

1993 Assembly Bill 129

Date of enactment: **November 18, 1993**

Date of publication*: **December 2, 1993**

1993 WISCONSIN ACT 71

AN ACT to amend 422.202 (1) (d) and (2m) (cm), 895.035 (2), 895.035 (4), 943.24 (5) (a), 943.24 (5) (b), 943.245 (3), 943.50 (3), 943.50 (5) (a), 943.50 (5) (b), 943.51 (1) (intro.) and (2) (a) 1 and 943.51 (3); and to create 943.245 (3m), 943.51 (2) (a) 1m, 943.51 (3m) and 943.51 (3r) of the statutes, relating to: charges for insufficient checks, detention of persons involved in retail theft, increasing the damages and fees allowed in retail theft and worthless check civil actions and allowing civil actions against any individual 14 years of age or older or the minor's parents for retail theft.

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

SECTION 1. 422.202 (1) (d) and (2m) (cm) of the statutes are amended to read:

422.202 (1) (d) With respect to a consumer credit transaction which is other than one pursuant to an open-end credit plan and which is entered into on or after May 17, 1988, a charge not to exceed \$10 \$15 for each check presented for payment to a creditor which is returned unsatisfied because the drawer does not have an account with the drawee, does not have sufficient funds in his or her account or does not have sufficient credit with the drawee.

(2m) (cm) With respect to a consumer credit transaction which is under an open-end credit plan and which is entered into on or after May 17, 1988, a charge not to exceed \$10 \$15 for each check presented for payment to a creditor which is returned unsatisfied because the drawer does not have an account with the drawee, does not have sufficient funds in his or her account or does not have sufficient credit with the drawee.

SECTION 2. 895.035 (2) of the statutes is amended to read:

895.035 (2) The parent or parents with custody of an ~~unemancipated~~ a minor child, in any circumstances where he, she or they may not be liable under the common law, are liable for damages to property, for the value of

unrecovered stolen property or for personal injury attributable to a wilful, malicious or wanton act of the child. The parent or parents with custody of their minor child are jointly and severally liable with the child for the damages imposed under s. 943.51 for their child's violation of s. 943.50.

SECTION 3. 895.035 (4) of the statutes is amended to read:

895.035 (4) The Except for recovery for retail theft under s. 943.51, the maximum recovery from any parent or parents may not exceed \$2,500 for damages resulting from any one act of a child in addition to taxable costs and disbursements and reasonable attorney fees, as determined by the court. If 2 or more children in the custody of the same parent or parents commit the same act the total recovery may not exceed \$2,500, in addition to taxable costs and disbursements. The maximum recovery from any parent or parents for retail theft by their minor child is established under s. 943.51.

SECTION 4. 943.24 (5) (a) of the statutes is amended to read:

943.24 (5) (a) In addition to the other penalties provided for violation of this section, a judge may order a violator to pay restitution under s. 973.20. ~~A victim may not be compensated under this section and s. 943.245.~~

SECTION 5. 943.24 (5) (b) of the statutes is amended to read:

– 2 –

1993 Assembly Bill 129

943.24 (5) (b) In actions concerning violations of ordinances in conformity with this section, a judge may order a violator to make restitution under s. 800.093. ~~A victim may not be compensated under ss. 800.093 and 943.245.~~

SECTION 6. 943.245 (3) of the statutes is amended to read:

943.245 (3) Notwithstanding sub. (2) (c) and (d), the total amount awarded for exemplary damages and reasonable attorney fees may not exceed \$300 ~~\$500~~.

SECTION 7. 943.245 (3m) of the statutes is created to read:

943.245 (3m) Any recovery under this section shall be reduced by the amount recovered as restitution for the same act under ss. 800.093 and 973.20.

SECTION 8. 943.50 (3) of the statutes is amended to read:

943.50 (3) A merchant ~~or a merchant's adult employe or a merchant's security agent~~ who has ~~probable~~ reasonable cause for believing that a person has violated this section in his or her presence may detain the person in a reasonable manner for a reasonable length of time to deliver the person to a peace officer, or to his or her parent or guardian in the case of a minor. The detained person must be promptly informed of the purpose for the detention and be permitted to make phone calls, but he or she shall not be interrogated or searched against his or her will before the arrival of a peace officer who may conduct a lawful interrogation of the accused person. The merchant, merchant's adult employe or merchant's security agent may release the detained person before the arrival of a peace officer or parent or guardian. Any merchant ~~or merchant's adult employe or merchant's security agent~~ who acts in good faith in any act authorized under this section is immune from civil or criminal liability for those acts.

SECTION 9. 943.50 (5) (a) of the statutes is amended to read:

943.50 (5) (a) In addition to the other penalties provided for violation of this section, a judge may order a violator to pay restitution under s. 973.20. ~~A victim may not be compensated under this section and s. 943.51.~~

SECTION 10. 943.50 (5) (b) of the statutes is amended to read:

943.50 (5) (b) In actions concerning violations of ordinances in conformity with this section, a judge may order a violator to make restitution under s. 800.093. A

~~victim may not be compensated under ss. 800.093 and 943.51.~~

SECTION 11. 943.51 (1) (intro.) and (2) (a) 1. of the statutes are amended to read:

943.51 (1) (intro.) 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~~ individual 14 years of age or older who caused the loss for all of the following:

(2) (a) 1. ~~Exemplary~~ Except as provided in subd. 1m, exemplary damages of not more than 3 times the amount under sub. (1) ~~(a) and (b)~~.

SECTION 12. 943.51 (2) (a) 1m of the statutes is created to read:

943.51 (2) (a) 1m. If the action is brought against a minor or against the parent who has custody of their minor child for the loss caused by the minor, the exemplary damages may not exceed 2 times the amount under sub. (1).

SECTION 13. 943.51 (3) of the statutes is amended to read:

943.51 (3) Notwithstanding sub. (2) and except as provided in sub. (3m), the total amount awarded for exemplary damages and reasonable attorney fees may not exceed \$300 ~~\$500~~.

SECTION 14. 943.51 (3m) of the statutes is created to read:

943.51 (3m) Notwithstanding sub. (2), the total amount awarded for exemplary damages and reasonable attorney fees may not exceed \$300 if the action is brought against a minor or against the parent who has custody of their minor child for the loss caused by the minor.

SECTION 15. 943.51 (3r) of the statutes is created to read:

943.51 (3r) Any recovery under this section shall be reduced by the amount recovered as restitution for the same act under ss. 800.093 and 973.20.

SECTION 16. Initial applicability. (1) The treatment of sections 895.035 (2) and (4), 943.24 (5) (a) and (b), 943.245 (3) and (3m), 943.50 (3) and (5) (a) and (b) and 943.51 (1) (intro.), (2) (a) 1. and 1m, (3), (3m) and (3r) of the statutes first applies to injuries or losses incurred on the effective date of this subsection.

(2) The treatment of section 422.202 (1) (d) and (2m) (cm) of the statutes first applies to a consumer credit transaction entered into on the effective date of this subsection.