



2003 ASSEMBLY BILL 627

October 27, 2003 – Introduced by LAW REVISION COMMITTEE. Referred to Committee on Judiciary.

1 **AN ACT** *to repeal* 93.135 (1) (am) and 93.35; *to amend* 93.22 (1), 93.22 (2), 93.22
2 (3) and 799.01 (1) (b); and *to create* 93.22 (4) of the statutes; **relating to:** court
3 procedures and time limits in forfeiture actions related to agriculture,
4 consumer protection, and trade regulation; and weather modification
5 (suggested as remedial legislation by the Department of Agriculture, Trade and
6 Consumer Protection).

Analysis by the Legislative Reference Bureau

Court procedures and time limits in forfeiture actions

Under current law, actions for the violation of a state statute in which the penalty is a forfeiture (civil penalty) generally are brought in circuit court using the small claims procedures. Generally, these procedures and proceedings are more informal than those for large claims actions. A person may, depending on the complexity of the issue, represent his or her interest in the action without an attorney. The action is started with a summons and complaint that is set forth in the statutes. The small claims procedures do not apply to forfeiture actions in circuit court for violations related to conservation, wildlife, and other natural resources or to traffic forfeiture actions.

Under this bill, the small claims procedures would not apply to a forfeiture action for the violation of a law enforced by the Department of Agriculture, Trade and

ASSEMBLY BILL 627

Consumer Protection (DATCP), including food regulation, animal health, agriculture resource management, and trade and consumer protection. The bill provides that large claims procedures apply to those actions.

Weather modification

Current law requires DATCP to regulate activities intended to modify the weather. This bill repeals that requirement.

For further information, see the NOTES provided by the Law Revision Committee of the Joint Legislative Council.

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

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

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is a remedial legislation proposal, requested by the Department of Agriculture, Trade and Consumer Protection and introduced by the Law Revision Committee under s. 13.83 (1) (c) 4., stats. After careful consideration of the various provisions of the bill, the Law Revision Committee has determined that this bill makes minor substantive changes in the statutes, and that these changes are desirable as a matter of public policy.

1 **SECTION 1.** 93.135 (1) (am) of the statutes is repealed.

NOTE: Section 1 of this bill eliminates a reference to the weather modification license. According to the Department of Agriculture, Trade and Consumer Protection, it has not issued a weather modification license or permit since 1977.

2 **SECTION 2.** 93.22 (1) of the statutes is amended to read:

3 93.22 (1) In cases arising under chs. 88 ~~and 93, 91~~ to 100, 126, or 136, the
4 department may be represented by its attorney.

NOTE: Sections 2, 3 and 4 of this bill update references to chapters of the statutes that have been renumbered.

5 **SECTION 3.** 93.22 (2) of the statutes is amended to read:

6 93.22 (2) The department may, with the approval of the governor, appoint
7 special counsel to prosecute or assist in the prosecution of any case arising under chs.
8 88 ~~and 93, 91~~ to 100, 126, or 136. The cost of such special counsel shall be charged
9 to the appropriation for the department.

10 **SECTION 4.** 93.22 (3) of the statutes is amended to read:

ASSEMBLY BILL 627

1 93.22 (3) In any criminal or civil action under chs. 88 ~~and 93~~, 91 to 100, 126,
2 or 136, any exception, exemption, proviso, excuse, or qualification contained in any
3 of said chapters, or in any order, standard, or regulation thereunder, may be proved
4 by the defendant, but need not be specified or negated in the information or
5 complaint, and, if so specified or negated, no proof in relation to the matters so
6 specified or negated, shall be required of the plaintiff.

7 **SECTION 5.** 93.22 (4) of the statutes is created to read:

8 93.22 (4) The procedures under ch. 778 that relate to forfeitures imposed for
9 the violation of a state statute and under chs. 801 to 816 apply to cases arising under
10 chs. 88, 93 to 100, 126, or 136 for which the penalty is a forfeiture.

NOTE: Section 5 of this bill allows the Department of Agriculture, Trade and Consumer Protection to bring civil forfeiture actions for violations of laws enforced by the department, including trade and consumer protection, plant and animal health, agricultural resource management, and food regulation, in circuit court. Currently, the department may be required to bring these types of civil forfeiture actions using small claims court procedures. According to the department, small claims court procedures are inappropriate for the types of civil forfeiture proceedings brought by the department. These proceedings often result in large civil forfeiture judgments and are often combined with injunction and restitution claims, which must be brought in circuit court under the large claims procedures.

11 **SECTION 6.** 93.35 of the statutes is repealed.

NOTE: Section 6 of this bill eliminates the statutory provisions containing the weather modification license and permit requirements. According to the Department of Agriculture, Trade and Consumer Protection, it has not issued a weather modification license or permit since 1977.

12 **SECTION 7.** 799.01 (1) (b) of the statutes is amended to read:

13 799.01 (1) (b) *Forfeitures.* Actions to recover forfeitures except as a different
14 procedure is prescribed in s. 93.22 (4) and chs. 23, 66, 345, and 778, or elsewhere, and
15 such different procedures shall apply equally to the state, a county, or a municipality
16 regardless of any limitation contained therein.

NOTE: Section 7 of this bill specifies that Department of Agriculture, Trade and Consumer Protection civil enforcement actions are exempt from the general requirement to bring forfeiture actions in small claims court. See also the Note after Section 5.

