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## WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

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<b>2003 Wisconsin Act 138</b> [2003 Assembly Bill 651]	<b>Main Street Crime</b>
2003 Acts: <a href="http://www.legis.state.wi.us/2003/data/acts/">www.legis.state.wi.us/2003/data/acts/</a>	Act Memos: <a href="http://www.legis.state.wi.us/lc/act_memo/act_memo.htm">www.legis.state.wi.us/lc/act_memo/act_memo.htm</a>

2003 Wisconsin Act 138 addresses a variety of areas of law, primarily civil law, that relate directly or indirectly to crimes to which merchants, in particular, may be susceptible; hence, the legislation was often referred to as “main street crime” legislation during its consideration by the Legislature. Note, however, that the provisions of law addressed by the Act are of general application and are not limited to situations involving merchants.

Provisions of the Act are summarized below. For more detailed information on the Act, see the Legislative Council staff Amendment Memo on Assembly Substitute Amendment 1 and Assembly Amendment 1 to the substitute amendment ([www.legis.state.wi.us/lc/amendment\\_memo/amendment\\_memo.htm](http://www.legis.state.wi.us/lc/amendment_memo/amendment_memo.htm)).

- **Earnings garnishment.** Under the Act, if the garnishment of 20% of the debtor’s disposable income would result in the debtor’s household income being below the poverty line, there is no total earnings exemption as under current law but, rather, the amount of the garnishment is limited to the debtor’s household income in excess of the poverty line.

The Act requires the written petition for relief from an earnings garnishment, claiming the general 80%-of-disposable-earnings exemption is insufficient, to state with reasonable specificity the grounds for the relief requested and to include any additional information necessary to support the petition.

- **Consolidation of creditor accounts for collection purposes.** The Act authorizes a collection agency (or collector or solicitor employed by an agency) licensed by the Department of Financial Institutions, with a creditor’s permission, to consolidate the creditor’s accounts relating to a particular debtor with those of any other creditor or creditors relating to that debtor and to bring suit on behalf of the creditor or creditors. With regard to such suits, the Act contains provisions intended to avoid possible issues of unauthorized practice of law.

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This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents.

- ***Depository accounts exempt from execution.*** Act 138 provides that depository accounts in the aggregate value of \$1,000 are generally exempt from execution only to the extent the account is for the debtor's personal use and is not used as a business account.

- ***Recovery of certain costs in civil proceedings.*** The Act increases the amounts of statutory attorney fees in civil actions. The Act increases statutory reimbursement for certain disbursement costs in civil cases and expands the list of disbursements for which costs are recoverable. The Act also increases the maximum amount of recoverable expert witness fees in a civil action. Finally, the Act increases the maximum allowable amount on a motion in a civil action.

- ***Reopening small claims default judgments.*** The Act expands the current six-month period for reopening a small claims default judgment to 12 months.

- ***Civil action for loss resulting from certain criminal conduct.*** The Act makes changes to the civil cause of action provided under current s. 895.80 for damage or loss resulting from intentional conduct prohibited under specified criminal statutes, including: (1) expanding the intentional conduct to which the cause of action applies; and (2) replacing recovery of "treble damages" with recovery of actual damages plus recovery of punitive damages of not more than three times the amount of actual damages awarded.

- ***Joint and several liability of parents for civil damages resulting from retail theft by a child.*** The Act limits the joint and several civil liability of a parent or parents with custody of their minor child for the child's violation of the shoplifting statute in situations where the child only spends part of his or her physical placement with the parent and in situations where the parent does not reasonably have the ability to exercise supervision and control of the child because the child is uncontrollable or another person has interfered with that parent's exercise of supervision and control.

- ***Worthless checks.*** Regarding worthless checks, the Act: (1) reduces requirements for mailing notice of nonpayment or dishonor (in connection with criminal proceedings) and notice of intent to sue (civil proceedings); (2) expressly applies the \$500 maximum for punitive damages and attorney fees in civil actions to "each violation of the worthless check statute; and (3) authorizes certain issuing agents (typically, retailers) appointed by the Department of Natural Resources (DNR) to report to the DNR persons who pay for fishing and game licenses, stamps, and other approvals with worthless checks after the agent makes an effort to receive payment; DNR must then revoke the approval and send a revocation notice.

- ***Civil liability for retail theft.*** The Act expressly applies the current \$500 maximum for punitive damages and attorney fees in a civil action for retail theft to "each violation" of the retail theft statute. Similarly, the Act expressly applies the current \$300 maximum for punitive damages and attorney fees in a civil action for retail theft against a minor or a minor's parent to "each violation."

***Effective Date:*** Act 138 takes effect July 1, 2004. The Act generally first applies to actions commenced on its effective date; for those provisions treated by the Act that involve violation of a criminal statute, it first applies to violations committed on the effective date.

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