



State of Wisconsin
2023 - 2024 LEGISLATURE

LRB-3042/1

SWB:all

2023 ASSEMBLY BILL 280

May 17, 2023 - Introduced by Representatives TUSLER, RETTINGER, BRANDTJEN, MURPHY, MURSAU, SNYDER and WICHGERS, cosponsored by Senators JACQUE and WIMBERGER. Referred to Committee on State Affairs.

AN ACT *to create* chapter 798 of the statutes; **relating to:** statutory recognition of specialized treatment court and commercial court dockets.

Analysis by the Legislative Reference Bureau

This bill statutorily recognizes specialized dockets for treatment courts and for commercial cases. The bill recognizes in statute treatment courts, which are defined in the bill to include adult drug treatment court, juvenile drug treatment court, operating while intoxicated treatment court, mental health treatment court, family dependency treatment court, veterans treatment court, hybrid treatment court, and tribal healing to wellness court.

The bill also statutorily recognizes a specialized docket for commercial cases. Under the bill, the chief justice of the Wisconsin Supreme Court, taking into consideration recommendations from the relevant chief judges of the judicial administrative districts, must select circuit court judges who will be assigned to the commercial court docket upon each judge's agreement to serve. The bill provides that a judge who presides over cases on the commercial court docket is not prohibited from working on any other assigned docket.

Under the bill, certain commercial case types must be assigned to the commercial court docket, including cases involving any of the following: 1) the governance or internal affairs of business organizations; 2) tortious or statutorily prohibited business activity, unfair competition, or antitrust claims; 3) the sale, consolidation, or merger of a business organization or the conversion, share

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exchange, or sale of substantially all of the assets of a business organization; 4) the issuance, sale, or transfer of securities; 5) intellectual property rights; 6) the relationship between a franchisor and franchisee or similar distribution relationship; 7) certain claims or disputes involving the Uniform Commercial Code, when the amount in controversy exceeds \$100,000; (8) receiverships in excess of \$250,000; (9) confirmation of arbitration awards and compelling or enforcing arbitration awards when the amount in controversy exceeds \$100,000; and (10) real estate construction disputes when the amount in controversy exceeds \$250,000. The bill provides that certain types of cases are ineligible for assignment to the commercial court docket, including small claims cases, cases involving a governmental entity or political subdivision seeking to enforce a statutory or regulatory restriction or prohibition, or disputes between landlords and tenants.

The commercial court docket created under the bill is a commercial case docket that generally involves disputes between commercial entities rather than individuals and does not include actions typically involving individuals such as personal injury suits, products liability, malpractice, or other tort claims, or landlord and tenant disputes or similar claims. Under the bill, parties may jointly move for discretionary assignment of a case to the commercial court docket if the case is one that is not identified under the mandatory criteria, but is not otherwise ineligible for assignment. The bill provides that a decision granting or denying a motion for a discretionary assignment of a case to the commercial court docket is final and nonappealable.

The bill also allows that parties to a case that is filed in a judicial administrative district that does not have a dedicated commercial court docket may, in certain circumstances, jointly petition for transfer of the case to a commercial court docket. Under the bill, no party may withdraw a request for transfer to the commercial court docket after a judicial assignment of the case has been made.

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

SECTION 1. Chapter 798 of the statutes is created to read:

CHAPTER 798

SPECIALTY COURTS

798.01 Legislative findings. The legislature finds all of the following:

(1) Specialized dockets for treatment courts and for commercial cases have existed in this state and across the country for a number of years in recognition of

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the fact that the interests of justice in general, and of litigants in particular, are substantially enhanced when judges and other court personnel commit to take specific training in the subject matter areas of a particular specialized docket and then apply that training and expertise to the unique issues before the court. The use of specialized dockets increases efficiencies and improve outcomes in the handling of these cases.

(2) The commercial court docket has existed in this state for 5 years as a pilot project in a number of counties and judicial districts and has been shown to reduce substantially the time it takes to obtain a decision and increase the level of satisfaction of the parties with the results in commercial disputes.

798.05 Treatment court dockets. (1) PURPOSE; AUTHORITY. The purpose of this section is to statutorily recognize specialized dockets for treatment courts. Treatment courts are designed to operate within the framework of the existing state court system and specifically address underlying issues relating to criminal behavior. Treatment courts provide treatment while working with a multidisciplinary team to deploy a range of graduated rewards and sanctions with the goal of engaging participants in treatment long enough to successfully address any addiction or mental health issues and end the cycle of recidivism.

(2) DEFINITION. In this section, “treatment court” includes any of the following:

- (a) Adult drug treatment court.
- (b) Juvenile drug treatment court.
- (c) Operating while intoxicated treatment court.

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- (d) Mental health treatment court.
- (e) Family dependency treatment court.
- (f) Veterans treatment court.
- (g) Hybrid treatment court.
- (h) Tribal healing to wellness court.

798.15 Commercial court docket. (1) **PURPOSE; AUTHORITY.** The purpose of this section is to statutorily recognize a specialized docket for commercial cases in state circuit courts. The commercial court docket is designed to operate within the framework of the existing state court system with minimal impact on the balance of court operations. It is intended to leverage judicial expertise in commercial law and disputes with commercial litigants' desire to tailor case management practices best suited for resolving substantial business disputes fairly and expeditiously.

(2) **DEFINITIONS.** In this section:

(a) "Business organization" includes a sole proprietorship, corporation, partnership, limited liability company, limited partnership, professional association, benefits corporation, service corporation, joint venture, bank, savings bank, savings and loan association, or business trust. A "business organization" excludes an individual, a family trust, or a political subdivision or governmental entity.

(b) "Consumer contract or transaction" means a consumer contract or transaction that is primarily for personal, family, or household purposes.

(3) **SCOPE.** (a) The commercial court procedures outlined in this section apply to judicial administrative districts that have established specialized dockets

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for commercial cases on the effective date of this paragraph [LRB inserts date], and to any commercial court docket established after the effective date of this paragraph [LRB inserts date], beginning on the date that docket is established. Courts with specialized dockets for commercial cases shall be referred to as the commercial court.

(b) 1. The chief justice of the supreme court, after considering the recommendation of the chief judge of the encompassing judicial administrative district, shall select the circuit court judges in the judicial administrative districts who will be assigned to the commercial court docket upon each judge's agreement to so serve. The chief justice of the supreme court shall select at least all of the following to participate in the commercial court under this section:

a. No fewer than 4 circuit court judges within the 2nd judicial administrative district.

b. No fewer than 4 circuit court judges within the 3rd judicial administrative district.

c. No fewer than 4 circuit court judges within the 5th judicial administrative district.

d. No fewer than 4 circuit court judges within the 8th judicial administrative district.

e. No fewer than 4 circuit court judges within the 10th judicial administrative district.

f. No fewer than 4 circuit court judges within any judicial administrative district that adds a commercial court docket.

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2. A judge who presides in a commercial court docket is not prohibited from working on any other assigned docket.

3. The chief justice of the supreme court may add additional judicial administrative districts to the commercial court docket upon the recommendation of the director of state courts.

(4) MANDATORY ASSIGNMENT OF CASES TO THE COMMERCIAL COURT DOCKET.

(a) Any case of a type described under par. (b) that is filed in a circuit court in which a commercial court docket has been established shall be assigned to the commercial court docket as provided under sub. (7).

(b) The commercial court shall have jurisdiction over any of the following types of cases:

1. Cases involving the governance or internal affairs of business organizations, including any of the following:

a. Claims between or among owners or constituents of a business organization.

b. Claims against officers, directors, or managers of a business organization.

c. Claims involving the indemnity of owners, officers, directors, or managers of a business organization.

d. Claims involving the interpretation of the rights and obligations under the law governing business organizations, such as chs. 178 to 181, 183, 185, 204, 214, 215, and 221 to 223, or any similar statute or law from another jurisdiction.

e. Claims involving the interpretation of the rights and obligations under any agreement governing a business organization, such as the articles of incorporation,

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bylaws, operating agreements, membership agreements, or partnership agreement of the business organization.

2. Cases involving tortious or statutorily prohibited business activity, unfair competition, or antitrust, including any of the following:

- a. Claims under ch. 133.
- b. Claims under s. 100.30 (5m) or (5r).
- c. Claims under s. 134.01.
- d. Claims of tortious interference with a business organization.
- e. Claims involving restrictive covenants and agreements not to compete or solicit.
- f. Claims involving confidentiality agreements.

3. Cases involving the sale, consolidation, or merger of a business organization or the conversion, share exchange, or sale of substantially all of the assets of a business organization.

4. Cases involving the issuance, sale, or transfer of securities, including claims for securities fraud under ch. 551, or any similar statute or law from another jurisdiction.

5. Cases involving intellectual property rights, including any of the following:

- a. Claims to determine the use, ownership, or status of trademarks, trade secrets, or copyrights.
- b. Claims under s. 134.90.
- c. Claims involving any agreement relating to the licensing of any intellectual property right, including patent rights.

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6. Cases involving the relationship between a franchisor and franchisee or similar distribution relationship, including any of the following:

a. Claims arising from ch. 135 or any similar statute or law from another jurisdiction.

b. Claims arising from s. 134.93 or any similar statute or law from another jurisdiction.

c. Claims arising from ch. 553 or any similar statute or law from another jurisdiction.

7. Cases involving claims or disputes under ch. 402, 403, 404, 405, or 409, or any similar statute or law from another jurisdiction, when the amount in controversy exceeds \$100,000, exclusive of interest, costs, and attorney fees.

8. Cases involving receiverships in excess of \$250,000.

9. Cases involving confirmation of arbitration awards and compelling or enforcing arbitration awards when the amount in controversy exceeds \$100,000.

10. Cases involving commercial real estate construction disputes when the amount in controversy exceeds \$250,000.

(5) DISCRETIONARY ASSIGNMENT OF CASES TO THE COMMERCIAL COURT DOCKET. (a) In addition to the cases identified under sub. (4) and that are not otherwise excluded under sub. (6), parties to a case in a judicial administrative district in which there is a commercial court docket may jointly move the chief judge of that judicial administrative district for discretionary assignment of the case to that commercial court docket. If the motion for discretionary assignment is granted, the case may be assigned to a commercial court docket.

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(b) In deciding a motion for discretionary assignment of a case to a commercial court docket, the chief judge of the encompassing judicial administrative district shall consider the parties to the dispute, the nature of the dispute, the complexity of the issues presented, and whether the commercial court's resolution of the case will provide needed guidance to influence future commercial behavior or assist in resolving future disputes. The decision granting or denying a motion for a discretionary assignment of a case to a commercial court docket is final and nonappealable.

(6) INELIGIBLE CASE TYPES. The following cases may not be assigned to the commercial court docket:

(a) Cases involving small claims under ch. 799.

(b) Cases involving a governmental entity or political subdivision seeking to enforce a statutory or regulatory restriction or prohibition.

(c) Unless the claim or dispute identified in this subsection is ancillary and incidental to a case assigned to the commercial court docket under sub. (4), cases involving a consumer contract or transaction; disputes between landlords and tenants; domestic relations claims; labor claims; receivership, insolvency, or liquidation cases, except as provided in sub. (4) (b) 8.; malpractice claims; personal injury claims; product liability claims; civil rights claims; tax disputes; cases seeking to compel arbitration or to affirm or disaffirm an arbitration award, except as provided in sub. (4) (b) 9.; construction claims, except as provided in sub. (4) (b) 10.; or environmental claims.

(7) IDENTIFICATION AND ASSIGNMENT OF CASES TO COMMERCIAL COURT

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DOCKET. (a) *Plaintiff duties.* At the time of the filing of the complaint under s. 801.02 (1), the plaintiff in a civil action shall state on the face of the complaint whether the case qualifies for the commercial court docket under sub. (4) and is not ineligible for assignment under sub. (6).

(b) *Clerk of court duties.* 1. For cases filed in which a circuit court judge in that county has already been assigned a commercial court docket, the clerk of court shall assign the case to the commercial court docket and to one of the judges designated for the commercial court docket. In the event of a request for judicial substitution, the case shall be transferred to another circuit court judge who is assigned to the commercial court docket in that judicial administrative district.

2. Within a judicial administrative district participating in the commercial court docket, but in which no circuit court judge has been assigned to the commercial court docket, upon the filing of a qualifying case, the clerk of court shall notify the chief judge of the encompassing judicial administrative district who shall assign one of the commercial court docket judges from the other counties in the judicial administrative district. The chief judge's selection shall be made pursuant to s. 751.03 (3). In the event a request for substitution is filed regarding the judge chosen by the chief judge of the encompassing judicial administrative district, the chief judge shall then assign another judge from the judicial administrative district who has been appointed for commercial court cases.

(c) *Omission by plaintiff; defendant's and 3rd-party defendant's rights and prerogatives of the circuit court.* In the event the duties set forth in par. (a) are not met, the circuit court may sua sponte, or upon a motion filed by a defendant or a 3rd

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party with his or her or its responsive pleading or responsive motion, order the transfer of a case to the commercial court docket if the court determines that the case meets the mandatory criteria of sub. (4) and is not ineligible for assignment under sub. (6).

(d) *Action number assignment.* On assignment of any matter to the commercial court docket, the matter shall retain the civil action number assigned to it by the clerk of court upon the filing of the complaint.

(8) DISPUTES REGARDING ASSIGNMENTS OF CASES TO THE COMMERCIAL COURT DOCKET. (a) *Contesting the assignment of a case to the commercial court docket.* 1. After assignment of a case to the commercial court docket, the judge assigned to the case may sua sponte, or upon motion of any party, reconsider whether assignment of that case to the commercial court docket is appropriate under the requirements of sub. (4) and is not ineligible for assignment under sub. (6). Any party filing a reconsideration motion under this paragraph shall file the motion no later than the earlier of the following:

a. Before any judicial ruling is rendered on any issue of material substance in the case.

b. Twenty days after the case is assigned to the commercial court docket.

2. If the assigned commercial court judge concludes that the case does not qualify for assignment to the commercial court docket, the judge shall return the case to the general civil case docket.

(b) *Review.* Any party aggrieved by the outcome of a motion for reconsideration under par. (a) may request the chief judge of the judicial

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administrative district in which the commercial court sits to review the reconsideration decision. A decision by the chief judge of the judicial administrative district resolving the question of which docket shall be assigned the case is final and nonappealable.

(9) TRANSFERRING A CASE TO A COMMERCIAL COURT DOCKET. (a) Parties from judicial administrative districts that do not have a dedicated commercial court docket may petition to have their cases administered within a commercial court docket. To facilitate consideration of such petitions, the director of state courts shall periodically designate a district court administrator to be the court administrative officer for the commercial court docket and shall also designate a circuit court judge serving as a commercial court judge at the time of designation to be the supervising commercial court judge.

(b) Parties described under par. (a) may jointly petition for transfer of a case to a commercial court docket if all of the following are true:

1. The case is a type identified in sub. (4) and is not ineligible for assignment to a commercial court docket under sub. (6).

2. The parties agree to use the forms and procedures developed for use in the commercial court docket.

3. The parties agree that all proceedings will be conducted in the courtroom of the judge to which the case is assigned under par. (c), except that if the case proceeds to trial, the trial will be conducted in the county where the case was originally filed.

(c) The procedure for a joint petition for transfer shall be as follows:

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1. When parties petition for the transfer of a commercial court case from a district that does not then have a commercial court docket, they shall file that petition with the clerk of court in the county where the case is originally filed and also file a copy of that petition with the court administrative officer designated by the director of state courts. The supervising commercial court judge shall determine where the case should be transferred based upon workload and the reasonable convenience of the parties and shall confer with the chief judge of that judicial administrative district as to which commercial court judge is best able to accept that additional workload assignment. The parties requesting the assignment to the commercial court docket shall agree that the judge assigned to the case may direct that all matters, other than trial, be held either in the assigned judge's home courtroom or by electronic means. Trials shall be held in the county in which the case was originally filed. The clerk of the circuit court of the county where the case was originally filed shall continue to be responsible to accept filings, clerk on the record proceedings, and perform all other duties applicable to that case. Any judgments rendered as a result of such proceedings shall be docketed in the county in which the matter was originally filed and any appeal shall be made to the court of appeals in the appellate district where the case was originally filed.

2. The supervising commercial court docket judge shall consider the caseload of the judges designated for the commercial court docket, the nature of the case for which the petition was submitted, and the work requirements for cases already pending in the commercial court docket when determining whether to allow the transfer of a case under this paragraph.

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3. The supervising commercial court docket judge shall, upon allowing a transfer, assign the case to the commercial court docket and to one of the judges designated for the commercial court docket in a participating judicial administrative district.

4. In the event of a request for judicial substitution in a case transferred under this subsection and assigned to the commercial court docket, the chief judge of the judicial administrative district in which the assignment is made shall then assign another judge from the judicial administrative district who has been appointed for commercial court cases.

(d) No party may withdraw a request for transfer to the commercial court docket after a judicial assignment has been made under par. (c).

(END)