawing, or amending pending petition or supplemental petition.* If the court of appeals files an amended decision in response to the motion for reconsideration under s. 809.24 (1), any party who filed a petition for review or a supplemental petition for review under this section prior to the filing of the motion for reconsideration must file with the clerk of the supreme court a notice affirming the pending petition or supplemental petition, a notice withdrawing the pending petition or supplemental petition, or an amendment to the pending petition or supplemental petition within 14 days after the date of the filing of the court of appeals' amended decision.

(d) *Responses.* If a motion for reconsideration is denied and a petition for review or a supplemental petition had been filed before the motion for reconsideration was filed, and if the time for filing a response to the petition or supplemental petition had not expired when the motion for reconsideration was filed, a response to the petition or the supplemental petition may be filed within 14 days of the order denying the motion for reconsideration. If a supplemental petition is filed under par. (b), the responding party may file a response to the supplemental petition within 14 days after service of the supplemental petition. After the petitioning party files the notice affirming or withdrawing the pending petition or supplemental petition or an amendment to the pending petition or supplemental petition under par. (c), the responding party must file a response to the notice or amendment within 14 days after service of the notice or amendment. The response to the notice or amendment may be an affirmation of the responding party's earlier response or a new response.

**SECTION 6.** 809.62 (1m) of the statutes is repealed and recreated to read:

809.62 (1m) General rule; time limits. (a) A party may file with the supreme court a petition for review of an adverse decision of the court of appeals pursuant to s. 808.10.

(b) If a motion for reconsideration has been timely filed in the court of appeals under s. 809.24 (1), no party may file a petition for review in the supreme court until after the court of appeals issues an order denying the motion for reconsideration or an amended decision.

(c) If a motion for reconsideration is denied and a petition for review had been filed before the motion for reconsideration was filed, and if the time for filing a response to the petition had not expired when the motion for reconsideration was filed, a response to the petition may be filed within 14 days of the order denying the motion for reconsideration.

(d) If the court of appeals files an amended decision in response to the motion for reconsideration under s. 809.24 (1), any party who filed a petition for review prior to the filing of the motion for reconsideration must file with the clerk of the supreme court a notice affirming the pending petition, a notice withdrawing the pending petition, or an amendment to the pending petition within 14 days after the date of the filing of the court of appeals' amended decision.

(e) After the petitioning party files a notice affirming or withdrawing the pending petition or an amendment to the pending petition under par. (d), the responding party must file a response to the notice or amendment within 14 days after service of the notice or amendment. The response may be an affirmation of the responding party's earlier response or a new response.

**SECTION 7.** 809.62 (3) (intro.) of the statutes is amended to read:

809.62 (3) RESPONSE TO PETITION. (intro.) Except as provided in sub. (1m) and s. 809.32 (4) and (5), an opposing party may file a response to the petition within 14 days after the service of the petition. If filed, the response may contain any of the following:

**SECTION 8. Initial applicability.**

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

**SECTION 9. Effective date.**

(1) This act takes effect on the first day of the 4th month beginning after publication.