

1999 Assembly Bill 92

Date of enactment: **April 11, 2000**
Date of publication*: **April 25, 2000**

1999 WISCONSIN ACT 45

AN ACT *to renumber* 895.57 (1) (a) and 943.75 (1) (a); *to amend* 174.02 (1) (a), 174.02 (1) (b), 895.57 (title), 895.57 (2), 943.75 (2), 943.75 (3), 943.75 (4) and 973.075 (5) (intro.); *to repeal and recreate* 895.57 (1) (am) and 943.75 (1) (am); and *to create* 895.57 (1) (ag), 895.57 (4), 943.75 (1) (ad), 943.75 (2m), 973.075 (1) (b) 1m. g. and 973.075 (1) (bg) of the statutes; **relating to:** the unauthorized release of animals, immunity from liability and providing a penalty.

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

SECTION 1. 174.02 (1) (a) of the statutes is amended to read:

174.02 (1) (a) *Without notice.* Subject to s. 895.045 and except as provided in s. 895.57 (4), the owner of a dog is liable for the full amount of damages caused by the dog injuring or causing injury to a person, domestic animal or property.

SECTION 2. 174.02 (1) (b) of the statutes is amended to read:

174.02 (1) (b) *After notice.* Subject to s. 895.045 and except as provided in s. 895.57 (4), the owner of a dog is liable for 2 times the full amount of damages caused by the dog injuring or causing injury to a person, domestic animal or property if the owner was notified or knew that the dog previously injured or caused injury to a person, domestic animal or property.

SECTION 3. 895.57 (title) of the statutes is amended to read:

895.57 (title) Damages and immunity; unauthorized release of animals.

SECTION 4. 895.57 (1) (a) of the statutes is renumbered 895.57 (1) (am).

SECTION 5. 895.57 (1) (ag) of the statutes is created to read:

895.57 (1) (ag) “Animal” means all vertebrate and invertebrate species, including mammals, birds, fish and shellfish but excluding humans.

SECTION 6. 895.57 (1) (am) of the statutes, as affected by 1997 Wisconsin Acts 192 and 1999 Wisconsin Act (this act), is repealed and recreated to read:

895.57 (1) (am) “Humane officer” means an officer appointed under s. 173.03.

SECTION 7. 895.57 (2) of the statutes is amended to read:

895.57 (2) A person who intentionally releases an animal that is lawfully confined for scientific, farming, companionship or protection of persons or property, recreation, restocking, research, exhibition, commercial or educational purposes, acting without the consent of the owner or custodian of the animal, is liable to the owner or custodian of the animal for damages, which punitive damages, attorney fees and interest on the amount of the damages incurred at the rate of 12% per year from the date of the intentional release. The damages awarded shall include the costs of restoring the animal to confinement.

* Section 991.11, WISCONSIN STATUTES 1997-98: 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].

SECTION 8. 895.57 (4) of the statutes is created to read:

895.57 (4) (a) In this subsection, "security device" includes any of the following:

1. Any fence enumerated under s. 90.02.
2. A theft alarm signal device, a burglar alarm or any other security alarm system or device.
3. A dog.

(b) Subject to par. (d), an owner or custodian of a confined animal is immune from civil liability for any damages to a person who suffers the damages while violating or attempting to violate s. 943.75 (2) or (2m).

(c) An owner or custodian of an animal that is released in violation of s. 943.75 (2) or (2m) is immune from liability for any damages caused by that released animal.

(d) The immunity provided to an owner or custodian of a confined animal under par. (b) does not apply if the injury was caused by a security device that is intended or likely to cause death or great bodily harm, as defined in s. 939.22 (14).

SECTION 9. 943.75 (1) (a) of the statutes is renumbered 943.75 (1) (am).

SECTION 10. 943.75 (1) (ad) of the statutes is created to read:

943.75 (1) (ad) "Animal" means all vertebrate and invertebrate species, including mammals, birds, fish and shellfish but excluding humans.

SECTION 11. 943.75 (1) (am) of the statutes, as affected by 1997 Wisconsin Acts 192 and 1999 Wisconsin Act (this act), is repealed and recreated to read:

943.75 (1) (am) "Humane officer" means an officer appointed under s. 173.03.

SECTION 12. 943.75 (2) of the statutes is amended to read:

943.75 (2) Whoever intentionally releases an animal that is lawfully confined for ~~scientific, farming,~~ companionship or protection of persons or property, recreation, ~~restocking, research,~~ exhibition, ~~commercial~~ or educational purposes, acting without the consent of the owner or custodian of the animal, is guilty of a Class C misdemeanor. A 2nd violation of this ~~section~~ subsection by a person is a Class A misdemeanor. A 3rd or subsequent violation of this ~~section~~ subsection by a person is a Class E felony.

SECTION 13. 943.75 (2m) of the statutes is created to read:

943.75 (2m) Whoever intentionally releases an animal that is lawfully confined for scientific, farming, restocking, research or commercial purposes, acting without the consent of the owner or custodian of the animal, is guilty of a Class C felony.

SECTION 14. 943.75 (3) of the statutes is amended to read:

943.75 (3) ~~Subsection Subsections~~ (2) ~~does and~~ (2m) do not apply to any humane officer, local health officer,

peace officer, employe of the department of natural resources while on any land licensed under s. 29.865, 29.867, 29.869 or 29.871 or designated as a wildlife refuge under s. 29.621 (1) or employe of the department of agriculture, trade and consumer protection if the officer's or employe's acts are in good faith and in an apparently authorized and reasonable fulfillment of his or her duties. This subsection does not limit any other person from claiming the defense of privilege under s. 939.45 (3).

SECTION 15. 943.75 (4) of the statutes is amended to read:

943.75 (4) When the existence of an exception under sub. (3) has been placed in issue by the trial evidence, the state must prove beyond a reasonable doubt that the facts constituting the exception do not exist in order to sustain a finding of guilt under sub. (2) or (2m).

SECTION 16. 973.075 (1) (b) 1m. g. of the statutes is created to read:

973.075 (1) (b) 1m. g. In the commission of a crime under s. 943.75 (2) or (2m).

SECTION 17. 973.075 (1) (bg) of the statutes is created to read:

973.075 (1) (bg) Any property used or to be used in the commission of a crime under s. 943.75 (2) or (2m), but if the property is encumbered by a bona fide perfected security interest that was perfected before the date of the commission of the current violation and the holder of the security interest neither had knowledge of nor consented to the commission of that violation, the holder of the security interest shall be paid from the proceeds of the forfeiture.

SECTION 18. 973.075 (5) (intro.) of the statutes is amended to read:

973.075 (5) (intro.) All forfeitures under ss. 973.075 to 973.077 shall be made with due provision for the rights of innocent persons under sub. (1) (b) ~~2m., (bg), (bm)~~ and (d). Any property seized but not forfeited shall be returned to its rightful owner. Any person claiming the right to possession of property seized may apply for its return to the circuit court for the county in which the property was seized. The court shall order such notice as it deems adequate to be given the district attorney and all persons who have or may have an interest in the property and shall hold a hearing to hear all claims to its true ownership. If the right to possession is proved to the court's satisfaction, it shall order the property returned if:

SECTION 19. Initial applicability.

(1) UNAUTHORIZED RELEASE OF ANIMALS; CRIMINAL PENALTIES. The treatment of section 943.75 (2) and (2m) of the statutes first applies to offenses committed on the effective date of this subsection.

(2) UNAUTHORIZED RELEASE OF ANIMALS; CIVIL ACTIONS. The treatment of section 895.57 (2) and (4) of the statutes first applies to causes of action accruing on the effective date of this subsection.

SECTION 20. Effective dates. This act takes effect on the day after publication, except as follows:

(am) and 943.75 (1) (am) of the statutes takes effect on December 1, 1999.

- (1) The repeal and recreation of sections 895.57 (1)
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