

1999 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB92)

Received: 03/11/99

Received By: nelsorp1

Wanted: As time permits

Identical to LRB:

For: John Ainsworth (608) 266-3097

By/Representing: Gordon Anderson, LC

This file may be shown to any legislator: NO

Drafter: nelsorp1

May Contact:

Alt. Drafters:

Subject: Courts - immunity liability

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Unauthorized release of animals

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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FE Sent For:

<END>

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/?	nelsorp1	1 3/12 jlg	3/12	3/12			

FE Sent For:

<END>

Gordon Anderson
~~Def~~ Sub And For Ainsworth

(d) Immunity to owner/custody:

a) for ~~any~~ injury to person
- while
violating (2) or (2a)

(b) for damages caused
by animals
released in
violation of - (2)
or (2a)

c) Immunity does
not apply if injury
was caused a security device
~~device~~ intended to
cause death or
great bodily harm

Soon

1999 - 2000 LEGISLATURE

LRBs0021

D-Doke

REN
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cmh

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

ASSEMBLY SUBSTITUTE AMENDMENT,

TO 1999 ASSEMBLY BILL 92

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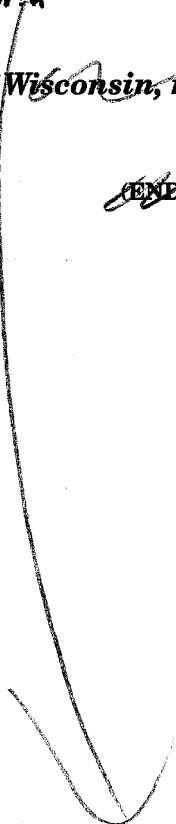
1

AN ACT ...; relating to: ~~ma~~

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

2

~~(END)~~



1999 ASSEMBLY BILL 92

February 4, 1999 - Introduced by Representatives GRONEMUS, PLALE, FREESE, ALBERS, AINSWORTH, MUSSEY, GUNDERSON, HASENOHRL, REYNOLDS, SKINDRUD, BRANDEMUEHL, OLSEN, SERATTI, HANDRICK, WARD and URBAN, cosponsored by Senators DECKER, DRZEWIECKI, BAUMGART, MOEN, HUELSMAN, BRESKE, WELCH, SCHULTZ, A. LASEE and ROESSLER. Referred to 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.

Analysis by the Legislative Reference Bureau

This bill makes the following changes in civil and criminal laws relating to the unauthorized release of animals.

Criminal law changes

Current law prohibits a person from intentionally releasing an animal that is lawfully confined for scientific, farming, restocking, research, exhibition, commercial, educational, recreational, companionship or security purposes if the owner or custodian of the animal does not consent to the release of the animal. The penalty for violating this prohibition depends on whether the person has violated the prohibition before. The penalty for the first violation is a fine of not more than \$500 or imprisonment for not more than 30 days or both. The penalty for the second violation is a fine of not more than \$10,000 or imprisonment for not more than nine

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months or both. The penalty for a third or subsequent violation is a fine of not more than \$10,000 or imprisonment for not more than two years or both, if the offense occurs before December 31, 1999, or a fine of not more than \$10,000 or imprisonment for not more than five years, if the offense occurs on or after December 31, 1999.

Current law also allows for the forfeiture to the state of certain property connected to criminal activity. Specifically, all of the following property is subject to forfeiture under current law: 1) any property that is directly or indirectly derived from or gained through the commission of any crime; 2) a vehicle used to transport any property or weapon that is used, that will be used or that is received in the commission of a felony; 3) a vehicle used in the commission of certain specified crimes, such as prostitution or impersonating a police officer; 4) certain equipment, such as scuba gear, that is used in the commission of a crime relating to a submerged cultural resource; 5) property used to commit the crime of stalking or to violate certain restraining orders or injunctions; and 6) tank vessels that violate certain environmental protection requirements for tank vessels.

This bill increases the maximum penalty for violating the prohibition against intentionally releasing an animal without the consent of the owner or custodian of the animal if the animal is lawfully confined for scientific, farming, restocking, research or commercial purposes. Under the bill, a person who violates the prohibition by releasing an animal confined for one of these purposes may be fined not more than \$10,000 or imprisoned for not more than ten years or both, if the offense occurs before December 31, 1999, or may be fined not more than \$10,000 or imprisoned for not more than 15 years, if the offense occurs on or after December 31, 1999. A person who violates the prohibition by releasing an animal that is lawfully confined for other purposes (such as for recreation or companionship) will be subject to the penalties provided under current law.

The bill also allows for the forfeiture of any vehicle that is used, or of any other property that is used or that will be used, to violate the prohibition against intentionally releasing an animal without the consent of the owner or custodian of the animal.

Civil law changes

Under current law, a person who intentionally releases an animal that is lawfully confined is liable to the owner or custodian of the animal for damages, including the costs of restoring the animal to confinement. This bill adds punitive damages, attorney fees and interest on the damages from the date of the release to the damages a person is liable for if he or she intentionally releases an animal that is lawfully confined.

The bill also provides the owner or custodian of a confined animal with immunity from civil liability for any damages caused by any security device (including a guard dog) that he or she installs or uses if he or she reasonably believes the security device is necessary to protect a confined animal or the premises containing a confined animal. Currently, a person is liable for any damages caused by any security device that is installed to protect a confined animal or the premises

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containing a confined animal if the device is installed negligently or operated in a negligent manner.

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

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

2 174.02 (1) (a) *Without notice.* Subject to s. 895.045 and except as provided in
3 s. 895.57 (4), the owner of a dog is liable for the full amount of damages caused by
4 the dog injuring or causing injury to a person, domestic animal or property.

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

6 174.02 (1) (b) *After notice.* Subject to s. 895.045 and except as provided in s.
7 895.57 (4), the owner of a dog is liable for 2 times the full amount of damages caused
8 by the dog injuring or causing injury to a person, domestic animal or property if the
9 owner was notified or knew that the dog previously injured or caused injury to a
10 person, domestic animal or property.

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

12 **895.57 (title) Damages and immunity; unauthorized release of animals.**

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

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

15 895.57 (1) (ag) “Animal” means all vertebrate and invertebrate species,
16 including mammals, birds, fish and shellfish but excluding humans.

17 **SECTION 6.** 895.57 (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:

19 895.57 (1) (am) “Humane officer” means an officer appointed under s. 173.03.

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

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SECTION 7

1 895.57 (2) A person who intentionally releases an animal that is lawfully
 2 confined for scientific, farming, companionship or protection of persons or property,
 3 recreation, restocking, research, exhibition, commercial or educational purposes,
 4 acting without the consent of the owner or custodian of the animal, is liable to the
 5 owner or custodian of the animal for damages, which punitive damages, attorney fees
 6 and interest on the amount of the damages incurred at the rate of 12% per year from
 7 the date of the intentional release. The damages awarded shall include the costs of
 8 restoring the animal to confinement.

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

10 895.57 (4) (a) In this subsection, "security device" includes any of the following:

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

15 (b) Subject to par. (d), an owner or custodian of a confined animal is immune
 16 from civil liability for any damages to a person ~~if all~~ of the following apply: *who* NO
FP

17 ~~The person~~ *(2) or* suffers the damages while violating or attempting to violate s.
 18 *943.75(2m). An owner or custodian of an animal that is released in violation of s. 943.75(2) or (2m) is immune from*

19 2. The damages are caused by a security device that is installed or used by the
 20 owner or custodian and that the owner or custodian reasonably believes is necessary
 21 to protect the confined animal or the premises containing the animal. For purposes
 22 of this subdivision, it is not reasonable to install or use a security device that is
 23 intended or likely to cause death or great bodily harm, as defined in s. 939.22 (14),
 24 for the purpose of protecting a confined animal or the premises containing a confined
 25 animal.

liability for any damages caused by that released animal.

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1 *The immunity provided to*
(g) ~~If an owner or custodian of a confined animal uses a dog as a security device,~~

2 ~~the owner or custodian is entitled to immunity under par. (b) only if the dog is on the~~
3 ~~owner's or custodian's property at the time that it causes the damage.~~
4 *Does not apply if the injury was caused by a security device that is intended or likely to cause death or great bodily*

5 **SECTION 9.** 943.75 (1) (a) of the statutes is renumbered 943.75 (1) (am). *harm, as defined in s. 939.22 (4).*
6 **SECTION 10.** 943.75 (1) (ad) of the statutes is created to read:

7 943.75 (1) (ad) "Animal" means all vertebrate and invertebrate species,
8 including mammals, birds, fish and shellfish but excluding humans.

9 **SECTION 11.** 943.75 (1) (am) of the statutes, as affected by 1997 Wisconsin Acts
10 192 and 1999 Wisconsin Act (this act), is repealed and recreated to read:

11 943.75 (1) (am) "Humane officer" means an officer appointed under s. 173.03.

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

13 943.75 (2) Whoever intentionally releases an animal that is lawfully confined
14 for ~~scientific, farming,~~ companionship or protection of persons or property,
15 recreation, ~~restocking, research,~~ exhibition, ~~commercial~~ or educational purposes,
16 acting without the consent of the owner or custodian of the animal, is guilty of a Class
17 C misdemeanor. A 2nd violation of this section by a person is a Class A misdemeanor.
18 A 3rd or subsequent violation of this section by a person is a Class E felony.

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

20 943.75 (2m) Whoever intentionally releases an animal that is lawfully
21 confined for scientific, farming, restocking, research or commercial purposes, acting
22 without the consent of the owner or custodian of the animal, is guilty of a Class C
23 felony.

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

25 943.75 (3) ~~Subsection~~ Subsections (2) ~~does~~ and (2m) do not apply to any
humane officer, local health officer, peace officer, employe of the department of

ASSEMBLY BILL 92**SECTION 14**

1 natural resources while on any land licensed under s. 29.865, 29.867, 29.869 or
2 29.871 or designated as a wildlife refuge under s. 29.621 (1) or employe of the
3 department of agriculture, trade and consumer protection if the officer's or employe's
4 acts are in good faith and in an apparently authorized and reasonable fulfillment of
5 his or her duties. This subsection does not limit any other person from claiming the
6 defense of privilege under s. 939.45 (3).

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

8 943.75 (4) When the existence of an exception under sub. (3) has been placed
9 in issue by the trial evidence, the state must prove beyond a reasonable doubt that
10 the facts constituting the exception do not exist in order to sustain a finding of guilt
11 under sub. (2) or (2m).

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

13 973.075 (1) (b) 1m. g. In the commission of a crime under s. 943.75 (2) or (2m).

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

15 973.075 (1) (bg) Any property used or to be used in the commission of a crime
16 under s. 943.75 (2) or (2m), but if the property is encumbered by a bona fide perfected
17 security interest that was perfected before the date of the commission of the current
18 violation and the holder of the security interest neither had knowledge of nor
19 consented to the commission of that violation, the holder of the security interest shall
20 be paid from the proceeds of the forfeiture.

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

22 973.075 (5) (intro.) All forfeitures under ss. 973.075 to 973.077 shall be made
23 with due provision for the rights of innocent persons under sub. (1) (b) 2m., (bg), (bm)
24 and (d). Any property seized but not forfeited shall be returned to its rightful owner.
25 Any person claiming the right to possession of property seized may apply for its

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1 return to the circuit court for the county in which the property was seized. The court
2 shall order such notice as it deems adequate to be given the district attorney and all
3 persons who have or may have an interest in the property and shall hold a hearing
4 to hear all claims to its true ownership. If the right to possession is proved to the
5 court's satisfaction, it shall order the property returned if:

6 **SECTION 19. Initial applicability.**

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

10 (2) UNAUTHORIZED RELEASE OF ANIMALS; CIVIL ACTIONS. The treatment of section
11 895.57 (2) and (4) of the statutes first applies to causes of action accruing on the
12 effective date of this subsection.

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

15 (1) The repeal and recreation of sections 895.57 (1) (am) and 943.75 (1) (am) of
16 the statutes takes effect on December 1, 1999.

17 (END)

D-Note:

*Do we need a special provision
for dogs that are used as
security devices. ^{m dash} it could be
argued that they are always
"intended or likely to cause great bodily
harm", so the injured party could always
collect for injuries caused by a dog. RPN*

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBs0021/1dn
RPN:jl&cmh:jf

March 12, 1999

Do we need a special provision for dogs that are used as security devices — it could be argued that they are always “intended or likely to cause...great bodily harm”, so the injured party could always collect for injuries caused by a dog.

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511