

1999 ASSEMBLY BILL 620

December 13, 1999 – Introduced by Representatives MONTGOMERY, HUEBSCH, ALBERS, GARD, GOETSCH, GUNDERSON, HASENOHRL, LADWIG, OLSEN, OWENS, RHOADES, SERATTI, SPILLNER, SUDER, SYKORA, VRAKAS, WALKER and ZIEGELBAUER, cosponsored by Senators SHIBILSKI, HUELSMAN, BRESKE, DARLING, ERPENBACH, FITZGERALD, LAZICH, PLACHE, RUDE and WELCH, by request of Midwest Equipment Dealers Association, Midwest Hardware Association, National Federation of Independent Business, Tavern League of Wisconsin, Wisconsin Alliance of Hearing Professionals, Wisconsin Association of Convenience Stores, Wisconsin Automobile and Truck Dealers Association, Wisconsin Automotive Parts Association, Wisconsin Automotive Trade Association, Wisconsin Civil Recovery Council, Wisconsin Collectors Association, Wisconsin Grocers Association, Wisconsin Fitness and Health Alliance, Wisconsin Independent Businesses, Inc., Wisconsin Jewelers Association, Wisconsin Merchants Federation, Wisconsin Motorcycle Dealers Association, Wisconsin Restaurant Association and Wisconsin Retail Lumber Association. Referred to Committee on Judiciary and Personal Privacy.

1 **AN ACT** *to repeal* 814.04 (1) (b); *to amend* 799.01 (1) (c), 799.01 (1) (d) (intro.),
2 799.01 (2), 812.34 (1) (a), 812.34 (2) (a), 812.34 (2) (b) 1., 812.37 (1), 812.37 (2),
3 812.38 (1) (b), 812.38 (2), 812.44 (3) (form) 3., 812.44 (4) (form) 1., 812.44 (4)
4 (form) 3., 814.04 (1) (a), 814.04 (2), 814.07, 815.18 (3) (k), 895.035 (2), 895.80 (2),
5 895.80 (3) (b), 943.24 (3) (b), 943.24 (3) (c), 943.245 (3), 943.245 (4), 943.50 (3),
6 943.51 (3) and 943.51 (3m); *to repeal and recreate* 895.80 (3) (a) and 895.80
7 (4); and *to create* 757.69 (1) (p), 812.34 (2) (c), 895.08, 895.80 (3) (c) and 895.80
8 (6) of the statutes; **relating to:** parental liability for acts of their minor child,
9 recovery of damages for certain criminal actions, increasing the jurisdictional
10 amount in small claims court, powers of court commissioners, garnishment,
11 attorney fees, exemption from execution of accounts, assignment of debt,

ASSEMBLY BILL 620

1 earnings garnishment retail theft and recovery in actions involving worthless
2 checks.

Analysis by the Legislative Reference Bureau

This bill increases the jurisdictional limit in small claims actions from \$5,000 to \$10,000.

Current law provides for limited payment of attorney fees by the unsuccessful litigant to the successful litigant in all civil actions. In a civil action concerning money damages or property, the successful litigant is entitled to attorney fees based on the following schedule:

<u>Amount recovered/value of property</u>	<u>Fee</u>
\$1,000 or more	\$100
\$500 to \$999.99	\$ 50
\$200 to \$499.99	\$ 25
Under \$200	\$ 15

This bill changes the amount of attorney fees allowed in these cases as follows:

<u>Amount recovered/value of property</u>	<u>Fee</u>
Greater than \$10,000	\$750
\$5,000 to \$10,000	\$500
\$1,000 to \$4,999.99	\$300
Under \$1,000	\$100

The bill also increases the amount of attorney fees recoverable in civil cases that do not involve money damages or property from a maximum of \$100 to a maximum of \$500.

Under current law, in civil cases certain disbursements, such as those made for the costs of certified copies of public papers or records, postage and depositions, are recoverable by the successful litigant, but are limited to \$50 for each item. This bill expands the list of disbursements that are recoverable to include such items as overnight delivery and facsimile transmissions and increases the limit to \$100 for each item. The bill also increases the amount that a successful litigant may recover for the cost of each expert witness testifying on behalf of the successful litigant from \$100 to \$300 and for filing a motion from \$50 to \$300.

Under current law, the earnings exemption in earnings garnishment actions provides that a debtor's earnings are totally exempt if the debtor's income is below the poverty line or if the garnishment would cause that result. Under this bill, a debtor's earnings are totally exempt if the debtor's income is below the poverty line, but if the garnishment would result in the debtor's income being below the poverty line, the amount garnished is limited to the debtor's income in excess of the poverty line. The bill requires debtors who claim earnings exemptions to submit with their

ASSEMBLY BILL 620

answer to the garnishment the schedules and worksheets that were given to them with the garnishment, plus any supporting documents. The bill restricts the exemption from execution for depository accounts to those depository accounts that are for the debtor's personal use.

The bill allows any person to assign a debt owed to that person for consideration. The bill requires the person assigned a debt to notify the debtor within 30 days of that assignment. Under the bill, if the notice is not sent within 30 days, the assignment is ineffective until the notice is sent. The person assigned the debt may sue to recover the debt. The court may allow the payment of reasonable attorney fees in those suits.

Under current law, a person who suffers damage as a result of certain crimes against property may sue the person that caused the damage. Currently, the person may recover treble damages plus the costs of the investigation and litigation. Under the bill, the person may recover his or her actual damages, including the value of the damaged property, the court costs, the costs of the investigation and litigation, including attorney fees and the value of the time spent by an employee, and exemplary damages of not more than three times the amount of actual damages. Any recovery is reduced by any amount received as restitution.

Current law provides that the total amount a person may receive for exemplary damages and attorney fees in an action to recover damages resulting from the issuance of a worthless check or retail theft is limited to \$500. This bill provides that the \$500 limit applies for each violation.

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

1 **SECTION 1.** 757.69 (1) (p) of the statutes is created to read:

2 757.69 (1) (p) Hold hearings, make findings and issue orders under s. 812.38.

3 **SECTION 2.** 799.01 (1) (c) of the statutes is amended to read:

4 799.01 (1) (c) *Replevins.* Actions for replevin under ss. 810.01 to 810.13 where
5 the value of the property claimed does not exceed \$5,000 \$10,000.

6 **SECTION 3.** 799.01 (1) (d) (intro.) of the statutes is amended to read:

7 799.01 (1) (d) *Other civil actions.* (intro.) Other civil actions where the amount
8 claimed is \$5,000 \$10,000 or less, if the actions or proceedings are:

9 **SECTION 4.** 799.01 (2) of the statutes is amended to read:

ASSEMBLY BILL 620

1 799.01 **(2)** PERMISSIVE USE OF SMALL CLAIMS PROCEDURE. A taxing authority may
2 use the procedure in this chapter in an action to recover a tax from a person liable
3 for that tax where the amount claimed, including interest and penalties, is \$5,000
4 \$10,000 or less. This chapter is not the exclusive procedure for those actions.

5 **SECTION 5.** 812.34 (1) (a) of the statutes is amended to read:

6 812.34 **(1)** (a) Was ordered by a court under s. 128.21 or by a court of bankruptcy
7 under Title 11, USC 1301 to 1330.

8 **SECTION 6.** 812.34 (2) (a) of the statutes is amended to read:

9 812.34 **(2)** (a) Unless the court grants relief under s. 812.38 (2) or par. (b) or (c)
10 applies, 80% of the debtor's disposable earnings are exempt from garnishment under
11 this subchapter.

12 **SECTION 7.** 812.34 (2) (b) 1. of the statutes is amended to read:

13 812.34 **(2)** (b) 1. The debtor's household income is below the poverty line, ~~or the~~
14 ~~garnishment would cause that result; or~~

15 **SECTION 8.** 812.34 (2) (c) of the statutes is created to read:

16 812.34 **(2)** (c) If the garnishment of 20% of the debtor's disposable income under
17 this subchapter would result in the debtor's household income being below the
18 poverty line, the amount of the garnishment is limited to the debtor's household
19 income in excess of the poverty line before the garnishment is in effect.

20 **SECTION 9.** 812.37 (1) of the statutes is amended to read:

21 812.37 **(1)** Except as provided in s. 812.34 (1), the debtor may claim an
22 exemption under s. 812.34 (2) (b), a limit to the garnishment under s. 812.34 (2) (c).
23 or may assert any defense to the earnings garnishment, by completing the answer
24 form and delivering or mailing it to the garnishee, along with the schedules and
25 worksheets provided under s. 812.35 (4) (b) and any other documents supporting his

ASSEMBLY BILL 620

1 or her answer, such as a wage statement, a court order regarding the payment of
2 support or a document showing the receipt of any of the benefits listed under s.
3 812.44 (4) (form) 2. The debtor or debtor's spouse may file an answer or an amended
4 answer and documentation at any time before or during the effective period of the
5 earnings garnishment.

6 **SECTION 10.** 812.37 (2) of the statutes is amended to read:

7 812.37 (2) Whenever the garnishee receives a debtor's answer or amended
8 answer and the schedules, worksheets and other documents, the garnishee shall
9 mail a copy of the answer, schedules, worksheets and any other documents the debtor
10 included with the answer to the creditor by the end of the 3rd business day after
11 receiving the debtor's answer and documents, writing on that copy the date of receipt
12 of the answer and documents by the garnishee.

13 **SECTION 11.** 812.38 (1) (b) of the statutes is amended to read:

14 812.38 (1) (b) The debtor may file with the court a written petition for relief
15 from the earnings garnishment if the exemption percentage under s. 812.34 (2) (a)
16 is insufficient for the debtor to acquire the necessities of life for the debtor and his
17 or her dependents. The petition shall state with reasonable specificity the grounds
18 for the relief requested and shall include any additional information necessary to
19 support the petition.

20 **SECTION 12.** 812.38 (2) of the statutes is amended to read:

21 812.38 (2) A motion or petition under sub. (1) may be made at any time during
22 the pendency of the earnings garnishment. Within 5 business days after a motion
23 or petition is filed under sub. (1), the court shall schedule the matter for a hearing
24 to be held as promptly as practicable. The court shall notify the parties of the time
25 and place of the hearing. Upon conclusion of the hearing, the court shall make

ASSEMBLY BILL 620

1 findings of fact and conclusions of law. If the debtor has failed to produce the
2 schedules and worksheets or other documents necessary to support a claim for
3 exemptions or other defenses, the court shall award the creditor his or her costs
4 related to the motion in an amount of not less than \$50. An award under this
5 subsection may not substitute for or replace an award made under sub. (3). The court
6 shall make such order as required by these findings and conclusions. If the order
7 permits the garnishment to proceed, the date on which the order is served upon the
8 garnishee shall substitute for the original date of service of the garnishment upon
9 the garnishee under s. 812.35 (3) for the purpose of determining any 13-week period
10 under s. 812.35 (5) or (6). A court order shall bind the garnishee from the time the
11 order is served upon him or her.

12 **SECTION 13.** 812.44 (3) (form) 3. of the statutes is amended to read:

13 812.44 (3) (form) 3. Whenever you receive a debtor's answer form from the
14 debtor, mail a copy of the answer form and any documents the debtor included with
15 the answer to the creditor by the end of the 3rd business day after receipt of that form.
16 Include the date you received the answer form on the copy sent to the creditor.

17 **SECTION 14.** 812.44 (4) (form) 1. of the statutes is amended to read:

18 812.44 (4) (form) 1. Your household income is below the federal poverty level,
19 ~~or this garnishment would cause that to happen.~~ See the enclosed schedules and
20 worksheet to determine if you qualify for this exemption.

21 **SECTION 15.** 812.44 (4) (form) 3. of the statutes is amended to read:

22 812.44 (4) (form) 3. At least 25% of your disposable earnings are assigned by
23 court order for support.

ASSEMBLY BILL 620

1 If you wrongly claim an exemption or defense in bad faith, or if the creditor
2 wrongly objects to your claim in bad faith, the court may order the person who acted
3 in bad faith to pay court costs, actual damages and reasonable attorney fees.

4 **SECTION 16.** 814.04 (1) (a) of the statutes is amended to read:

5 814.04 (1) (a) When the amount recovered or the value of the property involved
6 is ~~\$1,000 or over~~ equal to or greater than the maximum amount specified in s. 799.01
7 (1) (d), attorney fees shall be \$100 \$750; when it is equal to or less than \$1,000 and
8 is \$500 or over, \$50 the maximum amount specified in s. 799.01 (1) (d), but is \$5,000
9 or more, attorney fees shall be \$500; when it is less than \$500 and is \$200 or over,
10 \$25; and when it is less than \$200, \$15 \$5,000 and is \$1,000 or more, attorney fees
11 shall be \$300; and when it is less than \$1,000, attorney fees shall be \$100. In all other
12 cases in which there is no amount recovered or that do not involve property, attorney
13 fees shall be \$500.

14 **SECTION 17.** 814.04 (1) (b) of the statutes is repealed.

15 **SECTION 18.** 814.04 (2) of the statutes is amended to read:

16 814.04 (2) DISBURSEMENTS. All the necessary disbursements and fees allowed
17 by law; the compensation of referees; a reasonable disbursement for the service of
18 process or other papers in an action when the same are served by a person authorized
19 by law other than an officer, but the item may not exceed the authorized sheriff's fee
20 for the same service; amounts actually paid out for certified and other copies of
21 papers and records in any public office; postage, telegraphing photocopying,
22 telephoning, electronic communications, facsimile transmissions and express or
23 overnight delivery; depositions including copies; plats and photographs, not
24 exceeding ~~\$50~~ \$100 for each item; an expert witness fee not exceeding ~~\$100~~ \$300 for
25 each expert who testifies, exclusive of the standard witness fee and mileage which

ASSEMBLY BILL 620

1 shall also be taxed for each expert; and in actions relating to or affecting the title to
2 lands, the cost of procuring an abstract of title to the lands. Guardian ad litem fees
3 shall not be taxed as a cost or disbursement.

4 **SECTION 19.** 814.07 of the statutes is amended to read:

5 **814.07 Costs on motion.** Costs may be allowed on a motion, in the discretion
6 of the court or judge, not exceeding \$50 \$300, and may be absolute or directed to abide
7 the event of the action.

8 **SECTION 20.** 815.18 (3) (k) of the statutes is amended to read:

9 815.18 (3) (k) *Depository accounts.* Depository accounts in the aggregate value
10 of \$1,000, but only to the extent that the account is for the debtor's personal use and
11 is not used as a business account.

12 **SECTION 21.** 895.035 (2) of the statutes is amended to read:

13 895.035 (2) The parent or parents with custody of a minor child, in any
14 circumstances where he, she or they may not be liable under the common law, are
15 liable for damages to property, for the cost of repairing or replacing property or
16 removing the marking, drawing, writing or etching from property regarding a
17 violation under s. 943.017, for the value of unrecovered stolen property or for
18 personal injury attributable to a wilful, malicious or wanton act of the child. The
19 parent or parents with custody of their minor child are jointly and severally liable
20 with the child for the damages imposed under s. 895.80, 943.212, 943.24, 943.245
21 or 943.51 for their child's violation of s. 943.01, 943.011, 943.012, 943.017, 943.20,
22 943.201, 943.21, 943.24, 943.26, 943.34, 943.395, 943.41, 943.50 or 943.61.

23 **SECTION 22.** 895.08 of the statutes is created to read:

24 **895.08 Assignment of debt and right to sue. (1)** Any person may assign
25 a debt owed to that person to any other person, including a debt collection agency

ASSEMBLY BILL 620

1 licensed by the department of financial institutions. That assignment shall be in
2 writing for consideration and shall state the amount owed to the original creditor, the
3 name of the debtor and the name of the person to whom the debt is assigned.

4 (2) An assignee taking assignment of a debt under this section shall take the
5 assignment of the debt in his or her own name as real parties in interest for the
6 purpose of billing, collection and bringing suit in his or her own name. No suit
7 regarding an assigned debt may be instituted on behalf of a collection agency in any
8 court unless the collection agency appears by a duly authorized and licensed attorney
9 at law. When a suit is commenced under this subsection, the court may authorize
10 payment of reasonable attorney fees and costs to the prevailing party.

11 (3) The person assigned a debt under this section shall send notice to the debtor
12 of the assignment by mail at the debtor's last known address within 30 calendar days
13 after making the assignment. If the person assigned the debt fails to send a notice
14 to the debtor within the time period required by this subsection, the assignment may
15 not be effective until the notice is sent to the debtor.

16 **SECTION 23.** 895.80 (2) of the statutes is amended to read:

17 895.80 (2) The burden of proof in a civil action under sub. (1) is with the person
18 who suffers damage or loss to prove ~~his or her case~~ a violation of s. 943.01, 943.011,
19 943.012, 943.017, 943.20, 943.201, 943.21, 943.24, 943.26, 943.34, 943.395, 943.41,
20 943.50 or 943.61 by a preponderance of the credible evidence. A conviction under s.
21 943.01, 943.011, 943.012, 943.017, 943.20, 943.201, 943.21, 943.24, 943.26, 943.34,
22 943.395, 943.41, 943.50 or 943.61 is not required to bring an action, obtain a
23 judgment or collect on that judgment under this section.

24 **SECTION 24.** 895.80 (3) (a) of the statutes is repealed and recreated to read:

ASSEMBLY BILL 620

1 895.80 (3) (a) Actual damages, including the retail or replacement value of
2 damaged, used or lost property, whichever is greater, for a violation of s. 943.01,
3 943.011, 943.012, 943.017, 943.20, 943.201, 943.21, 943.24, 943.26, 943.34, 943.395,
4 943.41, 943.50 or 943.61.

5 **SECTION 25.** 895.80 (3) (b) of the statutes is amended to read:

6 895.80 (3) (b) All costs of investigation and litigation that were reasonably
7 incurred, including the value of the time spent by any employe or agent of the victim,
8 court costs and reasonable attorney fees.

9 **SECTION 26.** 895.80 (3) (c) of the statutes is created to read:

10 895.80 (3) (c) Exemplary damages of not more than 3 times the amount
11 awarded under par. (a). No additional proof is required under this section for an
12 award of exemplary damages under this paragraph.

13 **SECTION 27.** 895.80 (4) of the statutes is repealed and recreated to read:

14 895.80 (4) Any recovery under this section shall be reduced by the amount
15 recovered as restitution under ss. 800.093 and 973.20 and ch. 938.

16 **SECTION 28.** 895.80 (6) of the statutes is created to read:

17 895.80 (6) A person is not criminally liable under s. 943.30 for any action
18 brought in good faith under this section.

19 **SECTION 29.** 943.24 (3) (b) of the statutes is amended to read:

20 943.24 (3) (b) Proof that, at the time of issuance, the person did not have
21 sufficient funds or credit with the drawee and that the person failed within 5 days
22 after receiving written notice of nonpayment or dishonor to pay the check or other
23 order, delivered by regular mail to either the person's last-known address, or to the
24 address provided on the check or other order; or

25 **SECTION 30.** 943.24 (3) (c) of the statutes is amended to read:

ASSEMBLY BILL 620

1 943.24 (3) (c) Proof that, when presentment was made within a reasonable
2 time, the person did not have sufficient funds or credit with the drawee and the
3 person failed within 5 days after receiving written notice of nonpayment or dishonor
4 to pay the check or other order, delivered by regular mail to either the person's
5 last-known address, or to the address provided on the check or other order.

6 **SECTION 31.** 943.245 (3) of the statutes is amended to read:

7 943.245 (3) Notwithstanding sub. (2) (c) and (d), the total amount awarded for
8 exemplary damages and reasonable attorney fees may not exceed \$500 for each
9 violation.

10 **SECTION 32.** 943.245 (4) of the statutes is amended to read:

11 943.245 (4) At least 20 days prior to commencing an action, as specified in s.
12 801.02, under this section, the plaintiff shall notify the defendant, by mail, of his or
13 her intent to bring the action. Notice of nonpayment or dishonor shall be sent by the
14 payee or holder of the check or order to the drawer by regular mail ~~supported by an~~
15 ~~affidavit of service of mailing or by a certificate of mailing obtained from the U.S. post~~
16 ~~office from which the mailing was made.~~ The plaintiff shall mail the notice to the
17 defendant's last-known address or to the address provided on the check or order. If
18 the defendant pays the check or order prior to the commencement of the action, he
19 or she is not liable under this section.

20 **SECTION 33.** 943.50 (3) of the statutes is amended to read:

21 943.50 (3) A merchant, a merchant's adult employe or a merchant's security
22 agent who has reasonable cause for believing that a person has violated this section
23 in his or her presence may detain the person in a reasonable manner for a reasonable
24 length of time ~~to deliver the person to a peace officer, or to his or her parent or~~
25 ~~guardian in the case of a minor.~~ The detained person must be promptly informed of

ASSEMBLY BILL 620

1 the purpose for the detention and be permitted to make phone calls, but he or she
2 shall not be interrogated or searched against his or her will ~~before the arrival of a~~
3 ~~peace officer who may conduct a lawful interrogation of the accused person. The~~
4 ~~merchant, merchant's adult employe or merchant's security agent may release the~~
5 ~~detained person before the arrival of a peace officer or parent or guardian. Any~~
6 merchant, merchant's adult employe or merchant's security agent who acts in good
7 faith in any act authorized under this section is immune from civil or criminal
8 liability for those acts.

9 **SECTION 34.** 943.51 (3) of the statutes is amended to read:

10 943.51 **(3)** Notwithstanding sub. (2) and except as provided in sub. (3m), the
11 total amount awarded for exemplary damages and reasonable attorney fees may not
12 exceed \$500 for each violation.

13 **SECTION 35.** 943.51 (3m) of the statutes is amended to read:

14 943.51 **(3m)** Notwithstanding sub. (2), the total amount awarded for
15 exemplary damages and reasonable attorney fees may not exceed \$300 for each
16 violation if the action is brought against a minor or against the parent who has
17 custody of their minor child for the loss caused by the minor.

18 **SECTION 36. Initial applicability.**

19 (1) This act first applies to actions commenced on the effective date of this
20 subsection.

21 **SECTION 37. Effective date.**

22 (1) This act takes effect on the first day of the 4th month beginning after
23 publication.

24

(END)