

CHAPTER 813

INJUNCTIONS, NE EXEAT AND RECEIVERS

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813.01 Order substituted for injunction. The writ of injunction is abolished. An injunction may be the final judgment in the action or may be allowed as a provisional remedy therein; and when so allowed it shall be by order as prescribed by this chapter.

History: Sup. Ct. Order, 67 W (2d) 760; Stats. 1975 s. 813.01.

An injunction may be used to prevent prospective violations of a restrictive covenant. *Cobb v. Milwaukee County*, 60 W (2d) 99, 208 NW (2d) 848.

Low bidder under 33.22 who is apparently a "responsible" bidder has standing to seek permanent injunction against award of contract to any other bidder. *Aqua-Tech v. Como Lake Protect. & Rehab. Dist.* 71 W (2d) 541, 239 NW (2d) 25.

813.02 Temporary injunction; when granted. (1) (a) When it appears from his pleading that a party is entitled to judgment and any part thereof consists in restraining some act, the commission or continuance of which during the litigation would injure him, or when during the litigation it shall appear that a party is doing or threatens or is about to do, or is procuring or suffering some act to be done in violation of the rights of another party and tending to render the judgment ineffectual, a temporary injunction may be granted to restrain such act.

(b) Prior to granting a temporary injunction or temporary restraining order, the court may attempt to contact the party sought to be restrained, or his or her counsel if known, by telephone and allow all parties to be heard on the equities between the parties, the availability of other remedies, the damages which may be sustained if the temporary injunction or restraining order is granted, and other relevant matters.

(2) If, after the commencement of any action for waste or to restrain waste, or any action for the recovery of land or the possession or partition thereof or after any real estate has been levied upon by execution, any party to such action or execution shall commit waste or shall threaten or make preparations to commit waste upon the lands, tenements, or anything appertaining thereto, he may be restrained by injunction from committing any waste or further waste thereto. Such injunction may be issued in any of said actions or in cases of the levy above mentioned by the court from which the execution issued.

(3) In an action for that purpose commenced by the attorney general in the name of the state against a corporation, the court may restrain it from assuming or exercising any franchise, liberty or privilege or transacting any business not authorized by its charter; and in the same manner may restrain individuals from exercising corporate rights, privi-

leges or franchises not granted to them by law; and such court, pending such action, may issue a temporary injunction until final judgment.

(4) No temporary restraining order or injunction shall be issued by any judge or court in any action where it does not appear that the county where the application for such temporary restraining order or injunction is made is within the judicial circuit in which is located the county that is the proper place of trial of the action, and no temporary restraining order or injunction shall issue unless the residence of each defendant is stated if known. Any temporary restraining order or injunction issued in violation of this subsection shall be void.

History: Sup. Ct. Order, 67 W (2d) 760; Stats. 1975 s. 813.02; Sup. Ct. Order, 141 W (2d) xxvi.

Judicial Council Note, 1988: Sub. (1) (b) [created] allows the court to attempt to hold a telephone conference prior to granting a temporary injunction or temporary restraining order. The telephone conference procedure minimizes the risk of an improvident injunction and aids the court in fixing a realistic security [Re Order effective Jan. 1, 1988].

A trial court does not abuse its discretion in denying a motion for temporary injunction where it appears that the moving party has not established a reasonable probability that he will ultimately prevail in a trial of the issues. *Akin v. Kewaskum Community Schools*, 64 W (2d) 154, 218 NW (2d) 494.

Trial judge directed to reconsider question of granting temporary injunction in record piracy case in light of court holding that a cause of action existed. *Mercury Record v. Economic Consultants*, 64 W (2d) 163, 218 NW (2d) 705.

813.025 Ex parte restraining orders. (1) No court commissioner shall issue any injunction or order suspending or restraining the enforcement or execution of any statute of the state or of any order of an administrative officer, board, department, commission or other state agency purporting to be made pursuant to the statutes of the state. If so issued such injunction or order shall be void.

(2) The application for such an injunction or restraining order made to a court shall not be heard except upon notice to the attorney general and to such other persons as may be defendants in the action; but if the court is of the opinion that irreparable loss or damage will result to the applicant unless a temporary restraining order is granted, the court may grant such temporary restraining order at any time before such hearing and determination of the application for an interlocutory injunction. However, such temporary restraining order shall be effective only for 5 days unless extended after notice and hearing thereon, or upon written consent of the parties or their attorneys, and in no event shall such temporary restraining order remain in force beyond the time of the

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87-88 Wis. Stats. 4130

determination of the application for an interlocutory injunction.

History: Sup. Ct. Order, 67 W (2d) 760; Stats. 1975 s. 813.025; 1979 c. 111; 1983 a. 204.

Physical violence threat required in (2) (a) applies only to ex parte orders. In re Marriage of Sandy v. Sandy, 106 W (2d) 230, 316 NW (2d) 164 (Ct. App. 1982), aff'd, 109 W (2d) 564, 326 NW (2d) 761 (1982).

813.026 Remedy against heirs and legatees; temporary injunction; receivership; judgment. In an action, in a court of record, for damages founded upon contract or upon a judgment, when it appears that the defendant is interested, as heir, legatee or devisee, in the estate of a decedent and that the defendant's property liable to execution is probably insufficient to satisfy the plaintiff's claim for damages, the defendant may be enjoined by the court, pending the action, from assigning or otherwise disposing of his interest in such estate; and a receiver therefor may be appointed. The judgment may compel the defendant to transfer sufficient of his interest to satisfy the judgment or may adjudge such transfer. The remedy given by this section is in addition to that given by proceedings supplementary to execution under ch. 816. If a receiver is appointed, he shall give prompt notice thereof to the administrator or executor.

History: Sup. Ct. Order, 67 W (2d) 760, 779; Stats. 1975 s. 813.026.

813.03 When granted defendant. A temporary injunction may also be granted on the application of the defendant, when it shall appear that the plaintiff is doing, or threatens, or is about to do, or is procuring or suffering to be done some act in violation of the defendant's rights respecting the subject of the action and tending to his injury or to render ineffectual such judgment as may be rendered in his favor.

History: Sup. Ct. Order, 67 W (2d) 760; Stats. 1975 s. 813.03.

813.04 Same; when granted; Sunday or holiday. The injunction may be granted at any time before judgment upon its appearing satisfactorily to the court or judge, by the complaint or answer or by affidavit that sufficient grounds exist therefor. A copy of the pleading or affidavit on which granted must be served with the injunction unless previously served. In case of exigency an injunction may be granted and may be served on Sunday or on a legal holiday.

History: Sup. Ct. Order, 67 W (2d) 760; Stats. 1975 s. 813.04.

813.05 Notice required. (1) An injunction shall not be allowed after the defendant shall have answered, unless upon notice or upon an order to show cause; but in such case the defendant may be restrained until the decision of the court or judge granting or refusing the injunction.

(2) In an action against an insurance company or fraternal benefit society for an injunction or a receiver the commissioner of insurance shall be notified. Mailing a copy of such notice addressed to the commissioner of insurance at Madison, Wisconsin, shall be sufficient service.

History: Sup. Ct. Order, 67 W (2d) 760; Stats. 1975 s. 813.05.

813.06 Security for damages. In proceedings under s. 767.23 the court or judge may, and in all other proceedings except proceedings under ss. 813.12, 813.122 and 813.125 the court or judge shall, require a bond of the party seeking an injunction, with sureties, to the effect that he or she will pay to the party enjoined such damages, not exceeding an amount to be specified, as he or she may sustain by reason of the injunction if the court finally decides that the party was not entitled thereto. Copies of such bond, affidavit or other pleading shall be served upon the party enjoined and the officer serving the same shall, within 8 days after such service, file his or her return in the office of the clerk of the court.

History: Sup. Ct. Order, 67 W (2d) 760; Stats. 1975 s. 813.06; 1979 c. 32 s. 92 (4); 1983 a. 204; 1985 a. 234 s. 8.

An order of the trial court limiting the amount of annual compensation the corporation could pay the individual defendants until further order was an injunction; hence, the trial court was required to demand a bond. Becker v. Becker, 66 W (2d) 731, 225 NW (2d) 884.

813.07 Assessment of damages; bill of particulars; costs.

Upon an assessment of the damages caused by an injunction the defendant may be required to serve upon the plaintiff and his sureties, within such time and in such manner as the court or referee shall direct, a bill of particulars. The plaintiff or the sureties may within ten days after such service offer in writing to permit the court or referee to assess the defendant's damages at a specified sum together with the costs of such proceeding incurred up to the time of such offer. If such offer be not accepted in writing within five days after it is made, it shall be deemed withdrawn, and cannot be given in evidence; and if the defendant fail to obtain a more favorable assessment of damages he cannot recover costs, but must pay the costs of the opposite party from the time of the offer.

History: Sup. Ct. Order, 67 W (2d) 760; Stats. 1975 s. 813.07.

Increased construction costs are recoverable even though not in existence when the injunction was issued. Byrnes v. Metz, 53 W (2d) 627, 193 NW (2d) 675.

813.08 Injunction, defendant may be heard before enjoined.

The court or judge may, before granting the injunction, make an order requiring cause to be shown why the injunction should not be granted, and the defendant may in the meantime be restrained.

History: Sup. Ct. Order, 67 W (2d) 760; Stats. 1975 s. 813.08.

813.09 Injunctions against corporations. An injunction to suspend the general and ordinary business of a corporation shall not be granted except by the court or presiding judge thereof; nor shall it be granted without due notice of the application therefor to the proper officers of the corporation except where the state is a party to the proceedings, unless the plaintiff give a written undertaking, executed by two sufficient sureties, to be approved by the court or judge, to the effect that the plaintiff will pay all damages, not exceeding the sum to be mentioned in the undertaking, which such corporation may sustain by reason of the injunction if the court shall finally decide that the plaintiff was not entitled thereto. The damages may be ascertained by a reference or otherwise as the court shall direct.

History: Sup. Ct. Order, 67 W (2d) 760; Stats. 1975 s. 813.09.

813.11 Injunction, additional security. The party enjoined may, upon notice, apply for additional security and may combine such application with one to vacate or modify the injunction, and the presiding judge may require a further bond, in a sum and with sureties to be approved by him, as a condition of the continuance of the injunction.

History: Sup. Ct. Order, 67 W (2d) 760; Stats. 1975 s. 813.11.

813.12 Domestic abuse restraining orders and injunctions. (1) DEFINITIONS. In this section:

(a) "Domestic abuse" means any of the following engaged in by an adult family member or household member against another adult family member or household member:

1. Intentional infliction of physical pain, physical injury or illness.
2. Intentional impairment of physical condition.
3. A violation of s. 940.225 (1), (2) or (3).
4. A threat to engage in the conduct under subd. 1, 2 or 3.

(b) "Family member" means a spouse, a parent, a child or a person related by consanguinity to another person.

(c) "Household member" means a person currently or formerly residing in a place of abode with another person.

(2) COMMENCEMENT OF ACTION AND RESPONSE. No action under this section may be commenced by complaint and

summons. An action under this section may be commenced only by a petition described under sub. (5) (a). The action commences with service of the petition upon the respondent if a copy of the petition is filed before service or promptly after service. A petition may be filed in conjunction with an action affecting the family commenced under ch. 767, but commencement of an action affecting the family or any other action is not necessary for the filing of a petition or the issuance of a temporary restraining order or an injunction. Section 813.06 does not apply to an action under this section. The respondent may respond to the petition either in writing before or at the hearing on the issuance of the injunction or orally at that hearing.

(2m) TWO-PART PROCEDURE. Procedure for an action under this section is in 2 parts. First, if the petitioner requests a temporary restraining order the court shall issue or refuse to issue that order. Second, the court shall hold a hearing under sub. (4) on whether to issue an injunction, which is the final relief. If the court issues a temporary restraining order, the order shall set forth the date for the hearing on an injunction. If the court does not issue a temporary restraining order, the date for the hearing shall be set upon motion by either party.

(3) TEMPORARY RESTRAINING ORDER. (a) A judge or family court commissioner shall issue a temporary restraining order ordering the respondent to avoid the petitioner's residence, except as provided in par. (am), or any premises temporarily occupied by the petitioner or both, and to avoid contacting or causing any person other than a party's attorney to contact the petitioner unless the petitioner consents in writing, if all of the following occur:

1. The petitioner submits to the judge or family court commissioner a petition alleging the elements set forth under sub. (5) (a).

2. The judge or family court commissioner finds reasonable grounds to believe that the respondent has engaged in, or based on prior conduct of the petitioner and the respondent may engage in, domestic abuse of the petitioner.

(am) If the petitioner and the respondent are not married, the respondent owns the premises where the petitioner resides and the petitioner has no legal interest in the premises, in lieu of ordering the respondent to avoid the petitioner's residence under par. (a) the judge or family court commissioner may order the respondent to avoid the premises for a reasonable time until the petitioner relocates and shall order the respondent to avoid the new residence for the duration of the order.

(b) Notice need not be given to the respondent before issuing a temporary restraining order under this subsection. A temporary restraining order may be entered only against the respondent named in the petition.

(c) The temporary restraining order is in effect until a hearing is held on issuance of an injunction under sub. (4). A judge or family court commissioner shall hold a hearing on issuance of an injunction within 7 days after the temporary restraining order is issued, unless the time is extended upon the written consent of the parties or extended once for 7 days upon a finding that the respondent has not been served with a copy of the temporary restraining order although the petitioner has exercised due diligence.

(4) INJUNCTION. (a) A judge or family court commissioner may grant an injunction ordering the respondent to avoid the petitioner's residence, except as provided in par. (am), or any premises temporarily occupied by the petitioner or both, and to avoid contacting or causing any person other than a party's attorney to contact the petitioner unless the petitioner consents to that contact in writing, if all of the following occur:

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1. The petitioner files a petition alleging the elements set forth under sub. (5) (a).

2. The petitioner serves upon the respondent a copy of the petition and notice of the time for hearing on the issuance of the injunction, or the respondent serves upon the petitioner notice of the time for hearing on the issuance of the injunction.

3. After hearing, the judge or family court commissioner finds reasonable grounds to believe that the respondent has engaged in, or based upon prior conduct of the petitioner and the respondent may engage in, domestic abuse of the petitioner.

(am) If the petitioner and the respondent are not married, the respondent owns the premises where the petitioner resides and the petitioner has no legal interest in the premises, in lieu of ordering the respondent to avoid the petitioner's residence under par. (a) the judge or family court commissioner may order the respondent to avoid the premises for a reasonable time until the petitioner relocates and shall order the respondent to avoid the new residence for the duration of the order.

(b) The injunction may be entered only against the respondent named in the petition.

(c) 1. An injunction under this subsection is effective according to its terms, but for not more than 2 years.

2. When an injunction in effect for less than 6 months expires, the court shall extend the injunction if the petitioner states that an extension is necessary to protect him or her. This extension shall remain in effect until 6 months after the date the court first entered the injunction.

3. If the petitioner states that an extension is necessary to protect him or her, the court may extend the injunction for up to 2 years after the date the court first entered the injunction.

4. Notice need not be given to the respondent before extending an injunction under subd. 2 or 3. The petitioner shall notify the respondent after the court extends an injunction under subd. 2 or 3.

(5) PETITION. (a) The petition shall allege facts sufficient to show the following:

1. The name of the petitioner and that the petitioner is the alleged victim.

2. The name of the respondent and that the respondent is an adult.

3. That the respondent engaged in, or based on prior conduct of the petitioner and the respondent may engage in, domestic abuse of the petitioner.

(b) The clerk of circuit court shall provide the simplified forms provided under s. 46.95 (3) (c) to help a person file a petition.

(6) ENFORCEMENT ASSISTANCE. (a) If an order is issued under this section, upon request by the petitioner the court or family court commissioner shall order the sheriff to accompany the petitioner and assist in placing him or her in physical possession of his or her residence or to otherwise assist in executing or serving the temporary restraining order or injunction.

(b) Within 24 hours after request by the petitioner, the clerk of the circuit court shall send a copy of any order issued or provide notice of any order extended under this section to the sheriff or to any other local law enforcement agency which is the central repository for orders and which has jurisdiction over the petitioner's premises.

(c) The sheriff or other appropriate local law enforcement agency under par. (b) shall make available to other law enforcement agencies, through a verification system, information on the existence and status of any order issued under this section. The information need not be maintained after the order is no longer in effect.

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(7) **ARREST.** A law enforcement officer shall arrest and take a person into custody if all of the following occur:

(a) A petitioner under sub. (5) presents the law enforcement officer with a copy of a court order issued under sub. (3) or (4), or the law enforcement officer determines that such an order exists through communication with appropriate authorities.

(b) The law enforcement officer has probable cause to believe that the person has violated the court order issued under sub. (3) or (4).

(8) **PENALTY.** Whoever knowingly violates a temporary restraining order or injunction issued under this section shall be fined not more than \$1,000 or imprisoned not more than 9 months or both.

History: 1983 a. 204, 540; 1985 a. 29, 135

813.122 Child abuse restraining orders and injunctions.

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

(a) "Abuse" means any of the following:

1. Physical injury inflicted on a child by other than accidental means.

2. Sexual intercourse or sexual contact under s. 940.225 or 948.02.

3. A violation of s. 948.05.

4. Permitting or requiring a child to violate s. 944.30.

5. Emotional damage.

6. A threat to engage in any conduct under subs. 1 to 5.

NOTE: Subs. 2 and 3 are shown as amended by 1987 Wis. Act 332, s. 64, eff. 7-1-89. Act 332 added "or 948.02" to subd. 2 and in subd. 3 replaced "940.203" with "948.05".

(b) "Child" means any person under 18 years of age.

(c) "Child victim" means the child who is the victim or the alleged victim of abuse.

(d) "Child victim advocate" means any person who counsels child victims, assists child victims in coping with the impact of the crime or otherwise acts in support of child victims.

(e) "Emotional damage" means harm to a child's psychological or intellectual functioning which is exhibited by severe anxiety, depression, withdrawal or outward aggressive behavior, or a combination of those behaviors, which is caused by the child's parent, guardian, legal custodian or other person exercising temporary or permanent control over the child and for which the child's parent, guardian or legal custodian has failed to obtain the treatment necessary to remedy the harm.

(f) "Physical injury" includes but is not limited to lacerations, fractured bones, burns, internal injuries, severe or frequent bruising or great bodily harm as defined under s. 939.22 (14).

(2) **COMMENCEMENT OF ACTION AND RESPONSE.** No action under this section may be commenced by complaint and summons. An action under this section may be commenced only by a petition described under sub. (6) (a). The action commences with service of the petition upon the respondent if a copy of the petition is filed before service or promptly after service. The child victim or a parent, stepparent or legal guardian of the child victim may be a petitioner under this section. Section 813.06 does not apply to an action under this section. The respondent may respond to the petition either in writing before or at the hearing on the issuance of the injunction or orally at that hearing.

(3) **GENERAL PROCEDURE.** (a) Procedure for an action under this section is in 2 parts. First, if the petitioner requests a temporary restraining order, the court or court commissioner shall issue or refuse to issue that order. Second, the court shall hold a hearing under sub. (5) on whether to issue an injunction, which is the final relief. If the court or court

commissioner issues a temporary restraining order, the order shall set forth the date for the hearing on an injunction. If the court or court commissioner does not issue a temporary restraining order, the date for the hearing shall be set upon motion by either party.

(b) The court or court commissioner, on its own motion or the motion of any party, may order one or more of the following:

1. That a guardian ad litem be appointed for the child victim in accordance with s. 48.235.

2. That all persons, other than the parties, their attorneys, witnesses, child victim advocates, court personnel and any guardian ad litem, be excluded from any hearing under this section.

3. That access to any record of an action under this section be available only to the parties, their attorneys, any guardian ad litem, court personnel and any applicable court upon appeal.

(c) An action under this section may pertain to more than one child victim.

(4) **TEMPORARY RESTRAINING ORDER.** (a) A judge or court commissioner shall issue a temporary restraining order ordering the respondent to avoid the child victim's residence or any premises temporarily occupied by the child victim or both, and to avoid contacting or causing any person other than a party's attorney to contact the child victim unless the petitioner consents in writing and the judge or court commissioner agrees that the contact is in the best interests of the child victim, if all of the following occur:

1. The petitioner submits to the judge or court commissioner a petition alleging the elements set forth under sub. (6) (a).

2. The judge or court commissioner finds reasonable grounds to believe that the respondent has engaged in, or based on prior conduct of the child victim and the respondent may engage in, abuse of the child victim.

(b) Notice need not be given to the respondent before issuing a temporary restraining order under this subsection. A temporary restraining order may be entered only against the respondent named in the petition.

(c) The temporary restraining order is in effect until a hearing is held on issuance of an injunction under sub. (5). A judge shall hold a hearing on issuance of an injunction within 7 days after the temporary restraining order is issued, unless the time is extended upon the written consent of the parties or extended once for 7 days upon a finding that the respondent has not been served with a copy of the temporary restraining order although the petitioner has exercised due diligence.

(5) **INJUNCTION.** (a) A judge may grant an injunction ordering the respondent to avoid the child victim's residence or any premises temporarily occupied by the child victim or both, and to avoid contacting or causing any person other than a party's attorney to contact the child victim unless the petitioner consents to that contact in writing and the judge agrees that the contact is in the best interests of the child victim, if all of the following occur:

1. The petitioner files a petition alleging the elements set forth under sub. (6) (a).

2. The petitioner serves upon the respondent a copy of the petition and notice of the time for hearing on the issuance of the injunction, or the respondent serves upon the petitioner notice of the time for hearing on the issuance of the injunction.

3. After hearing, the judge finds reasonable grounds to believe that the respondent has engaged in, or based upon prior conduct of the child victim and the respondent may engage in, abuse of the child victim.

(b) If the respondent is the parent of the child victim, the judge shall modify the order under par. (a) to provide the parent reasonable visitation rights, unless the judge finds that visitation would endanger the child's physical, mental or emotional health. The judge may provide that any authorized visitation be supervised.

(c) The injunction may be entered only against the respondent named in the petition.

(d) 1. An injunction under this subsection is effective according to its terms, but for not more than 2 years or until the child attains 18 years of age, whichever occurs first.

2. When an injunction in effect for less than 6 months expires, the court shall extend the injunction if the petitioner states that an extension is necessary to protect the child victim. This extension shall remain in effect until 6 months after the date the court first entered the injunction or until the child attains 18 years of age, whichever occurs first.

3. If the petitioner states that an extension is necessary to protect the child victim, the court may extend the injunction for not more than 2 years or until the child attains 18 years of age, whichever occurs first.

4. Notice need not be given to the respondent before extending an injunction under subd. 2 or 3. The petitioner shall notify the respondent after the court extends an injunction under subd. 2 or 3.

(e) An injunction under this section may direct the payment of child support using a method of calculation authorized under s. 767.25.

(6) PETITION. (a) The petition shall allege facts sufficient to show the following:

1. The name of the petitioner and the child victim.

2. The name of the respondent and that the respondent is an adult.

3. That the respondent engaged in, or based on prior conduct of the respondent and the child victim may engage in, abuse of the child victim.

4. If the payment of child support is requested, that the payment of child support is reasonable or necessary based on criteria provided under s. 767.25.

(b) Upon request, the clerk of circuit court shall provide, without cost, the simplified forms obtained under s. 46.03 (7) (d) to a petitioner.

(7) CONTACT. Any order under this section directing a person to avoid contact with a child victim prohibits the person from knowingly touching, meeting, communicating or being in visual or audio contact with the child victim, except as provided in any modifications of the order under sub. (5) (b).

(8) EVIDENCE RELATING TO EMOTIONAL DAMAGE. In an action under this section alleging that emotional damage has occurred or may occur, the court may admit evidence of a substantial and observable change in behavior, emotional response or cognition that is not within the normal range for the child's age and stage of development.

(9) ENFORCEMENT ASSISTANCE. (a) If an order is issued under this section, upon request by the petitioner, the court or court commissioner, as applicable, shall order the sheriff to assist in executing or serving the temporary restraining order or injunction.

(b) Within 24 hours after request by the petitioner, the clerk of the circuit court shall send a copy of any order issued or provide notice of any order extended under this section to the sheriff or to any other local law enforcement agency which is the central repository for orders and which has jurisdiction over the child victim's premises.

(c) The sheriff or other appropriate local law enforcement agency under par. (b) shall make available to other law

enforcement agencies, through a verification system, information on the existence and status of any order issued under this section. The information need not be maintained after the order is no longer in effect.

(10) ARREST. A law enforcement officer shall arrest and take a person into custody if all of the following occur:

(a) A petitioner under sub. (6) (a) presents the law enforcement officer with a copy of an order issued under sub. (4) or (5), or the law enforcement officer determines that such an order exists through communication with appropriate authorities.

(b) The law enforcement officer has probable cause to believe that the person has violated the order issued under sub. (4) or (5).

(11) PENALTY. Whoever knowingly violates a temporary restraining order or injunction issued under this section shall be fined not more than \$1,000 or imprisoned for not more than 9 months or both.

History: 1985 a. 234; 1987 a. 332 s. 64.

813.125 Harassment restraining orders and injunctions.

(1) DEFINITION. In this section, "harassment" means any of the following:

(a) Striking, shoving, kicking or otherwise subjecting another person to physical contact or attempting or threatening to do the same.

(b) Engaging in a course of conduct or repeatedly committing acts which harass or intimidate another person and which serve no legitimate purpose.

(2) COMMENCEMENT OF ACTION. An action under this section may be commenced by filing a petition described under sub. (5) (a). No action under this section may be commenced by service of summons. Section 813.06 does not apply to an action under this section.

(3) TEMPORARY RESTRAINING ORDER. (a) A judge may issue a temporary restraining order ordering the respondent to cease or avoid the harassment of another person, if all of the following occur:

1. The petitioner files a petition alleging the elements set forth under sub. (5) (a).

2. The judge finds reasonable grounds to believe that the respondent has violated s. 947.013.

(b) Notice need not be given to the respondent before issuing a temporary restraining order under this subsection. A temporary restraining order may be entered only against the respondent named in the petition.

(c) The temporary restraining order is in effect until a hearing is held on issuance of an injunction under sub. (4). A judge shall hold a hearing on issuance of an injunction within 7 days after the temporary restraining order is issued, unless the time is extended upon the written consent of the parties or extended once for 7 days upon a finding that the respondent has not been served with a copy of the temporary restraining order although the petitioner has exercised due diligence.

(4) INJUNCTION. (a) A judge may grant an injunction ordering the respondent to cease or avoid the harassment of another person, if all of the following occur:

1. The petitioner has filed a petition alleging the elements set forth under sub. (5) (a).

2. The petitioner serves upon the respondent a copy of a restraining order obtained under sub. (3) and notice of the time for the hearing on the issuance of the injunction under sub. (3) (c).

3. After hearing, the judge finds reasonable grounds to believe that the respondent has violated s. 947.013.

(b) The injunction may be entered only against the respondent named in the petition.

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(c) An injunction under this subsection is effective according to its terms, but for not more than 2 years.

(5) **PETITION.** (a) The petition shall allege facts sufficient to show the following:

1. The name of the person who is the alleged victim.
2. The name of the respondent.
3. That the respondent has violated s. 947.013.

(b) The clerk of circuit court shall provide simplified forms:

(6) **ARREST.** A law enforcement officer shall arrest and take a person into custody if all of the following occur:

(a) A person named in a petition under sub. (5) presents the law enforcement officer with a copy of a court order issued under sub. (3) or (4), or the law enforcement officer determines that such an order exists through communication with appropriate authorities.

(b) The law enforcement officer has probable cause to believe that the person has violated the court order issued under sub. (3) or (4).

(7) **PENALTY.** Whoever violates a temporary restraining order or injunction issued under this section shall be fined not more than \$1,000 or imprisoned not more than 90 days or both.

History: 1983 a. 336.

This section is constitutional. *Bachowski v. Salamone*, 139 W (2d) 397, 407 NW (2d) 533 (1987)

813.127 Combined actions; domestic abuse, child abuse and harassment. A petitioner may combine in one action 2 or more petitions under one or more of the provisions in ss. 813.12, 813.122 and 813.125 if the respondent is the same person in each petition. In any such action, there is only one fee applicable under s. 814.61 (1) (a). In any such action, the hearings for different types of temporary restraining orders or injunctions may be combined.

History: 1985 a. 234.

813.13 Writ of ne exeat. The court or a judge may grant the writ of ne exeat to prevent any defendant from going out of the state until he shall give security. It may be granted at any time before judgment.

History: Sup. Ct. Order, 67 W (2d) 760; Stats. 1975 s. 813.13.

813.14 Same; when granted. No writ of ne exeat shall be granted unless it appears to the court or judge by the complaint or an affidavit that grounds exist therefor; and the court or judge granting such writ shall direct to be indorsed thereon the penalty of the bond and security to be given by the defendant.

History: Sup. Ct. Order, 67 W (2d) 760; Stats. 1975 s. 813.14.

813.15 Same; discharge of. If the defendant shall satisfy the court or judge granting such writ that there is no reason for his restraint or shall give security for the performance of the judgment in the action the writ shall be discharged.

History: Sup. Ct. Order, 67 W (2d) 760; Stats. 1975 s. 813.15.

813.16 Receivers. A receiver may be appointed:

(1) On the application of either party, when he establishes an apparent right to or interest in property which is the subject of the action and which is in the possession of an adverse party, and the property or its rents and profits are in danger of being lost or materially impaired.

(2) By the judgment, or after judgment, to carry it into effect or to dispose of the property according to the judgment.

(3) To preserve the property during the pendency of an appeal; or when an execution has been returned unsatisfied and the judgment debtor refuses to apply his property in

satisfaction of the judgment or in an action by a creditor under ch. 816.

(4) When a corporation has been dissolved or is insolvent or in imminent danger of insolvency, or has forfeited its corporate rights.

(5) In accordance with the practice which obtained when the code of 1856 took effect except as otherwise provided in this chapter.

(6) The receiver shall give to and file with the clerk of the court a bond, conditioned in the usual manner, with sureties to be approved by the judge making the appointment sufficient to cover all property likely to come into his hands.

(7) If the person seeking the appointment of a receiver under sub. (1) is a corporation supervised by the office of the commissioner of savings and loan or home loan bank board, the court, unless the opposing party objects, shall appoint an officer of such corporation as receiver to act without compensation and to give such bond as the court requires.

History: Sup. Ct. Order, 67 W (2d) 760, 779; Stats. 1975 s. 813.16.

A court can appoint a receiver to accept mortgage payments after a foreclosure action is started, where plaintiff refuses to accept them on the ground that this would be a waiver and defendant claims the right to make them on the ground that the defendant had no right to accelerate the note. *American Med. S. Inc. v. Mutual Fed. S. & L.* 52 W (2d) 198, 188 NW (2d) 529

813.17 Receiver; payment of employes' wages. Whenever a receiver shall be appointed to manage or close up any business, he shall immediately report to the court the amount due the employes in such business; and said court shall order him to pay out of the first receipts of said business, after the payment of costs, debts due the United States or this state, taxes and assessments and the current expenses of carrying on or closing said business, the wages, including pension, welfare and vacation benefits, of such employes earned during the last 3 months of employment and within one year prior to his appointment.

History: 1971 c. 63; Sup. Ct. Order, 67 W (2d) 760; Stats. 1975 s. 813.17.

813.22 Uniform absence as evidence of death and absentee's property act; insurance policy provisions invalid. (1) No provision concerning the effect to be given to evidence of absence or of death in any policy of life or accident insurance or in the charter or by-laws of any mutual or fraternal insurance association hereafter executed or adopted, shall be valid.

(2) When any such policy, charter or by-laws hereafter executed or adopted contains a provision requiring a beneficiary to bring suit upon a claim of death within one year or other period after the death of the insured, and the fact of the absence of the insured is relied upon by the beneficiary as evidence of the death, the action may be begun, notwithstanding such provision in the policy or charter or by-laws, at any time within the statutory period of limitation for actions on contracts in writing dating from the date of the giving of written notice of such absence to the insurer, which notice shall be given within one year from the date when the beneficiary last heard of the absent insured. If such notice is not given then the statutory period runs from the time when the absent person was last heard of by the beneficiary.

History: Sup. Ct. Order, 67 W (2d) 760; Stats. 1975 s. 813.22; 1979 c. 89.

813.23 Receiver may be appointed when. (1) (a) When a person domiciled in this state and having an interest in any form of property disappears and is absent from his place of residence without being heard of after diligent inquiry, upon application for a finding of such disappearance and absence and of the necessity for the appointment of a receiver to the circuit court of the county of the absentee's domicile by any person who would have an interest in said property were said absentee deceased or by an insurer or surety or creditor of

such absentee, after notice as provided in s. 813.24, and upon good cause being shown, the court may find that he was last heard of as of a date certain and may appoint a receiver to take charge of his estate. The absentee shall be made a party to said proceeding; and any other person who would have an interest in said property were said absentee deceased, upon direction by the court, may be made a party to said proceeding.

(b) When a person is a member of the armed forces of the United States without this state, or is serving as a merchant seaman outside of the limits of the United States included within the 50 states and the District of Columbia, or is outside such limits by permission, assignment or direction of any department or official of the United States government in connection with any activity pertaining to the prosecution of any war in which the United States is then engaged, and has an interest in any form of property in this state and no adequate power of attorney on his behalf has been recorded in the office of the register of deeds of the county of his domicile or of the county where such property is situated, upon application for findings establishing the foregoing and the necessity for appointment of a receiver, to the circuit court of the county of such person's domicile or of the county where such property is situated, by any person who would have an interest in said property were such person deceased, or by an insurer or surety or creditor of such person, or by any other person or on the court's own motion, after notice as provided in s. 813.24, and upon good cause being shown, the court may, on making such findings, appoint a receiver to take charge of such person's estate. Such person should be made a party to such proceedings; and any other person who would have an interest in said property were said person deceased, upon direction by the court, may be made a party to said proceedings. Such person shall be deemed an "absentee" within the meaning of ss. 813.23 to 813.34.

(2) The receiver, upon giving bond to be fixed in amount and with surety to be approved by the court and upon such conditions as will insure the conservation of such property, shall under the direction of said court administer said property as an equity receivership with power (a) to take possession of all property of the absentee wherever situated, (b) to collect all debts due the absentee, (c) to bring and defend suits, (d) to pay insurance premiums, (e) with the approval of the court in each case, to pay all debts due by the absentee, and (f) to pay over the proceeds of such part or all of said property, or the income thereof as may be necessary for the maintenance and support of the absentee's dependents; and if the personal property of said absentee be not sufficient to pay all his debts, and to provide for the maintenance and support of his dependents, the receiver may apply to the court for an order to sell or mortgage so much of the real estate as may be necessary therefor; said sale or mortgage to be reported to, approved and confirmed by the court and said receiver to be ordered to make deed conveying or mortgaging said real property to the purchaser or lender upon his complying with the terms of sale or mortgage.

(3) Upon the filing of the application referred to in sub. (1), the court may for cause shown appoint a temporary receiver to take charge of the property of the absentee and conserve it pending hearing upon the application. Such temporary receiver shall qualify by giving bond in an amount and with surety to be approved by the court and shall exercise only the powers named by the court. Should a permanent receiver be appointed, the temporary receiver shall turn over all property in his possession, less such as may be necessary to cover his expenses and compensation as allowed by the court, to the permanent receiver, shall file his final account and upon its

approval be discharged. Should the application for permanent receiver be denied, the temporary receiver shall restore to those from whom it may have been obtained, all property in his possession, less such only as may be necessary to cover his expenses and compensation as allowed by the court, shall file his final account and be discharged. Where the application is denied, the expenses of the temporary receivership and the compensation of the temporary receiver may in the discretion of the court be taxed as costs of the proceeding to be paid by the applicant and shall be enforceable by the temporary receiver against him.

History: Sup. Ct. Order, 67 W (2d) 760, 779; Stats. 1975 s. 813.23.

813.24 Notice. All notices required under ss. 813.22 to 813.34 shall be served upon all parties ordered by the court to be served as prescribed by statutes or rules, except that in addition thereto service on the absentee shall be by a class 3 notice, under ch. 985, in the county of the absentee's domicile, the last insertion to be not less than 10 nor more than 20 days prior to the time set for any hearing. The original notice prescribed in s. 813.23 (1) shall require each person claiming an interest in the property of the absentee to file in court within a time fixed by the court a statement of the nature and extent of such interest. In relation to a person in military service similar notice shall be given; except that where it appears to the court that such person was not domiciled in this state immediately prior to such service, publication of the notice may be made in the county where property of such person is situated.

History: Sup. Ct. Order, 67 W (2d) 760, 779; Stats. 1975 s. 813.24.

813.25 Search for absentee. (1) The court, upon application, may direct the receiver to make search for the absentee in any manner which the court may deem advisable, including any or all of the following methods:

(a) By inserting in one or more suitable periodicals a notice requesting information from any person having knowledge of the absentee's whereabouts;

(b) By notifying officers of justice and public welfare agencies in appropriate locations of the absentee's disappearance;

(c) By engaging the services of an investigation agency.

(2) The expenses of such search and of the notices provided for in s. 813.24 shall be taxed as costs and paid out of property of the absentee.

History: Sup. Ct. Order, 67 W (2d) 760, 779; Stats. 1975 s. 813.25.

813.26 Final hearing and finding. (1) At any time, during the proceedings, upon application to the court and presentation of satisfactory evidence of the absentee's death, the court may make a final finding and decree that the absentee is dead; in which event the decree and a transcript of all of the receivership proceedings shall be certified to the proper court for any administration required by law upon the estate of a decedent, and the receivership court shall proceed no further except for the purposes set forth in s. 813.28 (1) and (3).

(2) After the lapse of 5 years from the date of the finding provided for in s. 813.23 (1), if the absentee has not appeared, the court may proceed to take further evidence and thereafter make a final finding and enter a decree declaring that all interest of the absentee in his property has ceased and devolved upon others by reason of his failure to appear and make claim.

(3) At any time, upon proof to the court that a power of attorney has been recorded as provided by s. 813.23 (1) (b), the court shall direct termination of the receivership proceedings and transfer of property held thereunder to the person in military service or to the attorney named in such power of

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attorney upon payment of reasonable expenses and compensation of the receiver in the discretion of the court.

History: Sup. Ct. Order, 67 W (2d) 760, 779; Stats. 1975 s. 813.26.

813.27 Claim of absentee barred. No action shall be brought by an absentee to recover any portion of this property after the final finding and judgment provided for in s. 813.26.

History: Sup. Ct. Order, 67 W (2d) 760, 779; Stats. 1975 s. 813.27.

813.28 Termination of receivership and disposition of property of absentee. Upon the entry of any final finding and decree as provided in s. 813.26, the court shall proceed to wind up the receivership and terminate the proceedings:

(1) In the case of a finding under s. 813.26 (1) that the absentee is dead:

(a) By satisfying all outstanding debts and charges of the receivership; and

(b) By then certifying the proceedings to the proper court; or

(2) In the case of a finding under s. 813.26 (2):

(a) By satisfying all outstanding debts and charges;

(b) By then deducting for the insurance fund provided in s. 813.31 a sum equal to 5 per cent of the total value of the property remaining, including amounts paid to the receivership estate from policies of insurance on the absentee's life;

(c) By distributing the remaining property as provided in s. 813.29; and

(3) In both cases by requiring the receiver's account and upon its approval discharging him and his bondsmen and entering a final decree terminating the receivership.

History: Sup. Ct. Order, 67 W (2d) 760, 780; Stats. 1975 s. 813.28.

813.29 Distribution of property of absentee. The property remaining for distribution in accordance with s. 813.28 (2) (c) shall be distributed among those persons who would be entitled thereto under the laws of descent and distribution of this state had the absentee died intestate as of the date determined by the court in its final finding and decree; or in case the absentee leaves a document which, had he died, would under the laws of this state be entitled to probate as his will, the distribution shall be according to the terms of that document as of that date. The validity and effect of the distribution of said property shall be determined by the court administering the receivership and shall be final and binding upon all persons including the absentee.

History: Sup. Ct. Order, 67 W (2d) 760, 780; Stats. 1975 s. 813.29.

813.30 Insurance policies. (1) At the time of the distribution under s. 813.29, the court may direct the payment to the beneficiaries of any sums due and unpaid under any policies of insurance upon the life of the absentee, if the claim is uncontested by the insurer.

(2) If the claim is contested, the court shall take jurisdiction of the action and shall submit to a jury, if one be called for,

the issue of death of the insured and any other issues arising under the policy.

(3) Where the survival of a named beneficiary is not established, ss. 813.22 to 813.34 shall apply as if the proceeds of the insurance were a part of the estate of the absentee.

(4) If in any proceeding under subs. (1) and (2) the absentee is not found to be deceased and the policy provides for a surrender value, the beneficiary may request the receiver, acting for the insured, to demand the payment of surrender value. The receiver's receipt for such payment shall be a release to the insurer of all claims under the policy. The receiver shall pay over to the beneficiary (if he survives the insured, otherwise to the estate of the absentee) the sum thus received, reserving only an amount allowed by the court as costs of the proceedings under this section.

(5) Payment by an insurer hereunder shall be in full discharge of all contractual liability. No action shall be brought by an absentee to recover any portion of the proceeds, or any other benefits or values, arising out of contracts of life insurance issued upon his life, after any distribution of such property pursuant to this section.

History: Sup. Ct. Order, 67 W (2d) 760, 780; Stats. 1975 s. 813.30.

813.31 Absentee insurance fund. (1) In each case of termination of receivership as provided in s. 813.28, the court, except in cases where the proceedings have been certified to the proper court under s. 813.26 (1), shall set aside the sum there named and direct its payment by the receiver, to the state treasurer.

(2) The state treasurer shall retain or invest the funds thus paid in.

(3) If at any time thereafter an absentee whose estate has been distributed under a final finding and judgment made as herein provided shall appear and make claim for reimbursement, the court may in a proceeding by the claimant against the state treasurer order payment to the claimant as in its opinion may be fair and adequate under the circumstances.

History: Sup. Ct. Order, 67 W (2d) 760, 780; Stats. 1975 s. 813.31.

813.32 Uniformity of interpretation. Sections 813.22 to 813.34 shall be so construed as to make uniform the law of those states which enact it.

History: Sup. Ct. Order, 67 W (2d) 760, 780; Stats. 1975 s. 813.32.

813.33 Name of act. Sections 813.22 to 813.34 may be cited as the "Uniform Absence as Evidence of Death and Absentee's Property Act."

History: Sup. Ct. Order, 67 W (2d) 760, 780; Stats. 1975 s. 813.33.

813.34 Time of taking effect and not retroactive. The provisions of ss. 813.22 to 813.34 shall not be retroactive and they shall take effect on July 1, 1942.

History: Sup. Ct. Order, 67 W (2d) 760, 780; Stats. 1975 s. 813.34.