

1985 Senate Bill 643

Date of enactment: April 9, 1986  
Date of publication: April 17, 1986

## 1985 Wisconsin Act 179

AN ACT to amend 800.09 (1) and 973.073; and to create 755.045 (3), 943.24 (5), 943.245, 943.50 (5) and 943.51 of the statutes, relating to worthless checks, retail theft and providing penalties.

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

SECTION 1. 755.045 (3) of the statutes is created to read:

755.045 (3) A municipal judge may order the payment of restitution for violations of ordinances in conformity with s. 943.24 or 943.50. The judge shall use the restitution procedure under s. 943.24 (5) or 943.50 (5), as applicable.

SECTION 2. 800.09 (1) of the statutes is amended to read:

800.09 (1) JUDGMENT. If a municipal court finds a defendant guilty it may render judgment by ordering payment of a forfeiture and the penalty assessment imposed by s. 165.87 plus costs of prosecution, including the fee prescribed in s. 814.65 (1), and by imprisonment in default of the payment. Persons who fail to pay forfeitures, penalty assessments and costs shall be committed to a jail or a house of correction in the county in which the cause of action arose for not more than 90 days and shall be kept at the expense of the municipality. Any person committed under this section may be accorded privileges under s. 56.08. The

court may defer payment of any judgment for not more than 60 days. At the time the judgment is rendered, the court shall inform the defendant of the date by which payment of the forfeiture, penalty assessment and costs must be made, and of the possible consequences of failure to make the payment in timely fashion. A municipal court may order the payment of restitution under s. 755.045 (3).

SECTION 3. 943.24 (5) of the statutes is created to read:

943.24 (5) (a) In this subsection, "pecuniary loss" has the meaning described in s. 973.09 (8).

(b) In addition to the other penalties provided for violation of this section, a judge may order a violator to pay restitution to a victim regardless of whether the violator is placed on probation under s. 973.09. In determining the method of payment, the court shall consider the financial resources and future ability of the violator to pay. The court shall provide for payment of an amount equal to the pecuniary loss caused by the offense. Upon the application of any interested party, the court shall schedule and hold an evidentiary hearing to determine the value of the victim's pecuni-

ary loss resulting from the offense. A victim may not be compensated under this section and s. 943.245.

(c) The victim may file a restitution order under par. (b) with the clerk of circuit court. Upon payment of the fee under s. 814.61 (5) (a), the clerk shall enter the order on the judgment docket under s. 806.10 in the same manner as for a judgment in a civil action. Thereafter, the victim may enforce the order against the violator in the same manner as for a judgment in a civil action.

(d) This subsection is applicable in actions concerning violations of ordinances in conformity with this section.

SECTION 4. 943.245 of the statutes is created to read:

**943.245 Worthless checks; civil liability.** (1) Any person who incurs pecuniary loss, as defined in s. 973.09 (8), including any holder in due course of a check or order, may bring a civil action against any adult or emancipated minor who:

(a) Issued a check or order in violation of s. 943.24 or sub. (6); and

(b) Knew, should have known or recklessly disregarded the fact that the check or order was drawn on an account that did not exist, was drawn on an account with insufficient funds or was otherwise worthless.

(2) If the person who incurs the loss prevails, the judgment in the action shall grant monetary relief for all of the following:

(a) The face value of whatever checks or orders were involved.

(b) Any actual damages not covered under par. (a).

(c) 1. Exemplary damages of not more than 3 times the amount under pars. (a) and (b).

2. No additional proof is required for an award of exemplary damages under this paragraph.

(d) Notwithstanding the limitations of s. 799.25 or 814.04, all actual costs of the action, including reasonable attorney fees.

(3) Notwithstanding sub. (2) (c) and (d), the total amount awarded for exemplary damages and reasonable attorney fees may not exceed \$300.

(4) At least 20 days prior to commencing an action, as specified in s. 801.02, under this section, the plaintiff shall notify the defendant, by mail, of his or her intent to bring the action. Notice of nonpayment or dishonor shall be sent by the payee or holder of the check or order to the drawer by regular mail supported by an affidavit of service of mailing or by a certificate of mailing obtained from the U.S. post office from which the mailing was made. The plaintiff shall mail the notice to the defendant's last-known address or to the address provided on the check or order. If the defendant pays the check or order prior to the commencement of the action, he or she is not liable under this section.

(5) The plaintiff has the burden of proving by a preponderance of the evidence that a violation occurred under s. 943.24 or that he or she incurred a pecuniary loss as a result of the circumstances described in sub.

(6). A conviction under s. 943.24 is not a condition precedent to bringing an action, obtaining a judgment or collecting that judgment under this section.

(6) (a) In this subsection, "past consideration" does not include work performed, for which a person is entitled to a payroll check.

(b) Whoever issues any check or other order for the payment of money given for a past consideration which, at the time of issuance, the person intends shall not be paid is liable under this section.

(7) A person is not criminally liable under s. 943.30 for any civil action brought in good faith under this section.

(8) Nothing in this section precludes a plaintiff from bringing the action under ch. 799 if the amount claimed is within the jurisdictional limits of s. 799.01 (4).

SECTION 5. 943.50 (5) of the statutes is created to read:

943.50 (5) (a) In this subsection, "pecuniary loss" has the meaning described in s. 973.09 (8).

(b) In addition to the other penalties provided for violation of this section, a judge may order a violator to pay restitution to a victim regardless of whether the violator is placed on probation under s. 973.09. In determining the method of payment, the court shall consider the financial resources and future ability of the violator to pay. The court shall provide for payment of an amount equal to the pecuniary loss caused by the offense. Upon the application of any interested party, the court shall schedule and hold an evidentiary hearing to determine the value of the victim's pecuniary loss resulting from the offense. In lieu of actual payment, the court may order return of the merchandise. If the value of the merchandise is diminished, the court may order the return of the merchandise plus payment of an amount equal to the diminished value. A victim may not be compensated under this section and s. 943.51.

(c) The victim may file a restitution order under par. (b) with the clerk of circuit court. Upon payment of the fee under s. 814.61 (5) (a), the clerk shall enter the order on the judgment docket under s. 806.10 in the same manner as for a judgment in a civil action. Thereafter, the victim may enforce the order against the violator in the same manner as for a judgment in a civil action.

(d) This subsection is applicable in actions concerning violations of ordinances in conformity with this section.

SECTION 6. 943.51 of the statutes is created to read:

**943.51 Retail theft; civil liability.** (1) Any person who incurs injury to his or her business or property as a result of a violation of s. 943.50 may bring a civil

action against any adult or emancipated minor who caused the loss for all of the following:

(a) The retail value of the merchandise unless it is returned undamaged and unused. A person may recover under this paragraph only if he or she exercises due diligence in demanding the return of the merchandise immediately after he or she discovers the loss and the identity of the person who has the merchandise.

(b) Any actual damages not covered under par. (a).

(2) In addition to sub. (1), if the person who incurs the loss prevails, the judgment in the action may grant any of the following:

(a) 1. Exemplary damages of not more than 3 times the amount under sub. (1) (a) and (b).

2. No additional proof is required for an award of exemplary damages under this paragraph.

(b) Notwithstanding the limitations of s. 799.25 or 814.04, all actual costs of the action, including reasonable attorney fees.

(3) Notwithstanding sub. (2), the total amount awarded for exemplary damages and reasonable attorney fees may not exceed \$300.

(4) The plaintiff has the burden of proving by a preponderance of the evidence that a violation occurred under s. 943.50. A conviction under s. 943.50 is not a condition precedent to bringing an action, obtaining a judgment or collecting that judgment under this section.

(5) A person is not criminally liable under s. 943.30 for any civil action brought in good faith under this section.

(6) Nothing in this section precludes a plaintiff from bringing the action under ch. 799 if the amount claimed is within the jurisdictional limits of s. 799.01 (4).

SECTION 7. 973.073 of the statutes is amended to read:

**973.073 (title) Restitution; various violations.** A court may require the payment of restitution under s. 97.72 (1), ~~943.24 (5)~~ or ~~943.50 (5)~~ regardless of whether the violator is placed on probation under s. 973.09.