

**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 1999 ASSEMBLY BILL 92**

April 22, 1999 – Offered by COMMITTEE ON RURAL AFFAIRS AND FORESTRY.

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

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

8 **SECTION 1.** 174.02 (1) (a) of the statutes is amended to read:
9 174.02 **(1)** (a) *Without notice.* Subject to s. 895.045 and except as provided in
10 s. 895.57 (4), the owner of a dog is liable for the full amount of damages caused by
11 the dog injuring or causing injury to a person, domestic animal or property.

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

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

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

7 **895.57 (title) Damages and immunity; unauthorized release of animals.**

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

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

10 895.57 (1) (ag) “Animal” means all vertebrate and invertebrate species,
11 including mammals, birds, fish and shellfish but excluding humans.

12 **SECTION 6.** 895.57 (1) (am) of the statutes, as affected by 1997 Wisconsin Acts
13 192 and 1999 Wisconsin Act (this act), is repealed and recreated to read:

14 895.57 (1) (am) “Humane officer” means an officer appointed under s. 173.03.

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

16 895.57 (2) A person who intentionally releases an animal that is lawfully
17 confined for scientific, farming, companionship or protection of persons or property,
18 recreation, restocking, research, exhibition, commercial or educational purposes,
19 acting without the consent of the owner or custodian of the animal, is liable to the
20 owner or custodian of the animal for damages, which punitive damages, attorney fees
21 and interest on the amount of the damages incurred at the rate of 12% per year from
22 the date of the intentional release. The damages awarded shall include the costs of
23 restoring the animal to confinement.

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

25 895.57 (4) (a) In this subsection, “security device” includes any of the following:

1 1. Any fence enumerated under s. 90.02.

2 2. A theft alarm signal device, a burglar alarm or any other security alarm
3 system or device.

4 3. A dog.

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

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

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

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

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

15 943.75 (1) (ad) “Animal” means all vertebrate and invertebrate species,
16 including mammals, birds, fish and shellfish but excluding humans.

17 **SECTION 11.** 943.75 (1) (am) of the statutes, as affected by 1997 Wisconsin Acts
18 192 and 1999 Wisconsin Act (this act), is repealed and recreated to read:

19 943.75 (1) (am) “Humane officer” means an officer appointed under s. 173.03.

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

21 943.75 (2) Whoever intentionally releases an animal that is lawfully confined
22 for ~~scientific, farming,~~ companionship or protection of persons or property,
23 recreation, ~~restocking, research,~~ exhibition, ~~commercial~~ or educational purposes,
24 acting without the consent of the owner or custodian of the animal, is guilty of a Class

1 C misdemeanor. A 2nd violation of this section by a person is a Class A misdemeanor.

2 A 3rd or subsequent violation of this section by a person is a Class E felony.

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

4 **943.75 (2m)** Whoever intentionally releases an animal that is lawfully
5 confined for scientific, farming, restocking, research or commercial purposes, acting
6 without the consent of the owner or custodian of the animal, is guilty of a Class C
7 felony.

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

9 **943.75 (3)** ~~Subsection~~ Subsections (2) does and (2m) do not apply to any
10 humane officer, local health officer, peace officer, employe of the department of
11 natural resources while on any land licensed under s. 29.865, 29.867, 29.869 or
12 29.871 or designated as a wildlife refuge under s. 29.621 (1) or employe of the
13 department of agriculture, trade and consumer protection if the officer's or employe's
14 acts are in good faith and in an apparently authorized and reasonable fulfillment of
15 his or her duties. This subsection does not limit any other person from claiming the
16 defense of privilege under s. 939.45 (3).

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

18 **943.75 (4)** When the existence of an exception under sub. (3) has been placed
19 in issue by the trial evidence, the state must prove beyond a reasonable doubt that
20 the facts constituting the exception do not exist in order to sustain a finding of guilt
21 under sub. (2) or (2m).

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

23 **973.075 (1) (b) 1m. g.** In the commission of a crime under s. 943.75 (2) or (2m).

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

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

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

8 973.075 (5) (intro.) All forfeitures under ss. 973.075 to 973.077 shall be made
9 with due provision for the rights of innocent persons under sub. (1) (b) 2m., (bg), (bm)
10 and (d). Any property seized but not forfeited shall be returned to its rightful owner.
11 Any person claiming the right to possession of property seized may apply for its
12 return to the circuit court for the county in which the property was seized. The court
13 shall order such notice as it deems adequate to be given the district attorney and all
14 persons who have or may have an interest in the property and shall hold a hearing
15 to hear all claims to its true ownership. If the right to possession is proved to the
16 court's satisfaction, it shall order the property returned if:

17 **SECTION 19. Initial applicability.**

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

21 (2) UNAUTHORIZED RELEASE OF ANIMALS; CIVIL ACTIONS. The treatment of section
22 895.57 (2) and (4) of the statutes first applies to causes of action accruing on the
23 effective date of this subsection.

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

