

Senate Bill 75

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CHAPTER 500

AN ACT to repeal 247.081 (2) (a); to renumber 247.081 (2) (b), (c) and (d); to renumber and amend 247.081 (2) (e); to amend 247.061 (intro. par.) and (1) (a), (b) and (d), 247.062 (1), 247.066 (1) (unnumbered par.), 247.081 (2) (intro. par.) and 247.15 (1); and to create 247.081 (3) and 247.23 (3) of the statutes, relating to revisions in the divorce law and fees upon dismissal of actions affecting marriage.

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

SECTION 1. 247.061 (intro. par.) and (1) (a), (b) and (d) of the statutes are amended to read:

247.061 (intro. par.) When the defendant can with reasonable diligence be served personally within the state pursuant to s. 247.06 (1) (a) or at his usual place of abode therein pursuant to s. 247.06 (1) (b), actions under ss. 247.05 and 247.055 shall be commenced by such service. Within 20 days thereafter a copy of the summons shall be served upon the family court commissioner, but this requirement of service upon such commissioner within the time specified shall not affect the jurisdiction of the action; and after such copy has been served, the summons must be filed with the clerk of court before any proceeding or hearing prior to trial is held by either the court or the family court commissioner, or in the absence thereof as soon as the action is noticed or scheduled for trial. *If the summons is not filed, the defendant may file his copy of the summons served upon him and within 5 days thereafter the defendant shall serve a copy thereof upon the family court commissioner or the action shall be dismissed on motion of the defendant.* Service and filing of the complaint shall be as follows:

(1) (a) In every action for divorce or legal separation there shall be a waiting period of 60 days after service of the summons upon the defendant before the complaint may be served upon him or filed in court unless the court, upon good cause shown that such waiting period will be injurious to the health or safety of either of the parties or any child of the marriage or that some other emergency exists, and ~~upon~~ *after consideration of the recommendation of the family court commissioner, issues an order waiving such waiting period. When a defendant appears in an action by an attorney of record, service of the complaint shall be made upon such attorney; when a defendant has not appeared by an attorney of record, service of the complaint shall be made upon defendant, and if the complaint cannot with reasonable diligence be served personally upon the defendant either within or without the state or at his usual place of abode, it may be served upon the defendant's attorney of record in the action; or served upon the defendant by sending a copy thereof by cer-*

tified or registered mail to his last known post-office address and by filing the original complaint in court with both a postal sender's receipt and either a completed return receipt or an affidavit of mailing attached thereto. Such affidavit shall set forth the name and address of the defendant and state that the complaint was mailed thereto, giving the date of mailing.

(b) If after 60 days have passed following service of the summons a copy of the complaint is not served upon the defendant *or upon defendant's attorney of record*, the defendant, in person or by attorney, may ~~within the next 20 days, thereafter~~ serve a demand in writing on the plaintiff's attorney for a copy of the complaint, specifying a place embracing a post-office address within this state, where the complaint may be served and a copy of the complaint shall be served within 20 days thereafter accordingly.

(d) If the complaint is not served within 120 days after service of the summons upon the defendant, the action may be dismissed upon motion of either party or the family court commissioner, *or the defendant may prior to any order of dismissal, serve upon plaintiff's attorney a pleading for relief under s. 247.05 or 247.055 which shall be designated a counterclaim and the defendant within 20 days thereafter shall serve a copy thereof on the family court commissioner and file the original counterclaim in court.*

SECTION 2. 247.062 (1) of the statutes is amended to read:

247.062 (1) By personally serving the summons and a copy of the verified complaint upon the defendant without the state and within ~~10~~ 20 days thereafter filing the summons and verified complaint in court and serving copies of the summons and verified complaint on the family court commissioner; or

SECTION 3. 247.066 (1) (unnumbered par.) of the statutes is amended to read:

247.066 (1) (Unnumbered par.) You are hereby summoned and required to serve upon . . . . . , plaintiff's attorney, whose address is . . . . . , an answer or other pleading to the complaint for [divorce] [legal separation] within 20 days after such complaint is served upon you. In the absence of a court order to the contrary, service of such complaint upon you shall be delayed for 60 days after service of this summons. If no copy of the complaint is served upon you *or upon your attorney of record* after such 60 days have passed, you may ~~in the next 20 days~~ thereafter demand in writing of the plaintiff's attorney a copy of the complaint. If you fail to answer or defend the above entitled action in the court aforesaid, judgment will be rendered against you according to the demand of the complaint.

SECTION 4. 247.081 (2) (intro. par.) of the statutes is amended to read:

247.081 (2) (intro. par.) No action for divorce or legal separation, contested or uncontested, shall be brought to trial *until the family court commissioner has, within 120 days after service of the summons upon the family court commissioner or 5 days after the action is set for trial, whichever is sooner, certified to the court that a reconciliation effort has been made, which certification shall be filed and entered in the court record book, and until the happening of whichever of the following events occurs first:*

SECTION 5. 247.081 (2) (a) of the statutes is repealed.

SECTION 6. 247.081 (2) (b), (c) and (d) of the statutes are renumbered 247.081 (2) (a), (b) and (c), respectively.

SECTION 7. 247.081 (2) (e) of the statutes is renumbered 247.081 (2) (d) and amended to read:

247.081 (2) (d) An order by the court, after consideration of the recommendation of the family court commissioner, directing immediate trial of such action for the protection of the health or safety of either of the parties or any child of the marriage or for other emergency reasons. *The court shall upon granting such order specify the grounds therefor.*

SECTION 7m. 247.081 (3) of the statutes is created to read:

247.081 (3) In a contested action no report other than the reconciliation certification specified in sub. (2) shall be made by the family court commissioner to the court.

SECTION 7n. 247.15 (1) of the statutes is amended to read:

247.15(1) No judgment in any action in which the family court commissioner is required by s. 247.081 (1) or 247.14 to appear or otherwise discharge his duties under this chapter shall be granted until such commissioner in behalf of the public has made a fair and impartial investigation of the case and fully advised the court as to the merits of the case and the rights and interests of the parties and the public and the efforts made toward reconciliation of the parties or the reason such reconciliation attempt has not been made. Such family court commissioner is empowered to cause witnesses to be subpoenaed on behalf of the state when in his judgment their testimony is necessary to fully advise the court as to the merits of the case and as to the rights and interests of the parties and of the public. *No statement of the family court commissioner shall be considered by the court except when based upon facts which have been established by competent evidence at the trial of the action.* The fees of such witnesses shall be paid out of the county treasury as fees of witnesses in criminal cases are paid. The court may order that such fees be repaid to the county by one of the parties to the action, in which case it ~~shall be~~ *is* the duty of the family court commissioner to enforce such order.

SECTION 8. 247.23 (3) of the statutes is created to read:

247.23 (3) Upon making any order for dismissal of an action affecting marriage or for vacation of a judgment theretofore granted in any such action, the court shall prior to or in its order render and grant separate judgment in favor of any attorney who has appeared for a party to such action and in favor of any guardian ad litem for a party or a child for the amount of fees and disbursements to which such attorney or guardian ad litem is, in the court's judgment, entitled and against the party responsible therefor.

Approved December 20, 1965.