

1999 DRAFTING REQUEST

Bill

Received: **01/05/1999**

Received By: **nelsorpl**

Wanted: **As time permits**

Identical to LRB:

For: **Phil Montgomery (608) 266-5840**

By/Representing: **Doug Johnson**

This file may be shown to any legislator: NO

Drafter: **nelsorpl**

May Contact:

Alt. Drafters:

Subject: **Courts - miscellaneous
Courts - immunity liability
Courts - courts/judges**

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Parental liability, small claims **jurisdictional** amount, garnishment, exemptions from execution, recovery in cases involving retail theft or worthless checks

Instructions:

See 97-2636 - AB924

Drafting History:

| <u>Vers.</u> | <u>Drafted</u> | <u>Reviewed</u> | <u>Typed</u> | <u>Proofed</u> | <u>Submitted</u> | <u>Jacketed</u> | <u>Reaired</u> |
|--------------|-------------------------|---|-----------------------|----------------|----------------------------|-----------------|----------------|
| /? | nelsorp 1 01/12/1999 | ptellez 02/12/1999 | | _____ | | | |
| /P1 | | | lpaasch 02/15/1999 | _____ | lrb_docadmin 02/15/1999 | | |
| /1 | nelsorp 1 08/18/1999 | csicilia 08/31/ 999 jgeller 09/02/1999 | hhagen 09/08/1999 | _____ | lrb_docadmin 09/08/1999 | | |

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|--------------|-------------------------|------------------------|------------------------|----------------|----------------------------|----------------------------|-----------------|
| /2 | nelsorp 1 10/04/1999 | csicilia 10/04/1999 | jfrantze 10/04/1999 | _____ | lrb-docadmin 10/04/1999 | lrb-docadmin 11/16/1999 | |

FE Sent For:

<END>

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| | | <i>1/2 10/4 jlg</i> | <i>10/4</i> | <i>10/4</i> | <i>10/4</i> | | |

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| /? | nelsorp 1 | /PI est 1/13/99 | 2-12 L.A. | 2-17 L.A. IS | | | |
| | | /PI jug 2/12 | | | | | |
| FE Sent For: | | ***** NOTES | | | | | |

<END>

From '97 AB 924 file

2-17-97
Per our conversation of 2636
today.
Thank you

Mark
Graul
6-5840

MEMORANDUM

TO: Jefren Olsen
FROM: Mark Graul, Rep. Green's office
DATE: September 27, 1995
RE: Drafting request

Please make the following changes to s. 895.80 which was ^{je}crated in 1995 Act 27:

1. remove 943.24 and 943.50 from list in (1) because they already have civil recovery section
2. replace "his or her case" in (2) with "a violation under s. 943.01, 943.20, 943.21, 943.26, 943.34, 943.395, 943.41 or 943.61"
3. in (2), after evidence. add "A conviction under s. 943.01, 943.20, 943.21, 943.26, 943.34, 943.395, 943.41 or 943.61 is not a condition precedent to bringing an action, obtaining a judgement or collecting that judgement under this section."
4. in (3), change (a) to: "All actual damages including, ~~but not limited to~~ the retail value of damaged or used property and the cost of employee time for processing the person's violation of s. 943.01, 943.20, 943.21, ~~943.26, 943.34,~~ 943.395, 943.41 or 943.61; and"
?
5. In (3)(b), after incurred. add "including reasonable attorney fees notwithstanding the limitations of s. 799.25 or 814.04."
6. in (3), create (c) to read: "Exemplary damages of not more than three times the amount under sub (3)(a)."
7. create a (c)1. to read: "No additional proof is required for an award of exemplary damages under this paragraph."
8. replace (4) with new (4) to read: "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."
9. in (5) remove references to 943.245 and 943.51 for reasons already stated
10. create (6) to read: "A person is not criminally liable under s. 943.30 for any civil action brought in good faith under this section."

LRB MEMO, 9-27-95

page 2

Additionally, Rep. Green would like to apply this new statute (s. 895.80) and the worthless check civil liability statute (s.943.245) to the parental liability for acts of a minor child statute (s.895.035). I believe this can be accomplished with the suggestion made on the attached copy of s. 895.035.

Finally, Rep. Green would like to include in this same legislation a clarification of the worthless check law. Apparently, some courts have construed the awards mentioned in s.943.245(3), 943.51(3) and 943.51(3m) to apply to all bad checks one individual writes to a business. Rep. Green feels the award limits should apply to **each check**. Again, I have attached a copy of the relevant sections of the Wisconsin Statutes and suggested changes for your review.

Please call me with any questions you have.

Thank you.



- Instructions -

Wisconsin Merchants Federation

The Voice Of Wisconsin Retailing

30 W. Mifflin Street, Suite 310
Madison, WI 53703
Tel. 608-257-3541 Fax 608-257-8755

P.S. You may want to save changes re: parental liability for Fall (juvenile code).

fax transmittal

To:

Mark Green / Mark Grawl

Fax:

266-5345

From:

Doug Johnson

Date:

6/28/95

Re:

Civil Recovery

Pages:

4

NOTES:

Changes track current law re: retail theft (s. 943.51). I assume that was your intent. Current law has been tested in court

and is one of the best in the country.

① action, obtaining a judgment or collecting that judgment under this section. 6

tion which files with the ~~secretary of state~~ department of financial institutions, or any other state official or body, pursuant to the requirements of any applicable statute of this state, an instrument appointing a registered agent as provided in ch. 180, a resident or any state official or body of this state, its attorney or agent, on whom, pursuant to such instrument or any applicable statute, service of process may be made in connection with such cause of action, is deemed a person out of this state within the meaning of this section for the period during which such appointment is effective, excluding from such period the time of absence from this state of any registered agent, resident agent or attorney so appointed who departs from and resides outside of this state."

(This tracks existing 943.51(4)... preferable to (4) on page 405.

783. Page 2212, line 23: after that line insert:

"SECTION 7215m. 895.52 (6) (d) 3. of the statutes is amended to read:

895.52 (6) (d) 3. Property within 300 feet of a building or structure on land that is classified as mercantile commercial or manufacturing under S. 70.32 (2) (b) (a) 2. or 3."

784. Page 2213, line 7: after that line insert:

"SECTION 7223m. 895.80 of the statutes is created to read:

895.80 Property damage or loss. (1) Any person who suffers damage or loss

by reason of conduct that occurs on or after November 1, 1995, and that is prohibited

under s. 943.01, 943.20, 943.21, ~~943.24~~, 943.26, 943.34, 943.396, 943.41, ~~943.50~~ or *

943.61 has a cause of action against the person who caused the damage or loss.

(2) The burden of proof in a civil action under sub. (1) is with the person who

suffers damage or loss to prove his or her case by a preponderance of the credible evi-

dence. 943.20, 943.21, 943.26, 943.34, 943.395,

943.41 or 943.61

A conviction under (list stats.) is not a condition precedent to bringing an (A)

① Delete references to existing civil recovery laws for retail theft/worthless checks.

*

(A)

retail value of damaged or used property and the cost of employee time for processing the person's

1 (3) If the plaintiff prevails in a civil action under sub. (1), he or she may recover

2 all of the following: (a) All actual damages including, but not limited to, the

3 (b) ~~or Treble damages~~ Exemplary damages of up to three times the amount under sub. (3)(a).

4 (b) All costs of investigation and litigation that were reasonably incurred, including reasonable attorney fees notwith-

5 standing the limitations of s. 799.25 or 814.04.

6 ~~(4) A person may bring a civil action under sub. (1) regardless of whether there has been a criminal action related to the loss or damage under sub. (1) and regardless~~

7 (c) No additional proof is required for an award of exemplary damages under this paragraph.

8 (5) No person may bring a cause of action under both this section and s.

9 943.212, ~~943.245 or 943.51~~ regarding the same incident or occurrence. If the plaintiff

10 has a cause of action under both this section and s. 943.212, ~~943.245 or 943.51~~ regard-

11 ing the same incident or occurrence, the plaintiff may choose which action to bring."

12 (6) A person is not criminally liable

13 785. Page 2213, line 25: after "ch." insert "161,"

14 786. Page 2214, line 1: before that line insert:

15 "(ag) Any violation of s. 313.12 (8) (a).

16 (ah) Any misdemeanor arising out of an arrest for a domestic abuse incident

17 under s. 968.075."

18 787. Page 2214, line 4: after that line insert:

19 "(2m) If a person is convicted of a misdemeanor to which sub. (1) applies, a court

20 may not place the person on probation but may place the person on community super-

21 vision under s. 973.095.

22 SECTION 7225x. 940.20 (2m) (a) of the statutes is amended to read:

23 940.20 (2m) (a) In this subsection, "probation and parole agent" means any per-

24 son authorized by the department of corrections to exercise control over a probation-

er or parolee or a person on community supervision."

(4) 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.

Violation of (1)st stats. 943.20-943.61); and

973.20.

943.01, 943.20, 943.21, 943.24,
943.26, 943.34, 943.41, 943.50
and 943.61

Changes track current law re:

895.031 MISCELLANEOUS

juvenile/parental liability re: retail theft

93-94 Wis. Stats. 4762

the death of the wrongdoer occurred prior thereto shall be enforced by bringing an action against the executor or administrator or personal representative of such deceased wrongdoer.

History: 1993 a. 486.

895.035 Parental liability for acts of minor child.

(1) (a) In this section, "custody" means either legal custody of a child under a court order under s. 767.23 or 767.24, custody of a child under a stipulation under s. 767.10 or actual physical custody of a child. "Custody" does not include legal custody, as defined under s. 48.02 (12), by an agency or a person other than a child's birth or adoptive parent.

(b) In determining which parent has custody of a child for purposes of this section, the court shall consider which parent had responsibility for caring for and supervising the child at the time the act that caused the injury, damage or loss occurred.

(2) The parent or parents with custody of 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.

(3) An adjudication under s. 48.31 that the child violated a civil law or ordinance, is delinquent or is in need of protection and services under s. 48.13 (12), based on proof that the child committed the act, subject to its admissibility under s. 904.10, shall, in an action under sub. (1), stop a child's parent or parents from denying that the child committed the act that resulted in the injury, damage or loss.

(4) 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.

(5) This section does not limit the amount of damages recoverable by an action against a child or children except that any amount so recovered shall be reduced and apportioned by the amount received from the parent or parents under this section.

(6) Any recovery under this section shall be reduced by the amount recovered as restitution for the same act under s. 48.245, 48.32, 48.34 (5) or 48.343 (4).

(7) This section does not affect or limit any liability of a parent under s. 167.10 (7) or 343.15 (2).

History: 1985 a. 311; 1987 a. 27; 1993 a. 71.

See note to 343.15, citing *Swanigan v. State Farm Ins. Co.* 99 W (2d) 179, 299 NW (2d) 234 (1980).

See note to 343.15, citing *Jackson v. Ozaukee County*, 111 W (2d) 462, 331 NW (2d) 338 (1983).

This section imposes absolute liability on parents once elements have been established. Accordingly, defense of contributory negligence was unavailable to parents. *First Bank Southeast v. Bentkowski*, 138 W (2d) 283, 405 NW (2d) 764 (Ct. App. 1987).

This section does not apply to placement agencies or foster parents. 66 Atty. Gen. 164.

The constitutional validity of parental liability statutes. O'Connor. 55 MLR 584.

895.037 Abortions on or for a minor without parental consent or judicial waiver. (1) DEFINITIONS. In this section:

(a) "Abortion" has the meaning given in s. 48.375 (2) (a).

(c) "Emancipated minor" has the meaning given in s. 48.375 (2) (e).

(2) PENALTIES. (a) Any person who, in violation of s. 48.375 (4), intentionally performs or induces an abortion on or for a minor whom the person knows or has reason to know is not an emancipated minor may be required to forfeit not more than \$10,000.

(b) Any person who intentionally violates s. 48.375 (7) (e) or 809.105 (12) may be required to forfeit not more than \$10,000.

(3) CIVIL REMEDIES. (a) A person who intentionally violates s. 48.375 (4) is liable to the minor on or for whom the abortion was performed or induced and to the minor's parent, guardian and legal custodian for damages arising out of the performance or inducement of the abortion including, but not limited to, damages for personal injury and emotional and psychological distress.

(b) If a person who has been awarded damages under par. (a) proves by clear and convincing evidence that the violation of s. 48.375 (4) was wilful, wanton or reckless, that person shall also be entitled to punitive damages.

(c) A conviction under sub. (2) (a) is not a condition precedent to bringing an action. Obtaining a judgment on collecting that judgment under this subsection.

(d) A person who recovers damages under par. (a) or (b) may also recover reasonable attorney fees incurred in connection with the action, notwithstanding s. 814.04 (1).

(e) A contract is not a defense to an action under this subsection. 895.80, 943.245 and

(f) Nothing in this subsection limits the common law rights of parents, guardians, legal custodians and minors.

(4) CONFIDENTIALITY. The identity of a minor who is the subject of an action under this section and the identity of the minor's parents, guardian and legal custodian shall be kept confidential and may not be disclosed, except to the court, the parties, their counsel, witnesses and other persons approved by the court. All papers filed in and all records of a court relating to an action under this section shall identify the minor as "Jane Doe" and shall identify her parents, guardian and legal custodian by initials only. All hearings relating to an action under this section shall be held in chambers unless the minor demands a hearing in open court and her parents, guardian or legal custodian do not object. If a public hearing is not held, only the parties, their counsel, witnesses and other persons requested by the court, or requested by a party and approved by the court, may be present.

History: 1991 a. 263.

Essential holding of *Roe v. Wade* allowing abortion is upheld, but various state restrictions on abortion are permissible. *Planned Parenthood v. Casey*, 505 US ___, 120 Lfd 2d 674 (1992).

895.04 Plaintiff in wrongful death action. (1) An action for wrongful death may be brought by the personal representative of the deceased person or by the person to whom the amount recovered belongs.

(2) If the deceased leaves surviving a spouse, and minor children under 18 years of age with whose support the deceased was legally charged, the court before whom the action is pending, or if no action is pending, any court of record, in recognition of the duty and responsibility of a parent to support minor children, shall determine the amount, if any, to be set aside for the protection of such children after considering the age of such children, the amount involved, the capacity and integrity of the surviving spouse, and any other facts or information it may have or receive, and such amount may be impressed by creation of an appropriate lien in favor of such children or otherwise protected as circumstances may warrant, but such amount shall not be in excess of 50% of the net amount received after deduction of costs of collection. If there are no such surviving minor children, the amount recovered shall belong and be paid to the spouse of the deceased. If no spouse survives, to the deceased's lineal heirs as determined by s. 852.01; if no lineal heirs survive, to the deceased's brothers and sisters. If any such relative dies before judgment in the action the relative next in order shall be entitled to recover for the wrongful death. A surviving nonresident alien spouse and minor children shall be entitled to the benefits of this section. In cases subject to s. 102.29 this subsection shall apply only to the surviving spouse's interest in the amount recovered. If the amount allocated to any child under this subsection is less than \$1,500, s. 807.10 may be applied. Every settlement in wrongful death cases in which the deceased leaves minor children under 18 years of age



Wisconsin Merchants Federation

The Voice Of Wisconsin Retailing

30 West Mifflin Street
Madison, Wisconsin 53703
Telephone 608/257-3541
Fax 608/257-8755

FAX TRANSMISSION COVER SHEET

Date: 1-22-98

To: Robert Nelson

FAX: 266.5648

Subject: Stat. Attys. Fees

Sender: Rebecca Bretz

YOU SHOULD RECEIVE (1) PAGE(S), INCLUDING **THIS** COVER SHEET. **IF YOU DO NOT** RECEIVE **ALL** THE PAGES, PLEASE CALL.

NOTES:

Omni-bus Mainstreet Merchant Bill

Goals of Civil Recovery Amendments/Revisions

- Fax ✓
- ✓ ① raise statutory attorney fees
 - ✓ ② specify that civil penalty statute 943.245 applies per check/ **per retail theft**
 - ✓ ③ allow right of assignment
 - ✓ ④ 943.245- allow first class letter for notice requirement (same as small claims court)
 - ✓ ⑤ clarify garnishment laws
 - ⑥ grant rule making authority to DFI re: "reasonable charge" under s.403.806 (note this can not be accomplished until AB 265 is enacted)
 - ✓ ⑦ civil immunity for reasonable detentions , , , **i.e. not have to call police ...**

wait for AB265 passage ...

Right of Assignment

4.24.230. Liability for conversion of goods or merchandise from store or mercantile establishment, leaving restaurant or hotel or motel without paying—Adults, minors—Parents, guardians—Notice

(1) An adult or emancipated minor who takes possession of any goods, wares, or merchandise displayed or offered for sale by any wholesale or retail store or other mercantile establishment without the consent of the owner or seller, and with the intention of converting such goods, wares, or merchandise to his own use without having paid the purchase price thereof shall be liable in addition to actual damages, for a penalty to the owner or seller in the amount of the retail value thereof not to exceed one thousand dollars, plus an additional penalty of not less than one hundred dollars nor more than two hundred dollars, plus all reasonable attorney's fees and court costs expended by the owner or seller. A customer who orders a meal in a restaurant or other eating establishment, receives at least a portion thereof, and then leaves without paying, is subject to liability under this section. A person who shall receive any food, money, credit, lodging, or accommodation at any hotel, motel, boarding house, or lodging house, and then leaves without paying the proprietor, manager, or authorized employee thereof, is subject to liability under this section.

Right of Assignment

Maybe 895.08,
but why.
R. Bretz
2/3 called
& she will call me back

(2) The parent or legal guardian having the custody of an unemancipated minor who takes possession of any goods, wares, or merchandise displayed or offered for sale by any wholesale or retail store or other mercantile establishment without the consent of the owner or seller and with the intention of converting such goods, wares, or merchandise to his own use without having paid the purchase price thereof, shall be liable as a penalty to the owner or seller for the retail value of such goods, wares, or merchandise not to exceed five hundred dollars plus an additional penalty of not less than one hundred dollars nor more than two hundred dollars, plus all reasonable attorney's fees and court costs expended by the owner or seller. The parent or legal guardian having the custody of an unemancipated minor, who orders a meal in a restaurant or other eating establishment, receives at least a portion thereof, and then leaves without paying, is subject to liability under this section. The parent or legal guardian having the custody of an unemancipated minor, who receives any food, money, credit, lodging, or accommodation at any hotel, motel, boarding house, or lodging house, and then leaves without paying the proprietor, manager, or authorized employee thereof, is subject to liability under this section. For the purposes of this subsection, liability shall not be imposed upon any governmental entity, private agency, or foster parent assigned responsibility for the minor child pursuant to court order or action of the department of social and health services.

Any debt owed anybody should

(3) Judgments and claims arising under this section may be assigned.

(4) A conviction for violation of chapter 9A.56 RCW shall not be a condition precedent to maintenance of a civil action authorized by this section.

(5) An owner or seller demanding payment of a penalty under subsection (1) or (2) of this section shall give written notice to the person or persons from whom the penalty is sought. The notice shall state:

"IMPORTANT NOTICE: The payment of any penalty demanded of you does not prevent criminal prosecution under a related criminal provision."

This notice shall be boldly and conspicuously displayed, in at least the same size type as is used in the demand, and shall be sent with the demand for payment of a penalty described in subsection (1) or (2) of this section.

Amended by Laws 1994, ch. 9, § 1.

← be assignable

Where to put - ask Scott

Historical and Statutory Notes

1994 Legislation
Laws 1994, ch. 9, § 1, in subsec. (3), substituted "Judgments and claims arising" for "Judgments, but not claims, arising"; in subsec. (4) deleted a reference to

RCW 9A.56.040 following "chapter 9A.56 RCW"; and in subsec. (5), near the end of the second paragraph, substituted "(1) or (2)" for "(1) of (2)".



garnishment

DAVID D. RELLES
GREGORY J. MEEKER
MARK F. BORNES
JOSEPH R. LONG II
KELLY L. KINZEL
Paralegals
JEANNINE HANSON
KRISTA M. DE BELLIS

April 10, 1996

Mr. Douglas Q. Johnson, Esq.
Johnson Law Offices
P.O. Box 161
Evansville, WI 53536

Re: Proposed Changes in Garnishment Law

Dear Mr. Johnson:

As you and I have discussed, recent changes to Wisconsin's garnishment law have proven to be very helpful to attorneys, to the public at large, and to the court system. However, the law could still use some fine tuning. I have recently met with Attorney Jay Koritzinsky, who spends a good deal of his practice in collection matters. I also have a significant collections practice. Here are some suggestions for modifications of Wisconsin's garnishment law:

1). Currently, when a debtor objects to a garnishment of their wages, he/she is only required to file a form entitled EARNINGS GARNISHMENT DEBTORS ANSWER. No supporting documentation is required to be filed. Unfortunately, this leaves the creditor in the difficult position of deciding whether or not to object to the answer and thereby require a hearing. In most instances, at the hearing, the debtor provides the necessary documentation to support their answer, and the garnishment is dismissed. This process could easily be streamlined, if only the debtor were required to provide the supporting documentation with their answer. For instance, if the debtor claims an exemption due to a child support obligation exceeding 25% of his/her disposable earnings, the debtor could provide a copy of the Court's Order for Support in the divorce case or copies of pay stubs, and/or other written verification from the employer. This procedure would avoid the scheduling and holding of many hearings.

2). Wisconsin law is currently unclear in setting forth the proper forum for the hearing of a motion by the creditor objecting to the debtor's Answer. Should it be heard by a court commissioner or by a circuit court judge? It is important to note that if the hearing is held before a court commissioner, either party may request a de novo hearing before a circuit court judge. This process potentially causes significant delay in having (what should be) a routine matter resolved. One resolution would be a clear statement in the law that a court commissioner

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is empowered to conduct these hearings and make findings of fact and conclusions of law.

3). Section 812.34 Wis. Stats. provides for the judicial conference to promulgate schedules of the poverty guidelines for earnings. However, the law does not direct the judicial conference to make the guidelines based upon gross earnings or disposable earnings, and the current guidelines do not do so. A clarification would be helpful.

No 812.30
sec (8)

4). Under present law, the first \$1000.00 in an individual's personal bank account is exempt from garnishment. However, the law is not clear as to the status of a sole proprietor's business account that may be titled in the individual's name, but actually be used as the operating account for the business (e.g.) Pat Jones dba Pat's Bar and Grill). Since it would appear to be the intent of the law to allow a garnishment of the latter type of account, a clarification in this regard would be helpful.

changed
815.0(3)(k)

We appreciate your assistance in helping to direct this information to the appropriate legislative committee. I am also sending a copy of this letter to Dane County Court Commissioner Howard B. Hippman with the request that he review the information contained in this letter and provide his input regarding the proposed changes and any other changes that he thinks would be useful to the court systems, attorneys, and members of the public.

Sincerely,

RELLES, MEEKER & BORNES

David D. Relles
B72

David D. Relles

cc: Court Commissioner Howard B. Hippman
Jay Koritzinsky

a debtor fails to provide verification of claims. Therefore, the committee recommends a change in Section 812.38(2) to award a creditor costs in an amount not less than \$50 if the debtor fails to produce **schedules** and worksheets to support its **claim** for exemptions and other defenses either with the answer or a petition for relief.

E. **Subcommittee Recommendations to Bankruptcy, Insolvency & Creditors' Rights Section Board of Directors. Proposed revisions:**

1. §812.34(1)

The exemptions provided in this section do not apply if the judgment debt meets one of the following conditions:

(a) was ordered by a court under s.128.21 or by a court of bankruptcy under Chapter XIII, of Title 11, U.S.C.

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Rebecca know

2. § 812.34(2)(b)

The debtor's earnings are **totally** exempt from garnishment under this subchapter ~~if to the extent that:~~

(1) ~~The debtor's household income is below the poverty line; or the garnishment would cause that result; but if the debtor's household income is above the poverty line, the amount of debtor's household income in excess of the poverty line may be garnished.~~

3. § 812.37(1)

(1) The debtor may claim an exemption under § 812.34(2)(b), or assert any defense to the earnings garnishment, by completing the ~~answer form, schedules and worksheets provided to debtor under § 812.35(4)(b), and delivering or mailing them to the garnishee . . .~~

(2) Whenever the garnishee receives a debtor's answer or amended ~~answer, schedules and worksheets completed by debtor; the garnishee shall mail a copy of the answer, schedules and worksheets to the creditor by the end of the third (3rd) business day after receiving the debtor's answer, schedules and worksheets, writing on that copy the date of receipt of the answer, schedules and worksheets; by the garnishee.~~

4. § 812.38(1)(b)

(1)(b) The debtor may file with the court a written petition for relief from the earnings garnishment, which states with reasonable specificity the grounds therefor, and includes such additional information as would be submitted to the court in support of such a claim; if the exemption percentage under § 812.34 is insufficient for the debtor to acquire the necessities of life for the debtor and his or debtors.

5. § 812.38(2)

(2) A motion or petition under sub (1) may be made . . . Upon conclusion of the hearing, the court shall make findings of fact and conclusions of law and if the debtor has failed to produce schedules and worksheets to support the claim for exemptions, or other defense, the court shall award to creditor the costs of the motion in an amount of not less than \$50.00. This award of costs shall not avoid or supplant any findings and award which the court may make under § 812.38(3), hereof. The court shall make such order as required . . .

II. ACTIVITY AFTER THE SUBCOMMITTEE'S REPORT AND RECOMMENDATIONS

- A. Action by Bankruptcy, Insolvency & Creditors' Rights Section Board of Directors.
- B. Trailer Legislation.
 - 1. Time table
 - 2. Sponsors or potential sponsors



State of Wisconsin
1997 - 1998 LEGISLATURE

LRB-2884/1
RPN:kaf&king:lp

1997 BILL

Incorporate parts of
this in LRB 2636/P2

- 1 **AN ACT to amend** 812.34 (1) (a), 812.84 (2) (b) (intro.) and 1., **812.37** (I), **812.37**
2' **(2), 812.38** (1) (b) and **612.38** (2); and **to create 812.34** (2) (c) of the statutes;
3 relating to: garnishment of earnings.

Analysis by the Legislative Reference Bureau

Under current law, a person who owes a debt may have part of his or her earnings garnished (set aside by his or her employer) to pay that debt. If the creditor commences an action and follows certain procedures, current law exempts all of a debtor's earnings from garnishment if the disposable income of the debtor and his or her dependents is below the poverty line or if the garnishment would cause the disposable income of the debtor and his or her dependents to be below the poverty line. Under this bill, the debtor's earnings are exempt from garnishment if the disposable income of the debtor is below the poverty line. In addition, if the garnishment would cause the disposable income of the debtor and his or her dependents to be below the poverty line, this bill limits the garnishment to the income in excess of the poverty line.

Currently, debtors are given schedules and worksheets to assist them in determining if they can claim any exemptions from garnishment, such as having insufficient income or being in receipt of an aid program such as food stamps or medical assistance. The debtor currently may answer the garnishment by claiming an exemption or asserting a defense. This bill requires the debtor to include with that answer the completed schedules and worksheets provided to the debtor by the creditor. If the debtor fails to provide the schedules and worksheets and the credit-

1997 - 1988 Legislature

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LRB-2884/1
RPN:kaf&km:lp

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requests a court hearing in response to the debtor's answer, the bill requires the court to award the creditor his or her costs related to the motion requesting the hearing in an amount of not less than \$60,

Under current law, the debtor may file a petition with the court for relief from an earnings garnishment. The bill requires the debtor to include in that petition specific grounds for the relief and my additional information necessary to support the petition.

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

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

2 812.34 (1) (a) Was ordered by a court under s. 128.21 or by a court of bankruptcy
3 under Title 11, USC 1301 et seq.

4 **SECTION 2.** 812.34 (2) (b) (intro.) and 1, of the statutes are amended to read:

5 812.34 (2) (b) (intro.) The debtor's earnings are ~~totally~~ exempt from
6 garnishment under this subchapter if:

7 1. The debtor's household income is below the poverty line, ~~or the garnishment~~
8 ~~would cause that result~~; or

9 **SECTION 3.** 812.34 (2) (c) of the statutes is created to read:

10 812.34 (2) (c) If a garnishment under this subchapter would result in the
11 debtor's household income being below the poverty line, the amount of the
12 garnishment is limited to the debtor's household income in excess of the poverty line
13 before the garnishment is in effect.

14 **SECTION 4.** 012.37 (1) of the statutes is amended to read:

15 812.37 (1) The debtor may claim an exemption under a. 812.34 (2) (b), or assert
16 any defense to the earnings garnishment, by completing the answer form, schedules
17 and worksheets ~~provided~~ under s. 812.35 (4) (b) and delivering or mailing it them to
18 the garnishee. The debtor or debtor's spouse may file an answer or an amended

Add

→ prefer LRB 2636/P2

1997 - 1998 Legislature

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SECTION 4

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1 ~~answer with the schedules and worksheets~~ at any time before or during the effective
2 period of the earnings garnishment.

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

4 812.37 (2) Whenever the garnishee receives a debtor's answer or amended
5 ~~answer, schedules and worksheets~~, the garnishee shall mail a copy of the answer,
6 ~~schedules and worksheets~~ to the creditor by the end of the 3rd business day after
7 receiving the debtor's answer, ~~schedules and worksheets~~, writing on that copy the
8 data of receipt of the ~~answer, schedules and worksheets~~ by the garnishee.

9 SECTION 6. 812.38 (1) (b) of the statutes is amended to read:

10 812.38 (1) (b) The debtor may file with the court a written petition for relief
11 from the earnings garnishment if the exemption percentage under s. 812.84 is
12 insufficient for the debtor to acquire the necessities of life for the debtor and his or
13 her dependents, The petition shall state with reasonable specificity the grounds for
14 the relief requested and shall include any additional information necessary to
15 support the petition.

16 SECTION 7. 812.38 (2) of the statutes is amended to read;

17 812.38 (2) A motion or petition under sub. (1) may be made at any time during
18 the pendency of the earnings garnishment. Within 5 business days after a motion
19 or petition is filed under sub. (1), the court shall schedule the matter for a hearing
20 to be held as promptly as practicable. The court shall notify the parties of the time
21 and place of the hearing. Upon conclusion of the hearing, the court shall make
22 findings of fact and conclusions of law. If the debtor has failed to produce the
23 schedules and worksheets necessary to support a claim for exemptions or other
24 defenses, the court shall award the creditor his or her costs related to the motion in
25 an amount of not less than \$50. An award under this subsection may not substitute

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1997 - 1998 Legislature
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SECTION 7

1 ~~for or replace an award made under sub. (3).~~ The court shall make such order as
 2 required by these findings and conclusions. If the order permits the garnishment to
 3 proceed, the date on which the order is served upon the garnishee shall substitute
 4 for the original date of service of the garnishment upon the garnishee under s. 812.35
 5 (3) for the purpose of determining any 13-week period under s. 812.35 (5) or (6). A
 6 court order shall bind the garnishee from the time the order is served upon him or
 7 her.

SECTION 8. Initial applicability.

8
9 (1) This act first applies to earnings garnishments commenced on the effective
10 date of this subsection.

SECTION 9. Effective date.

11
12 (1) This act takes effect on the first day of the 4th month beginning after
13 publication.

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

regen

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

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

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

10 SECTION 1. 757.69 (1) (n) of the statutes is created to read:

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

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~~SECTION 3.~~ 812.34 (1) (a) of the statutes is amended to read:

812.34 (1) (a) Was ordered by a court under s. 128.21 or by a court of bankruptcy

under Title 11, USC 1301 et. seq.

~~SECTION 3.~~ 812.37 (1) of the statutes is amended to read:

812.37 (1) The debtor may claim an exemption under s. 812.34 (2) (b), or assert

any defense to the earnings garnishment, by completing the answer form and

the schedules and worksheets provided under s. 812.35(4)(b) ✓
delivering or mailing it to the garnishee, along with any documents sunwortinn his and

or her answer, such as a wage statement, a court order regardina the wavment of

support or a document showing the receipt of any of the benefits listed under s.

812.44 (4) (form) 2. The debtor or debtor's spouse may file an answer or an amended

answer and documentation at any time before or during the effective period of the

earnings garnishment.

SECTION 4. 812.37 (2) of the statutes is amended to read:

812.37 (2) Whenever the garnishee receives a debtor's answer or amended

answer, the garnishee shall mail a copy of the answer and any documents the debtor

included with the answer to the creditor by the end of the 3rd business day after

receiving the debtor's answer, writing on that copy the date of receipt of the answer

by the garnishee.

SECTION 5. 812.44 (3) (form) 3. of the statutes is amended to read:

812.44 (3) (form) 3. Whenever you receive a debtor's answer form from the

debtor, mail a copy of the answer form and any documents the debtor included with

the answer to the creditor by the end of the 3rd business day after receipt of that form.

Include the date you received the answer form on the copy sent to the creditor.

SECTION 6. 812.44 (4) (form) 3. of the statutes is amended to read:

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1 **SECTION 7.** 814.04 (1) (a) of the statutes is amended to read:

2 814.04 (1) (a) When the amount recovered or the value of the property involved
3 is ~~\$1,000~~ \$3,000 or over, attorney fees shall be ~~\$100~~ \$200; when it is less than ~~\$1,000~~
4 \$3,000 and is ~~\$500~~ \$1,000 or over, ~~\$50~~ \$150; when it is less than ~~\$500~~ \$1,000 and is
5 ~~\$200~~ \$500 or over, \$25 \$75; and when it is less than ~~\$200, \$15~~ \$500, \$50.

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

7 815.18 (3) (k) *Depository accounts.* Depository accounts in the aggregate value
8 of \$1,000, but only to the extent that the account is for the debtor's personal use and
9 is not used as a business account.

10 **SECTION 9.** 895.035 (2) of the statutes is amended to read:

11 895.035 (2) The parent or parents with custody of a minor child, in any
12 circumstances where he, she or they may not be liable under the common law, are
13 liable for damages to property, for the cost of repairing or replacing property or
14 removing the marking, drawing, writing or etching from property regarding a
15 violation under s. 943.017, for the value of unrecovered stolen property or for
16 personal injury attributable to a wilful, malicious or wanton act of the child. The
17 parent or parents with custody of their minor child are jointly and severally liable
18 with the child for the damages imposed under s. ~~895.80.943.212.943.245~~ or 943.51
19 for their child's violation of s. ~~943.01, 943.20, 943.21, 943.26, 943.34, 943.395, 943.41,~~
20 ~~943.50~~ or 943.61.

21 **SECTION 10.** 895.08 of the statutes is created to read:

22 **895.08 Assignments of debt.** Any person may assign a debt owed to that
23 person to any other person. The person assigning the debt shall notify the debtor of
24 the assignment by mail at the debtor last-known address within 7 days after the

1 assignment. Failure to timely notify the debtor as required by this section voids the
2 assignment.

3 **SECTION 11.** 895.80 (1) of the statutes is amended to read:

4 895.80 (1) Any person who suffers damage or loss by reason of intentional
5 conduct that occurs on or after November 1, 1995, and that is prohibited under s.
6 943.01, 943.20, 943.21, ~~943.24~~, 943.26, 943.34, 943.395, 943.41, ~~943.50~~ or 943.61 has
7 a cause of action against the person who caused the damage or loss.

8 **SECTION 12.** 895.80 (2) of the statutes is amended to read:

9 895.80 (2) The burden of proof in a civil action under sub. (1) is with the person
10 who suffers damage or loss to prove ~~his or her case a violation of s. 943.01, 943.20,~~
11 ~~943.21, 943.26, 943.34, 943.395, 943.41 or 943.61~~ by a preponderance of the credible
12 evidence. ~~A conviction under s. 943.01, 943.20, 943.21, 943.26, 943.34, 943.395,~~
13 ~~943.41 or 943.61 is not required to bring an action, obtain a judgment or collect on~~
14 ~~that judgment under this section.~~

15 **SECTION 13.** 895.80 (3) (a) of the statutes is repealed and recreated to read:

16 895.80 (3) (a) Actual damages, including the retail value of damaged or used
17 property and the cost of the time of any employe involved in the investigation and
18 prosecution of a person for a violation of s. 943.01, 943.20, 943.21, 943.26, 943.34,
19 943.395, 943.41 or 943.61.

20 **SECTION 14.** 895.80 (3) (b) of the statutes is amended to read:

21 895.80 (3) (b) All costs of investigation and litigation that were reasonably
22 incurred, including reasonable attorney fees.

23 **SECTION 15.** 895.80 (3) (c) of the statutes is created to read:

1 895.80 (3) (c) Exemplary damages of not more than 3 times the amount
2 awarded under par. (a). No additional proof is required under this section for an
3 award of exemplary damages under this paragraph.

4 **SECTION 16.** 895.80 (4) of the statutes is repealed and recreated to read:

5 895.80 (4) Any recovery under this section shall be reduced by the amount
6 recovered as restitution under ss. 800.093 and 973.20.

7 **SECTION 17.** 895.80 (6) of the statutes is created to read:

8 895.80 (6) A person is not criminally liable under s. 943.30 for any action
9 brought in good faith under this section.

10 **SECTION 18.** 943.245 (3) of the statutes is amended to read:

11 943.245 (3) Notwithstanding sub. (2) (c) and (d), the total amount awarded for
12 exemplary damages and reasonable attorney fees may not exceed \$500 for each
13 violation.

14 **SECTION 19.** 943.245 (4) of the statutes is amended to read:

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

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

1 943.50 (3) A merchant, a merchant's adult employe or a merchant's security
 2 agent who has reasonable cause for believing that a person has violated this section
 3 in his or her presence may detain the person in a reasonable manner for a reasonable
 4 length of time ~~to deliver the person to a peace officer, or to his or her parent or~~
 5 ~~guardian in the case of a minor.~~ The detained person must be promptly informed of
 6 the purpose for the detention and be permitted to make phone calls, but he or she
 7 shall not be interrogated or searched against his or her will ~~before the arrival of a~~
 8 ~~peace officer who may conduct a lawful interrogation of the accused person. The~~
 9 ~~merchant, merchant's adult employe or merchant's security agent may release the~~
 10 ~~detained person before the arrival of a peace officer or parent or guardian.~~ Any
 11 merchant, merchant's adult employe or merchant's security agent who acts in good
 12 faith in any act authorized under this section is immune from civil or criminal
 13 liability for those acts.

14 **SECTION 21.** 943.51 (3) of the statutes is amended to read:

15 943.51 (3) Notwithstanding sub. (2) and except as provided in sub. (3m), the
 16 total amount awarded for exemplary damages and reasonable attorney fees may not
 17 exceed \$500 for each violation.

18 **SECTION 22.** 943.51 (3m) of the statutes is amended to read:

19 943.51 (3m) Notwithstanding sub. (2), the total amount awarded for
 20 exemplary damages and reasonable attorney fees may not exceed \$300 for each
 21 violation if the action is brought against a minor or against the parent who has
 22 custody of their minor child for the loss caused by the minor.

23

(END)✓

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1 insert 2-1.

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

3 799.01 (1) (c) *Replevins*. Actions for replevin under ss. 810.01 to 810.13 where
4 the value of the property claimed does not exceed ~~\$5,000~~ \$7,500.

History: History: Sup. Ct. Order, 67 W (2d) 585, 776 (1975), 1975 c. 325, 365, 422; 1977 c. 449 s. 497; 1979 c. 32 ss. 66, 92 (16); 1979 c. 175 s. 53; Stats. 1979 s. 799.01; 1983 a. 228; 1987 a. 208, 378, 403; 1989 a. 31, 359, 1991 a. 163, 1993 a. 80, 181, 1995 a. 27

5 SECTION 2. 799.01 (1) (d) (intro.) of the statutes is amended to read:

6 799.01 (1) (d) *Other civil actions*. (intro.) Other civil actions where the amount
7 claimed is ~~\$5,000~~ \$7,500 or less, if the actions or proceedings are:

History: History: Sup. Ct. Order, 67 W (2d) 585, 776 (1975), 1975 c. 325, 365, 422; 1977 c. 449 s. 497; 1979 c. 32 ss. 66, 92 (16); 1979 c. 175 s. 53; Stats. 1979 s. 799.01; 1983 a. 228; 1987 a. 208, 378, 403; 1989 a. 31, 359; 1991 a. 163, 1993 a. 80, 181; 1995 a. 27

8 SECTION & 799.01 (2) of the statutes is amended to read:

9 799.01 (2) **PERMISSIVE USE OF SMALL CLAIMS PROCEDURE**. A taxing authority may
10 use the procedure in this chapter in an action to recover a tax from a person liable
11 for that tax where the amount claimed, including interest and penalties, is ~~\$5,000~~
12 \$7,500 or less. This chapter is not the exclusive procedure for those actions.

History: History: Sup. Ct. Order, 67 W (2d) 585, 776 (1975), 1975 c. 325, 365, 422; 1977 c. 449 s. 497; 1979 c. 32 ss. 66, 92 (16); 1979 c. 175 s. 53; Stats. 1979 s. 799.01; 1983 a. 228; 1987 a. 208, 378, 403; 1989 a. 31, 359; 1991 a. 163, 1993 a. 80, 181; 1995 a. 27

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requests a court hearing in response to the debtor's answer, the bill requires the court to award the creditor his or her costs related to the motion requesting the hearing in an amount of not less than \$50.

Under current law, the debtor may file a petition with the court for relief from an earnings garnishment. The bill requires the debtor to include in that petition specific grounds for the relief and any additional information necessary to support the petition.

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

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

2 812.34 (1) (a) Was ordered by a court under s. 128.21 or by a court of bankruptcy
3 under Title 11, USC 1301 et seq

4 SECTION 2. 812.34 (2) (b) (intro.) and 1. of the statutes are amended to read:

5 812.34 (2) (b) (intro.) The debtor's earnings are [✓]totally exempt from
6 garnishment under this subchapter if:

7 1. The debtor's household income is below the poverty line, ~~or the garnishment~~
8 ~~would cause that result; or~~

9 SECTION 3. 812.34 (2) (c) of the statutes is created to read:

10 812.34 (2) (c) If a garnishment under this subchapter would result in the
11 debtor's household income being below the poverty line, the amount of the
12 garnishment is limited to the debtor's household income in excess of the poverty line
13 before the garnishment is in effect.

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14 SECTION 4. 812.37 (1) of the statutes is amended to read:

15 812.37 (1) The debtor may claim an exemption under s. 812.34 (2) (b), or assert
16 any defense to the earnings garnishment, by completing the answer form, schedules
17 and worksheets provided under s. 812.35 (4) (b) and delivering or mailing it them to
18 the garnishee. The debtor or debtor's spouse may file an answer or an amended

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1 answer with the schedules and worksheets at any time before or during the effective
2 period of the earnings garnishment.

3 **SECTION 5.** 812.37 (2) of the statutes is amended to read:

4 812.37 (2) Whenever the garnishee receives a debtor's answer or amended
5 answer, schedules and worksheets, the garnishee shall mail a copy of the answer,
6 schedules and worksheets to the creditor by the end of the 3rd business day after
7 receiving the debtor's answer, schedules and worksheets, writing on that copy the
8 date of receipt of the answer, schedules and worksheets by the garnishee.

9 **SECTION 6.** 812.38 (1) (b) of the statutes is amended to read:

10 812.38 (1) (b) The debtor may file with the court a written petition for relief
11 from the earnings garnishment if the exemption percentage under s. 812.34 is
12 insufficient for the debtor to acquire the necessities of life for the debtor and his or
13 her dependents. The petition shall state with reasonable specificity the grounds for
14 the relief requested and shall include any additional information necessary to
15 support the petition.

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16 **SECTION% 812.38** (2) of the statutes is amended to read:

17 812.38 (2) A motion or petition under sub. (1) may be made at any time during
18 the pendency of the earnings garnishment. Within 5 business days after a motion
19 or petition is filed under sub. (1), the court shall schedule the matter for a hearing
20 to be held as promptly as practicable. The court shall notify the parties of the time
21 and place of the hearing. Upon conclusion of the hearing, the court shall make
22 findings of fact and conclusions of law. If the debtor has failed to produce the
23 schedules and worksheets necessary to support a claim for exemptions or other
24 defenses. the court shall award the creditor his or her costs related to the motion in
25 an amount of not less than \$50. An award under this subsection may not substitute

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SECTION 7

1 for or replace an award made under sub. (3). The court shall make such order as
2 required by these findings and conclusions. If the order permits the garnishment to
3 proceed, the date on which the order is served upon the garnishee shall substitute
4 for the original date of service of the garnishment upon the garnishee under s. 812.35
5 (3) for the purpose of determining any 13-week period under s. 812.35 (5) or (6). A
6 court order shall bind the garnishee from the time the order is served upon him or
7 her.

(end of insert 2-19)

SECTION ~~8~~ [#] **Initial applicability.**

(1) This act first applies to earnings garnishments commenced on the effective date of this subsection.

actions ✓

SECTION ~~9~~ [#] **Effective date.**

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

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insert 7-22
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END

ins
(end 7-22)

(d) *Schedule D, statement of ownership and affidavit.* This schedule shall include a statement of ownership of the collection agency and an affidavit as to the veracity of the report.

(e) *Schedule E, new claimants or forwarders listed during the past year.* This schedule sets forth a listing of all new claimants or forwarders including the street address and the city and state in which the claimants reside.

(2) The above schedules are to be furnished only on forms provided or approved by the office of the administrator of the division of banking.

History: Cr. Register, July, 1966, No. 127, eff. 8-1-66; am. (1) (b) and (2), Register, July, 1968, No. 151, eff. 8-1-68; correction in (1) (intro.) made under s. 13.93 (2m) (b) 5. Stats., Register, December, 1991, No. 432; am. (2), Register, February, 1993, No. 446, eff. 3-1-93.

DFI-Bkg 74.11 Fair collection practice notice.

(1) Within 5 days after the initial communication with a debtor a licensee shall, unless the initial communication is written and contains the following notice or the debtor has paid the debt, send the debtor the following notice in not less than 8 point boldface type:

This collection agency is licensed by the:
Office of the Administrator of the Division of Banking,
P.O. Box 7876, Madison, Wisconsin 53707.

This notice shall be typed or printed on either a collection notice or on the validation of any debt directed to the debtor by the licensee pursuant to Section 809 of the Federal Fair Debt Collection Practices Act.

(2) Where the notice required by sub. (1) is printed on the reverse side of any collection notice or validation sent by the licensee, the front of such notice shall bear the following statement in not less than 8 point boldface type:

Notice: See Reverse Side for Important Information.

History: Cr. Register, August, 1978, No. 272, eff. 9-1-78, except (1) which is effective 2-1-79; am. (1), Register, July, 1983, No. 331, eff. 8-1-83.

DFI-Bkg 74.12 Use of alias. In any oral or written communication with a debtor, any collector, solicitor, licensee, person, employe or agent of a collection agency may use a separate alias. However, any alias shall be registered with and approved by the office of administrator of the division of banking prior to use. The real name of a person using an alias will be available from the office of administrator of the division of banking. No collector, solicitor, licensee, person, employe or agent may have more than one alias. No change of alias may be authorized unless good cause is shown. When using an alias, persons shall also identify the agency which they represent using the name under which it is licensed to do business. A licensee may forward printed collection notices to a debtor which are unsigned. Violations of this rule are subject to s. 218.04 (5) and (7), Stats.

History: Cr. Register, August, 1978, No. 272, eff. 9-1-78; r. and recr. Register, February, 1988, No. 386, eff. 3-1-88.

DFI-Bkg 74.13 Unauthorized practice of law. No collector or other employe of a licensee may in attempting to collect an account, engage in the practice of law. This includes but is not limited to the preparation of a summons or complaint or the appearance on behalf of any creditor, except when called as a witness by the plaintiff's attorney in open court, before any court including the clerk of any small claims court in an action on the debt or in garnishment proceedings. It is not considered the practice of law for an employe of a licensee to prepare a summons or complaint under the direction of an attorney which will subsequently be signed and filed by the plaintiff's attorney. This section does not prohibit the appearance of an owner or officer of a licensed collection agency in court for the purpose of obtaining judgment on a debt owed to the licensee directly.

History: Cr. Register, August, 1978, No. 272, eff. 9-1-78; am. Register, February, 1993, No. 446, eff. 3-1-93.

DFI-Bkg 74.14 Oppressive and deceptive practices prohibited. A licensee shall not engage in any oppressive or deceptive practices. In attempting to collect an alleged debt, a licensee shall not:

(1) Use or threaten force or violence to cause physical harm to the person, dependents or property of a debtor;

(2) Threaten criminal prosecution;

(3) Disclose or threaten to disclose information adversely affecting the debtor's reputation for credit worthiness with knowledge or reason to know that the information is false;

(4) Initiate or threaten to initiate communication with the debtor's employer prior to obtaining final judgment against the debtor, except as permitted by statute. This subsection does not prohibit a debt collector from communicating with the debtor's employer solely to verify employment status or earnings or where an employer has an established debt counseling service or procedure;

(5) Contact a debtor by telephone at the debtor's place of employment following a request or demand by the debtor that such collection efforts cease;

(6) Disclose or threaten to disclose to a person other than the debtor or the debtor's spouse information affecting the debtor's reputation, whether or not for credit worthiness, with knowledge or reason to know that the other person does not have a legitimate business need for the information; but this subsection does not prohibit the disclosure to another person of information permitted to be disclosed to that person by statute;

(7) Disclose or threaten to disclose information concerning the existence of a debt known to be reasonably disputed by the debtor without disclosing the fact that the debtor disputes the debt;

(8) Communicate with the debtor or a person related to the debtor with such frequency or at such unusual hours or in such a manner as can reasonably be expected to threaten or harass the debtor;

(9) Engage in other conduct which can reasonably be expected to threaten or harass the debtor or a person related to the debtor including conduct which violates the Federal Fair Debt Collection Practices Act;

(10) Use obscene, profane or threatening language in communicating with the debtor or a person related to the debtor;

(11) Claim or attempt to threaten to enforce a right with knowledge or reason to know that the right does not exist;

(12) Use a communication which simulates legal or judicial process or which gives the appearance of being authorized, issued or approved by a government, governmental agency or attorney-at-law when it is not or any bogus letter ostensibly addressed to any governmental authority or attorney;

(13) Threaten action against the debtor unless like action is taken in regular course or is intended with respect to the particular debt;

(14) Mutilate any check or other writing tendered by a debtor before forwarding it or returning it to the customer;

(15) Enlist the aid of a neighbor or other third party to request that the debtor contact the licensee except a person who resides with the debtor or a third party with whom the debtor has authorized the licensee to place such requests. This subsection shall not apply to a call back message left at the debtor's place of employment which is limited to the licensee's telephone number and the collector's name.

History: Cr. Register, August, 1978, No. 272, eff. 9-1-78.

DFI-Bkg 74.15 Use of data processing. (1) **SYSTEMS APPROVAL** Data processing procedures shall be submitted to the office of administrator of the division of banking with sample print-outs or reports to show how the licensee will comply with the record requirements of this chapter before using the system. The administrator of the division of banking may approve data



mfd

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D. Note

gen. cat.

1 AN ACT **relating to:** parental liability for acts of their minor child, recovery
2 of damages for certain criminal actions and recovery in actions involving
3 worthless checks.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

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

4 SECTION 1. 895.035 (2) of the statutes is amended to read:
5 895.035 (2) The parent or parents with custody of a minor child, in any
6 circumstances where he, she or they may not be liable under the common law, are
7 liable for damages to property, for the cost of repairing or replacing property or
8 removing the marking, drawing, writing or etching from property regarding a
9 violation under s. 943.017, for the value of unrecovered stolen property or for
10 personal injury attributable to a wilful, malicious or wanton act of the child. The

1 parent or parents with custody of their minor child are jointly and severally liable
 2 with the child for the damages imposed under s. 895.80, 943.21[✓], 943.24[✓] or 943.51
 3 for their child's violation of s. 943.01[✓], 943.20[✓], 943.21[✓], 943.26[✓], 943.34[✓], 943.395[✓], 943.41[✓],
 4 943.50 or 943.6:

5 **History:** History: 1985 a. 311; 1987 a. 27; 1993 a. 71; 1995 a. 24, 77, 262, 352.

SECTION 2. 895.80 (1) of the statutes is amended to read:

6 895.80 (1) Any person who suffers damage or loss by reason of intentional
 7 conduct that occurs on or after November 1, 1995, and that is prohibited under s.
 8 943.01, 943.20, 943.21, 943.24[✓], 943.26, 943.34, 943.395, 943.41, 943.50[✓] or 943.61 has
 9 a cause of action against the person who caused the damage or loss.

10 **History:** History: 1995 a. 27.

SECTION 3. 895.80 (2) of the statutes is amended to read:

11 895.80 (2) The burden of proof in a civil action under sub. (1) is with the person
 12 who suffers damage or loss to prove ~~his or her case~~ a violation of s. 943.01[✓], 943.26,
 13 943.21[✓], 943.26[✓], 943.34[✓], 943.395[✓], 943.4[✓] or 943.61 by a preponderance of the credible
 14 evidence. A conviction under s. 943.01[✓], 943.20: 943.21[✓], 943.26[✓], 943.3: 943.395[✓],
 15 943.41[✓] or 943.61[✓] is not required to bring an action, obtain a iudgment or collect on
 16 that judgment under this section.

17 **History:** History: 1995 a. 27.

SECTION 4. 895.80 (3) (a) of the statutes is repealed and recreated to read:

18 895.80 (3) (a) Actual damages, including the retail value of damaged or used
 19 property and the cost of the time of any employee~~s~~ involved in the investigation and
 20 prosecution of a person for a violation of s. 943.01: 943.20[✓], 943.21[✓], 943.26: 943.34:
 21 943.395[✓], 943.41[✓] or 943.61.

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

1 895.80 (3) (b) All costs of investigation and litigation that were reasonably
 2 incurred, including reasonable attorney fees.

History: History: 1995 a. 27.

3 **SECTION 6.** 895.80 (3) (c) of the statutes is created to read:

4 895.80 (3) (c) Exemplary damages of not more than 3 times the amount
 5 awarded under par. (a). No additional proof is required under this section for an
 6 award of exemplary damages under this paragraph.

7 **SECTION 7.** 895.80 (4) of the statutes is repealed and recreated to read:

8 895.80 (4) Any recovery under this section shall be reduced by the amount
 9 recovered as restitution under ss. ^Δ800.093 and 973.26.

10 **SECTION 8.** 895.80 (6) of the statutes is created to read:

11 895.80 (6) A person is not criminally liable under s. 943.30 for any action
 12 brought in good faith under this section.

13 **SECTION 9.** 943.245 (3) of the statutes is amended to read:

14 943.245 (3) Notwithstanding sub. (2) (c) and (d), the total amount awarded for
 15 exemplary damages and reasonable attorney fees may not exceed \$500 for each
 16 violation.

History: History: 1985 a. 179; 1987 a. 398; 1989 a. 31; 1993 a. 71.

17 **SECTION 10.** 943.51 (3) of the statutes is amended to read:

18 943.51 (3) Notwithstanding sub. (2) and except as provided in sub. (3m), the
 19 total amount awarded for exemplary damages and reasonable attorney fees may not
 20 exceed \$500 for each violation.

History: History: 1985 a. 179; 1989 a. 31; 1993 a. 71; 1995 a. 77

21 **SECTION 11.** 943.51 (3m) of the statutes is amended to read:

22 943.51 (3m) Notwithstanding sub. (2), the total amount awarded for
 23 exemplary damages and reasonable attorney fees may not exceed \$300 for each

1 violation if the action is brought against a minor or against the parent who has
2 custody of their minor child for the loss caused by the minor.

3 **History:** History: 1985 a. 179; 1989a.31; 1993 a. 71; 1995 a. 77.

(END)

D - No fee

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2636/P1dn

RPN:mfd:lp

Thursday, June 5, 1997

You proposed removing the references in s. 895.80 (1) and (5) to ss. 943.24, 943.245, 943.50 and 943.51 "because they already have civil recovery section". However, in s. 895.80 (1) there is a reference to s. 943.21, which also has a civil recovery section and in s. 895.80 (5) there is a reference to s. 943.212, which is a civil remedy section, so why not remove those references also?

I thought the reason for s. 895.80 (5) is to require a person to choose which statute he or she would bring an action under. If the references to ss. 943.245 and 943.51 are removed, the single reference to s. 943.212, which is a civil remedy statute, makes little sense. I think s. 895.80 (5) should be left unchanged, which is what I did in this draft. OK?

I think the parental liability section changes should include a reference to s. 943.212 for consistency. OK?

Robert P. Nelson
Senior Legislative Attorney
267-7511

D-Note

1999 BILL
1997 ASSEMBLY BILL 924

WPO = PLEASE
MAKE CORRECTION
on REQUEST
sheet.

March 17, 1998 - Introduced by Representatives GREEN and MURAT, cosponsored by Senators PANZER and SHIBILSKI. Referred to Committee on Judiciary.

regen. cal.

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

Analysis by the Legislative Reference Bureau

This bill increases the jurisdictional limit in small claims actions from \$5,000 to \$7,500 and increases the statutory attorney fees, including increasing the maximum fee from \$100 to \$200. ✓

ASSEMBLY BILL 924

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 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. The bill requires the person assigning 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.

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 employe, and exemplary damages of not more than ~~3~~ ^{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:

SECTION 1. 757.69 (1) ~~(a)~~ of the statutes is created to read:

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

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

799.01 (1) (c) *Replevins.* Actions for replevin under ss. 810.01 to 810.13 where the value of the property claimed does not exceed ~~\$5,000~~ \$7,500.

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

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proof of stats

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1 799.01 (1) (d) **Other civil actions. (intro.)** Other civil actions where the amount
2 claimed is ~~\$5,000~~ \$7,500 or less, if the actions or proceedings are:

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

4 799.01 (2) **PERMISSIVE USE OF SMALL CLAIMS PROCEDURE.** A taxing authority may
5 use the procedure in this chapter in an action to recover a tax from a person liable
6 for that tax where the amount claimed, including interest and penalties, is ~~\$5,000~~
7 \$7,500 ~~chapter~~ is not the exclusive procedure for those actions.

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

9 812.34 (1) (a) Was ordered by a court under s. 128.21 or by a court of bankruptcy
10 under ~~Title 11,~~ USC 1301 et. seq.

11 SECTION 6. 812.34 (2) (b) (intro.) and 1. of the statutes are amended to read:

12 812.34 (2) (b) (intro.) The debtor's earnings are ~~totally~~ exempt from
13 **garnishment under this subchapter if:**

14 1. The debtor's household income is below the poverty line, ~~or the garnishment~~
15 ~~would cause that result;~~ or

16 SECTION 7. 812.34 (2) (c) of the statutes is created to read:

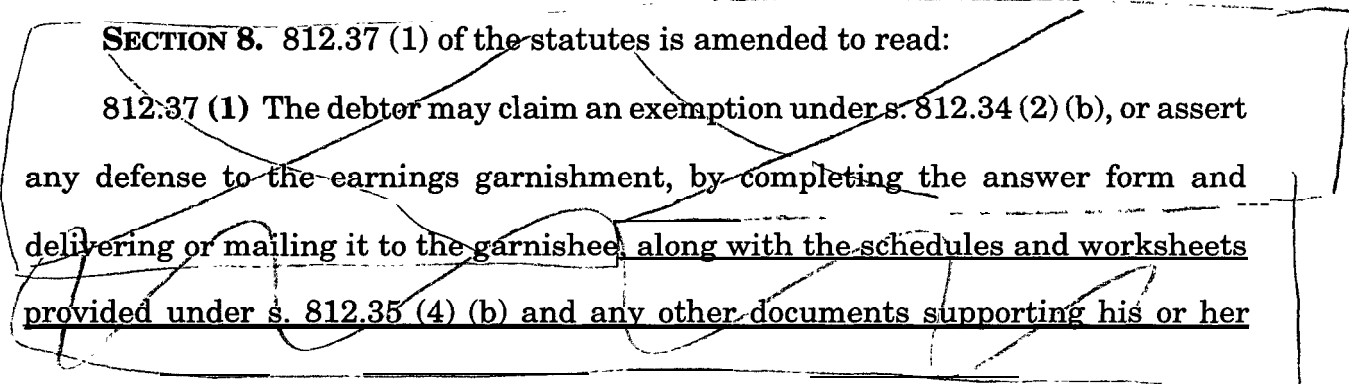
17 812.34 (2) (c) If a garnishment under this subchapter would result in the
18 debtor's household income being below the poverty line, the amount of the
19 **garnishment is limited to the debtor's household income in excess of the poverty line**
20 before the garnishment is in effect.

21 SECTION 8. 812.37 (1) of the statutes is amended to read:

22 812:37 (1) The debtor may claim an exemption under s. 812.34 (2) (b), or assert
23 any defense to the earnings garnishment, by completing the answer form and
24 delivering or mailing it to the garnishee, along with the schedules and worksheets
25 provided under s. 812.35 (4) (b) and any other documents supporting his or her

proof w/ stats.

✓
Insert
3-20



ASSEMBLY BILL 924

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 12, 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 13. 812.44 (4) (form) 3.** of the statutes is amended to read:

18 812.44 (4) (form) 3. At least 25% of your disposable earnings are assigned by
 19 court order for support.

20 If you qualify for a complete exemption, you must give or mail a copy of the
 21 enclosed debtor's answer form to the garnishee, along with the schedules and
 22 worksheets and any other documents supporting your answer, such as a wage
 23 statement, a court order regarding: the payment of support or a document showing:
 24 the receipt of any of the benefits listed under paragraph 2 above in order to receive
 25 that increased exemption.

proof w/ STATS.

insert 5-16

proof w/ STATS.

ASSEMBLY BILL 924

1 If your circumstances change while the garnishment is in effect, you may file
2 a new answer at any time.

3 If you do not qualify for a complete exemption, but you will not be able to acquire
4 the necessities of life for yourself and your dependents if your earnings are reduced
5 by this earnings garnishment, you may ask the court in which this earnings
6 garnishment was filed to increase your exemption or grant you other relief.

7 IF YOU NEED ASSISTANCE

8 CONSULT AN ATTORNEY

9 If you have earnings that are being garnished that are exempt or subject to a
10 defense, the sooner you file your answer or seek relief from the court, the sooner such
11 relief can be provided. This earnings garnishment affects your earnings in pay
12 periods beginning within 13 weeks after it was served on the garnishee. You may
13 agree in writing with the creditor to extend it for additional 13-week periods until
14 the debt is paid.

15 PENALTIES

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

19 **SECTION 14. 814.04 (1) (a)** of the statutes is amended to read:

20 814.04 (1) (a) When the amount recovered or the value of the property involved
21 is ~~\$1,000~~ \$3,000 or over, attorney fees shall be ~~\$100~~ \$200; when it is less than ~~\$1,000~~
22 \$3,000 and is ~~\$5043~~ \$1,000 or over, ~~\$50~~ \$150; when it is less than ~~\$500~~ \$1,000 and is
23 ~~\$200~~ \$500 or over, ~~\$25~~ \$50 and when it is less than ~~\$200, \$15~~ \$500, \$50.

24 **SECTION 15. 815.18 (3) (k)** of the statutes is amended to read:

Proof w/ STATS.

ASSEMBLY BILL 924

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

4 **SECTION 16.** 895.035 (2) of the statutes is amended to read:

5 895.035 (2) The parent or parents with custody of a minor child, in any
6 circumstances where he, she or they may not be liable under the common law, are
7 liable for damages to property, for the cost of repairing or replacing property or
8 removing the marking, drawing, writing or etching from property regarding a
9 violation under s. 943.017, for the value of unrecovered stolen property or for
10 personal injury attributable to a wilful, malicious or wanton act of the child. The
11 parent or parents with custody of their minor child are jointly and severally liable
12 with the child for the damages imposed under s. 895.80, 943.212, 943.24, 943.245
13 or 943.51 for their child's violation of s. 943.01, 943.20, 943.21, 943.24, 943.26,
14 943.34, 943.395, 943.41, 943.50 or 943.61.

proof w/ stats.

→

***NOTE: sections 943.011, 943.201 and 943.30 are newly created crimes. Do you want these added to the list?
(CS)

15 **SECTION 17.** 895.08 of the statutes is created to read:

16 **895.08 Assignments of debt.** Any person may assign a debt owed to that
17 person to any other person. The person assigning the debt shall send a notice to the
18 debtor of the assignment by mail at the debtor last-known address within 30 days
19 after the assignment. If the person assigning the debt fails to send a notice to the
20 debtor within the 30-day period required by this section, the assignment is
21 ineffective until the notice is sent to the debtor.

22 **SECTION 18.** 895.80 (2) of the statutes is amended to read:

23 895.80 (2) The burden of proof in a civil action under sub. (1) is with the person
24 who suffers damage or loss to prove his or her case a violation of s. 943.01, 943.20,
25 943.21, 943.24, 943.26, 943.34, 943.395, 943.41, 943.50 or 943.61 by a preponderance

proof w/ stats.

ASSEMBLY BILL 924

1 of the credible evidence. A conviction under s. 943.01, 943.20, 943.21, 943.24, 943.26,
2 943.34, 943.395, 943.41, 943.50 or 943.61 is not required to bring an action, obtain
3 a judgment or collect on that judgment under this section.

4 *** NOTE: See the *** Note after s. 895.035(2).
5 SECTION 19. 895.80 (3) (a) of the statutes is repealed and recreated to read:

6 895.80 (3) (a) Actual damages, including the retail or replacement value of
7 damaged, used or lost property, whichever is greater, for a violation of s. 943.01,
8 943.20, 943.21, 943.24, 943.26, 943.34, 943.395, 943.41, 943.50 or 943.61.

9 *** NOTE: See the *** Note after s. 895.035(2).
10 SECTION 20. 895.80 (3) (b) of the statutes is amended to read:

11 895.80 (3) (b) All costs of investigation and litigation that were reasonably
12 incurred, including the value of the time spent by any employee or agent of the victim,
13 court costs and reasonable attorney fees.

14 SECTION 21. 895.80 (3) (c) of the statutes is created to read:

15 895.80 (3) (c) Exemplary damages of not more than 3 times the amount
16 awarded under par. (a). No additional proof is required under this section for an
17 award of exemplary damages under this paragraph.

18 SECTION 22. 895.80 (4) of the statutes is repealed and recreated to read:

19 895.80 (4) Any recovery under this section shall be reduced by the amount
20 recovered as restitution under ss. 800.093 and 973.20 and ch. 938.

21 SECTION 23. 895.80 (6) of the statutes is created to read:

22 895.80 (6) A person is not criminally liable under s. 943.30 for any action
23 brought in good faith under this section.

24 SECTION 24. 943.245 (3) of the statutes is amended to read:

25 943.245 (3) Notwithstanding sub. (2) (c) and (d), the total amount awarded for
exemplary damages and reasonable attorney fees may not exceed \$500 for each
violation.

Proof w/ STATS.

Proof w/ STATS.

f w/ STATS.

§ 24

25

ASSEMBLY BILL 924

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Proof w/ STATS.

SECTION 25. 943.245 (4) of the statutes is amended to read:

943.245 (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.

SECTION 26. 943.50 (3) of the statutes is amended to read:

943.50 (3) A merchant, a merchant's adult employe or a merchant's security agent who has 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, 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 27. 943.51 (3) of the statutes is amended to read:

ASSEMBLY BILL 924

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Proof w/ STAFF.

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 \$500 for each violation.

SECTION 28. 943.51 (3m) of the statutes is amended to read:

943.51 (3m) Notwithstanding sub. (2), the total amount awarded for exemplary damages and reasonable attorney fees may not exceed \$300 for each violation 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 29. **Initial applicability.**

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

SECTION 30. **Effective date.**

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

(END)

[INSERTS]
1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1588/?ins
RPN.....:....

1 [insert 3-20:] ✓

2 SECTION 1. 812.37 (1) of the statutes is amended to read:

3 812.37 (1) Except as provided in s. 812.34 (l), the debtor may claim an
4 exemption under s. 812.34 (2) (b), or may assert any defense to the earnings
5 garnishment, by completing the answer form and delivering or mailing it to the
6 garnishee. ^{(insert 3-20-6) ✓} The debtor or debtor's spouse may file an answer or an amended answer
7 and documentation at any time before or during the effective period of the earnings garnishment.

History: 1993 a. 80; 1997 a. 291.

***NOTE: The amendment of this subsection ✓ does not address the addition of s.
812.34 (2) (c) ✓ of the statutes by this bill. Is the debtor required to submit the schedules
and worksheets if he or she is claiming an exemption under s. 812.34 (2) (c)? ^(?) The answer
to this question also affects 812.37 (2), 812.38 (2) and 812.44 (4) (form) 3., as amended in
this bill.

8 [insert 5-16] ✓

9 SECTION 2. 812.44 (4) (form) 1. of the statutes is amended to read:

10 812.44 (4) (form) 1. Your household income is below the federal poverty level? ✓
11 ~~or this garnishment would cause that to happen.~~ See the enclosed schedules and
12 worksheet to determine if you qualify for this exemption.
13

History: 1993 a. 80, 490; 1995 a. 27, 224; 1997 a. 35, 250, 291; s. 13. 93 (2) (c).

***NOTE: I add this subdivision to the draft to be consistent with the change made
in s. 812.34 (2) (b) (intro.) ✓

before the garnishment is in effect.

SECTION 8. 812.37 (1) of the statutes is amended to read:
812.37 (1) The debtor may claim an exemption under s. 812.34 (2) (b), or assert any defense to the earnings garnishment, by completing the answer form and delivering or mailing it to the garnishee, along with the schedules and worksheets provided under s. 812.35 (4) (b) and any other documents supporting his or her

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3-20-6

1997 - 1998 Legislature
ASSEMBLY BILL 924

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SECTION 8

answer, such as a wage statement, a court order regarding the payment of support or a document showing the receipt of any of the benefits listed under s. 812.44 (4)

(form) 2) The debtor or debtor's spouse may file an answer or an amended answer and documentation at any time before or during the effective period of the earnings garnishment.

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SECTION 9. 812.37 (2) of the statutes is amended to read:

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

SECTION 10. 812.38 (1) (b) of the statutes is amended to read:

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

SECTION 11. 812.38 (2) of the statutes is amended to read:

812.38 (2) A motion or petition under sub. (1) may be made at any time during

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**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU-**

LRB-1588/7dn

RPN.fjt:....

-b
jlg

I drafted this as a preliminary because of the questions I raise with my **** Notes in the body of the bill. Please review those notes.

cs

Robert P. Nelson
Senior Legislative Attorney
267-7511

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1588/P1dn
RPN:pgt&jlg:lp

February 12, 1999

I drafted this as a preliminary because of the questions I raise with my **** NOTES in the body of the bill. Please review those notes.

Robert P. Nelson
Senior Legislative Attorney
267-7511



End of Aug.
State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-1588/P1
RPN:pgt&jlg:lp

For: Montgomery

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Redraft 8-10-'99
See text and attached

Contact
Doug Johnson
Tom Bretz
257-3541

Received - 8/15/99

1 AN ACT to amend 799.01 (1) (c), 799.01 (1) (d) (intro.), 799.01 (2), 812.34 (1) (a),
 2 812.34 (2) (b) (intro.) and 1., 812.37 (1), 812.37 (2), 812.38 (1) (b), 812.38 (2),
 3 812.44 (3) (form) 3., 812.44 (4) (form) 1., 812.44 (4) (form) 3., 814.04 (1) (a),
 4 815.18 (3) (k), 895.035 (2), 895.80 (2), 895.80 (3) (b), 943.245 (3), 943.245 (4),
 5 943.50 (3), 943.51 (3) and 943.51 (3m); ~~to repeal and recreate~~ 895.80 (3) (a)
 6 and 895.80 (4); and to create 757.69 (1) (p), 812.34 (2) (c), 895.08; 895.80 (3) (c)
 7 and 896.80 (6) of the statutes; relating to: parental liability for acts of their
 8 minor child, recovery of damages for certain criminal actions, increasing the
 9 jurisdictional amount in small claims court, powers of court commissioners,
 10 garnishment, attorney fees, exemption from execution of accounts, assignment
 11 of debt, earnings garnishment retail theft and recovery' in actions involving
 12 worthless checks.

Analysis by the Legislative Reference Bureau

This bill increases the jurisdictional limit in small claims actions from \$5,000 to ~~\$7,500~~ and increases the statutory attorney fees, ~~including increasing the maximum fee from \$100 to \$200.~~

→ \$10,000

see attached A

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 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**. The bill **requires** the **person** assigning 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. **See Attached B**

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 a.8 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 ~'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~~ **\$7,500**.

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

~~\$10,000~~

1 799.01 (1) (d) Other *civil actions*. (intro.) Other ci ~~ivil actions where the amount~~
2 claimed is ~~\$5,000~~ \$7,500 or less, if the actions or proceedings are:

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

4 799.01 (2) PERMISSIVE USE OF SMALL CLAIMS PROCEDURE. A taxing authority may
5 use the procedure in this chapter in an action to recover a tax from a person liable
6 for that tax where the amount claimed, including interest and penalties, is ~~\$5,000~~
7 \$7,500 or less. This chapter is not the **exclusive** procedure for those actions.

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

9 812.34 (1) (a) Was ordered by a court under s. 128.2 1 or ~~by a court~~ of bankruptcy
10 under ~~Title 11,~~ USC 1301 et. seq.

11 SECTION 6. 812.34 (2) (b) (intro.) and 1. of the statutes ~~are~~ amended to read:

12 812.34 (2) (b) (intro.) The debtor's earnings are ~~totally~~ exempt from
13 garnishment under this subchapter **if**:

- 14 1. The debtor's household income is below the ~~poverty line, or the garnishment~~
15 ~~would cause that result;~~ or

16 SECTION 7. 812.34 (2) (c) of the statutes is created to read:

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

21 SECTION 8. 812.37 (1) of the statutes is amended to read:

22 812.37 (1) Except as provided in s. 81234 (1), the debtor may **claim** an
23 exemption under s. 812.34 (2) (b), or may assert any defense to the earnings
24 garnishment, by completing the answer form and delivering or mailing it to the
25 ~~garnishee, along with the check sheets and work~~ provided under a. 812.36 (4) (b)

1999 - 2000 Legislature

- 4 -

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RPN:pgt&jlg:lp
SECTION 8

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

Yes

---NOTE: The amendment of this subsection does not address the addition of s. 812.34 (2)(c) of the statutes by this bill. Is the debtor required to submit the schedules and worksheets if he or she is claiming an exemption under s. 812.34 (2)(c)? The answer to this question also affects 812.37(2), 812.38(2) and 812.44 (4) (form) 3, as amended in this bill.

6 SECTION 9; 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 10. 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 is
 16 insufficient for the debtor to acquire the necessities of life for the debtor and his or
 17 her dependents, The petition shall state with reasonable specificity the grounds for
 18 the relief requested and shall include any additional information necessary to
 19 support the petition.

20 SECTION 11. 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

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

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

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

20 SECTION 13. 812.44 (4) (form) 1. of the statutes is amended to read:

21 **812.44 (4)** (form) 1. Your household income is below the federal poverty **level,**
 22 ~~or this garnishment would cause that to happen.~~ See the enclosed schedules and
 23 worksheet to determine if *you* qualify for this exemption.

Fine

***NOTE: I add this subdivision to the draft to be consistent with the change made
 ins. 81234 (2) (b) (intro.).

1 **SECTION 14. 812.44 (4) (form) 3. of the statute is amended to read:**

2 812.44 **(4)** (form) 3. At least 25% of your disposable **earnings are assigned** by
3 court **order** for support.

4 **If you qualify** for a complete exemption, you must give or **mail** a **copy** of the
5 **enclosed debtor's answer form to the garnisheed**
6 **worksheets and any other documents supporting your answer, such as a wage**
7 **statement, a court order regarding the payment of support or a document showing**
8 **the receipt of any of the benefits listed under paragraph 2 above in order to receive**
9 **that increased exemption.**

10 **If your circumstances change while the garnishment is in effect, you may file**
11 **a new answer at any time.**

12 **If you do not qualify for a complete exemption, but you will not be able to acquire**
13 **the necessities of life for yourself and your dependents if your earnings are reduced**
14 **by this earnings garnishment, you may ask the court in which this earnings**
15 **garnishment was filed to increase your exemption or grant you other relief.**

16 **IF YOU NEED ASSISTANCE**

17 **CONSULT AN ATTORNEY**

18 If you have earnings that are being garnisheed that are **exempt** or subject to a
19 **defense, the sooner you file your answer or seek relief from** the court, the sooner such
20 relief can be provided. This **earnings garnishment affects your earnings in pay**
21 **periods beginning** within **13** weeks after it was served on the garnishee. You may
22 agree in writing with the creditor to extend it for additional **13-week** periods until
23 the debt is paid.

24 **PENALTIES .**

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 15. 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~~ \$3,000 or over, attorney fees shall be ~~\$100~~ \$200; when it is less than ~~\$1,000~~
7 \$3,000 and is ~~\$500~~ \$1,000 or over, ~~\$50~~ \$150; when it is less than ~~\$500~~ \$1,000 and is
8 ~~\$200~~ \$500 or over, ~~\$25~~ \$75; and when it is less than ~~\$200~~, ~~\$15~~ \$500, \$50.

9 SECTION 16. 815.18 (3) (k) of the statutes is amended to read:

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

13 SECTION 17. 895.035 (2) of the statutes is amended to read:

14 895.035 (2) The parent or parents with custody of a minor child, in any
15 circumstances where he, she or they may not be liable under the common law, are
16 liable for damages to property, for the cost of repairing or replacing property or
17 removing the marking, drawing, writing or etching from property regarding a
18 violation under s. 943.017, for the value of unrecovered stolen property or for
19 personal injury attributable to a wilful, malicious or wanton act of the child. The
20 parent or parents with custody of their minor child are jointly and severally liable
21 with the child for the damages imposed under s. ~~895.80, 943.212, 943.24, 943.245~~
22 ~~or 943.51 for their child's violation of s. 943.01, 943.20, 943.21, 3, 24, 943.26~~
23 ~~943.34, 943.395, 943.41, 943.50 or 943.61.~~

• =Nom Sections 943.011, 943.201 and 943.30 are newly created crimes. Do you want those added to the list?

Yes

1999 - 2000 Legislature

- 8 -

LRB-1588/P1
RPN:pgt&jlg:lp
SECTION 18

1 **SECTION 18.** 895.08 of the statutes is created to read:

2 **895.08 Assignments of debt.** Any person may assign a debt owed to that
3 person to any other person. The person assigning the debt shall send a notice to the
4 debtor of the assignment by mail at the debtor last-known address within 30 days,
5 after the **assignment**. If the person assigning the debt **fails** to send a **notice** to the
6 debtor within the **30-day** period **required** by this section, the assignment is
7 **ineffective** until the **notice** is sent to the **debtor**.

8 **SECTION 19.** 895.80 (2) of the statutes is amended to read:

9 **895.80 (2)** The burden of proof in a civil action under sub. (1) is with the person
10 who suffers damage or loss to prove his or her case a violation of s. 943.01, 943.20,
11 943.21, 943.24, 943.26, 943.34, 943.395, 943.41, 943.50 or 943.61 by a preponderance
12 of the credible evidence. A conviction under s. 943.01, 943.20, 943.21, 943.24, 943.26,
13 943.34, 943.395, 943.41, 943.50 or 943.61 is not required to bring an action, obtain
14 a judgment or collect on that judgment under this section.

***NOTE: See the ***NOTE after s. 895.035 (2).

Yes

15 **SECTION 20.** 895.80 (3) (a) of the statutes is **repealed and** recreated to read:

16 895.80 (3) (a) **Actual damages**, including the retail or replacement value of
17 damaged, used or lost property, whichever is greater, for a violation of s. 943.01,
18 943.20, 943.21, 943.24, 943.26, 943.34, 943.395, 943.41, 943.50 or 943.61.

***NOTE: See the ***NOTE after s. 895.035 (2).

Yes

19 **SECTION 21.** 896.80 (3) (b) of the statutes is amended to read:

20 895.80 (3) (b) ~~All costs of investigation and litigation that were reasonably~~
21 incurred, including the value of the time spent by any employe or agent of the victim,
22 court costs and reasonable attorney fees.

23 **SECTION 22.** 895.80 (3) (c) of the statutes is created to read: .

1 . 895.80 (3) (c) Exemplary damages of not more, than 3 times the amount
2 awarded under par. (a). No additional proof is required under this section for an
3 award of exemplary damages under **this paragraph.**

4 **SECTION 23.** 895.80 (4) of the statutes is repealed and recreated to read:

5 895.80 (4) Any recovery under this **section** shall be reduced by the amount
6 recovered **as restitution** under **ss. 800.093** and 973.20 **and ch. 938.**

7 **SECTION 24.** 895.80 (6) **of the statutes** is created to read:

8 89580 (6) A person is not criminally liable **under s. 943.30** for any **action**
9 **brought in good faith under this section.**

10 **SECTION 25.** 943.246 (3) of the statutes is amended to read:

11 943.246 (3) Notwithstanding sub. (2) (c) and (d), the **total** amount awarded for
12 exemplary damages and reasonable attorney fees may not exceed \$500 **for each**
13 **violation.**

14 **SECTION 26.** 943.245 (4) of the statutes is amended to read:

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

24 **SECTION 27.** 943.50 (3) of the statutes is amended to read:

1999 - 2000 Legislature

- 10 -

LRB-1588/P1
RPN:pgt&jlg:lp
SECTION 27

1 943.50 (3) A merchant, a merchant's adult **employe** or a merchant's security
 2 agent who has **reasonable** cause for believing that a person has violated this section
 3 in his or her presence may detain the **person** in a reasonable manner for a reasonable
 4 ~~length of time to deliver the person to a peace officer, or to his or her parent or~~
 5 ~~guardian in the case of a minor.~~ The detained person must be promptly informed of
 6 the **purpose** for the detention and be permitted to make phone calls, but he or she
 7 shall not be interrogated or searched against his or her will ~~before the arrival of a~~
 8 ~~peace officer who may conduct a lawful interrogation of the accused person.~~ The
 9 ~~merchant, merchant's adult employe or merchant's security agent may release the~~
 10 ~~detained person before the arrival of a peace officer or parent or guardian.~~ Any
 11 ~~merchant, merchant's adult employe or merchant's security agent who acts in good~~
 12 ~~faith' in any act authorized under this section is immune from civil or criminal~~
 13 liability for those acts.

14 **SECTION 28. 943.51 (3)** of the statutes **is** amended to read:

15 **943.51 (3)** Notwithstanding sub. (2) **and** except as provided in sub. **(3m)**, the
 16 total **amount** awarded for exemplary damages and reasonable attorney fees may not
 17 exceed \$500 **for each violation.**

18 **SECTION 29. 943.51 (3m)** of the statutes is amended to read:

19 943.51 (3m) **Notwithstanding** sub. (2), the total amount awarded for
 20 exemplary -damages and reasonable attorney fees may not exceed \$300 **for each**
 21 **violation** if the action is brought against a minor or against the parent who has
 22 custody of their minor child for the loss caused by the minor.

23 **SECTION 30. Initial applicability.**

24 (1) This act ~~irst~~ applies to actions commenced on the effective date of this
 25 subsection.

Statutory Atty Fees & Costs ^{Attach - A.}

* * *

COURTS AND PROCEDURE * * *

CIRCUIT COURTS

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 |

Change
To...

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

| <u>Amount recovered/value of property</u> | <u>Fee, not to exceed</u> |
|---|---------------------------|
| Greater than \$5,000 | \$500 |
| \$1,000 to \$5,000 | \$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.
include also

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

✓ Allow judge discretion to award lesser fee in cases of demonstrated hardship.
include also

of person paying
to fee

ASSEMBLY BILL 133

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, when the clerk of circuit court collects a fee from a person commencing a civil action, including garnishment, small claims and forfeiture actions, the clerk is also required to collect a \$7 justice information system fee. Four-sevenths of the \$7 fee is used to pay the costs incurred by the department of administration to develop and operate the automated justice information system. Two-sevenths of the \$7 fee is used to pay the costs incurred by the director of state courts for the operation of the circuit court, court of appeals and supreme court automated information systems and for the payment of interpreter fees. The remaining \$1 of the fee does not have a specified purpose.~~

~~This bill raises the justice information system fee from \$7 to \$9 and uses the additional \$2 of each fee to pay the costs incurred by the director of state courts for the operation of the circuit court, court of appeals and supreme court automated information systems and for the payment of interpreter fees.~~

PUBLIC DEFENDER

~~Under current law, the state public defender (SPD) provides legal representation to indigent persons in criminal, delinquency and certain related cases. The SPD assigns cases either to staff attorneys in the agency's trial division or local private attorneys. A staff attorney working in the trial division is expected to meet an annual caseload standard. This bill provides that, beginning on July 1, 2000, the SPD may exempt up to ten staff attorneys in the trial division from the annual caseload standards based on the need of those attorneys to perform other assigned duties.~~

OTHER COURTS AND PROCEDURE

~~Under current law, the department of agriculture, trade and consumer protection (DATCP) administers and enforces certain consumer protection and trade practices laws. These laws include laws prohibiting or regulating methods of competition, fraudulent representations, fraudulent drug advertising, prize notices, mail-order sales, purchases of vegetables and dairy products from farmers and advertising of telecommunication services. They also include laws relating to weights and measures. A person found to have violated one of these laws is subject to a forfeiture or a fine.~~

~~This bill requires a court to impose an assessment equal to 15% of the fine or forfeiture if the court imposes a fine or forfeiture for a violation of any of these laws or local ordinances enacted pursuant to these laws. The assessments that are~~

Bad Checks - Notice

943.24 Issue of worthless check.

(1) Whoever issues any check or other order for the payment of not more than \$1,000 which, at the time of issuance, he or she intends shall not be paid is guilty of a Class A misdemeanor.

(2) Whoever issues any single check or other order for the payment of more than \$1,000 or whoever within a **15-day** period issues more than one check or other order amounting in the aggregate to more than \$1,000 which, at the time of issuance, the person intends shall not be paid is guilty of a Class E felony.

(3) Any of the following is prima facie evidence that the person at the time he or she issued the check or other order for the payment of money, **intended** it should not be paid:

(a) Proof that, at the-time of issuance, the person did not have an account with the drawee; or

(b) Proof that, at the time of issuance, the person did not have sufficient funds or credit with **the** drawee and **that the person failed** to pay the check or other order within 5 days after receiving w&ten notice of nonpayment or dishonor **delivered by regular mail to either the person's last known address, or to the address provided on the check of other order;** or

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

(4) **This** section does not apply to a postdated check or to a check given for a past consideration, except a payroll check.

(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 .

(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 .

(c) **If the** court orders restitution under pars. (a) and (b), any amount of restitution paid to the **victim** under one of those paragraphs reduces the amount the violator must pay in restitution to that victim under the **other paragraph.**

History: 1977 c. 173; 1985 a. 179; 1987 a. 398; 1991 a. **39, 40**; 1993 a. 71.

Grace period under (3) does not transform issuance of worthless check into debt for which one may not be imprisoned under Art. I, sec. 16. **Locklear v. State**, 86 **Wis.2d** 603,273 NW 2d 334 (1979).



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-1588/21
RPN:pgt&jlg:lp

D. R. Note

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

repeal

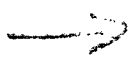
1 **AN ACT to amend** 799.01 (1) (c), 799.01 (1) (d) (intro.), 799.01 (2), 812.34 (1) (a),
 2 812.34 (2) (b) (intro.) and 1., 812.37 (1), 812.37 (2), 812.38 (1) (b), 812.38 (2),
 3 812.44 (3) (form) 3., 812.44 (4) (form) 1., 812.44 (4) (form) 3., 814.04 (1) (a),
 4 815.18 (3) (k), 895.035 (2), 895.80 (2), 895.80 (3) (b), 943.245 (3), 943.245 (4),
 5 943.50 (3), 943.51 (3) and 943.51 (3m); **to repeal and recreate 895.80 (3) (a)**
 6 **and 895.80 (4); and to create 757.69 (1) (p), 812.34 (2) (c), 895.08, 895.80 (3) (c)**
 7 **and 395.80 (6) of the statutes; relating** to: parental liability for acts of their
 8 minor child, recovery of damages for certain criminal actions, increasing the
 9 jurisdictional amount in small claims court, powers of court commissioners,
 10 garnishment, attorney fees, exemption from execution of accounts, assignment
 11 of debt, earnings garnishment retail theft and recovery in actions involving
 12 worthless checks.

\$10,000!

Analysis by the Legislative Reference Bureau

This bill increases the jurisdictional limit in small claims actions from \$5,000 to ~~\$7,500~~ and increases the statutory attorney fees, including increasing the maximum fee from \$100 to ~~\$200~~.

✓
Insert
Act 1



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 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 assigning 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}

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 employe, 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.

to recover the debt, the court may allow the payment of reasonable attorney fees in those cases.

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~~ ~~\$7,500~~ \$10,000.

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

\$10,000

1 799.01 (1) (d) *Other civil actions.* (intro.) Other civil actions where the amount
2 claimed is \$5,000 ~~\$7,500~~ or less, if the actions or proceedings are:

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

4 799.01 (2) PERMISSIVE USE OF SMALL CLAIMS PROCEDURE. A taxing authority may
5 use the procedure in this chapter in an action to recover a tax from a person liable
6 for that tax where the amount claimed, including interest and penalties, is \$5,000
7 ~~\$7,500~~ or less. This chapter is not the exclusive procedure for those actions.

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

9 812.34 (1) (a) Was ordered by a court under s. 128.21 or by a court of bankruptcy
10 under Title 11, USC 1301 ~~et seq.~~ *to 1330*

insert
10

11 SECTION 6. 812.34 (2) (b) ~~1. of the statutes~~ *is* amended to read:

12 812.34 (2) (b) (intro.) The debtor's earnings are totally exempt from
13 garnishment under this subchapter if:

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

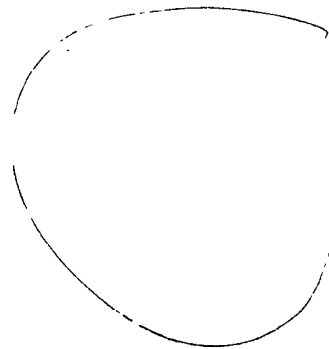
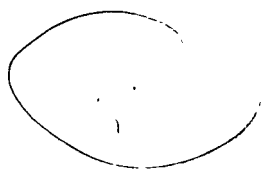
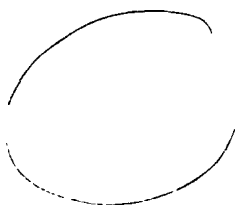
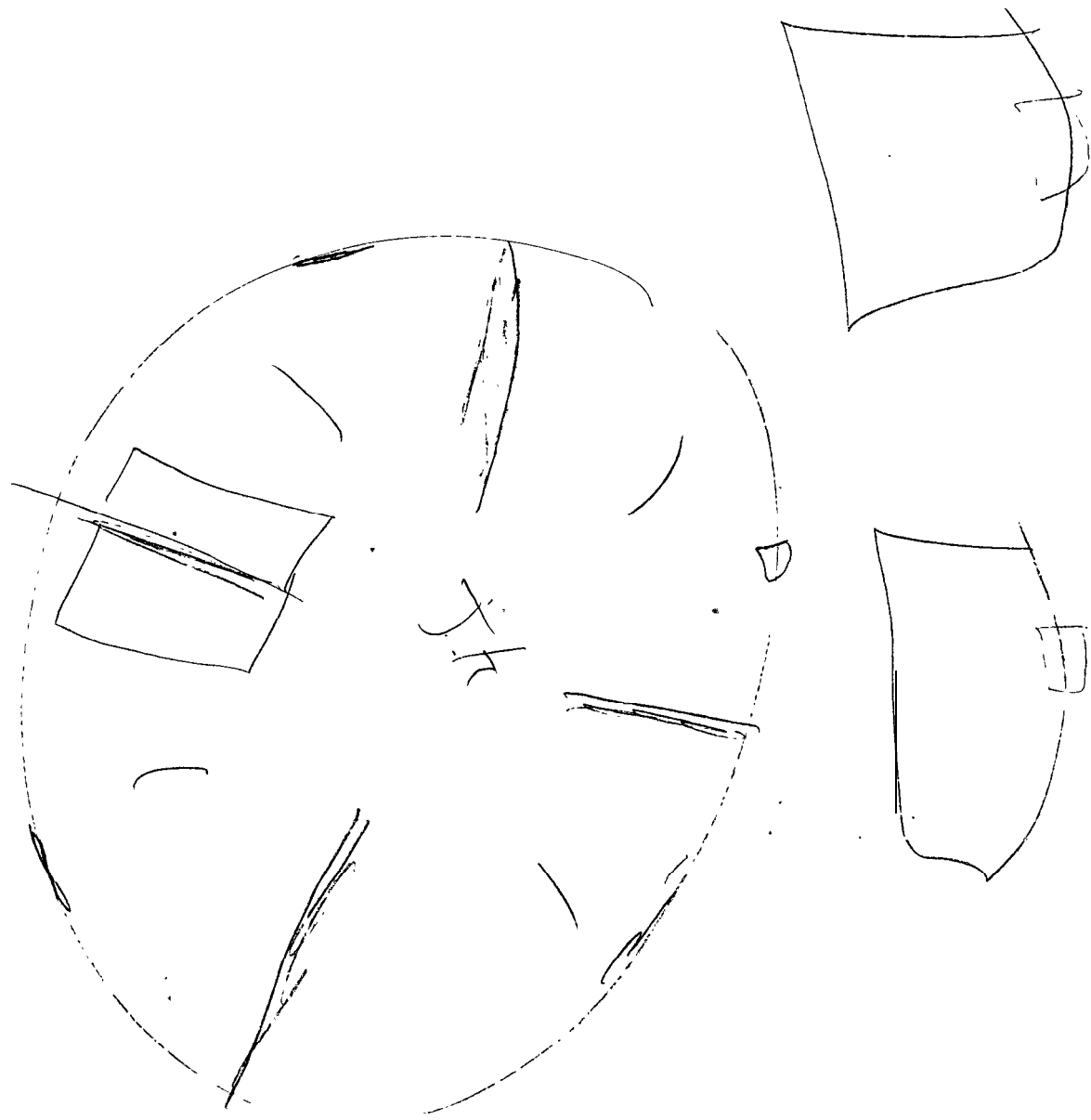
16 SECTION 7. 812.34 (2) (c) of the statutes is created to read:

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

21 SECTION 8. 812.37 (1) of the statutes is amended to read:

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

OCUT - 2x when hid in our
car



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

~~****NOTE: The amendment of this subsection does not address the addition of s.
 812.34 (2) (c) of the statutes by this bill. Is the debtor required to submit the schedules
 and worksheets if he or she is claiming an exemption under s. 812.34 (2) (c)? The answer
 to this question also affects 812.37 (2), 812.38 (2) and 812.44 (4) (form) 3., as amended in
 this bill.~~

6 SECTION 9. 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 10. 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)} is ~~is~~
 16 insufficient for the debtor to acquire the necessities of life for the debtor and his or
 17 her dependents. The petition shall state with reasonable specificity the grounds for
 18 the relief requested and shall include any additional information necessary to
 19 support the petition.

20 SECTION 11. 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

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

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

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

20 **SECTION 13.** 812.44 (4) (form) 1. of the statutes is amended to read:

21 812.44 (4) (form) 1. Your household income is below the federal poverty level,
2 2 ~~or this garnishment would cause that to happen.~~ See the enclosed schedules and
23 worksheet to determine if you qualify for this exemption.

NOTE: I add this subdivision to the draft to be consistent with the change made
in s. 812.34 (2) (b) (intro.).

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 15.** 814.04 (1) (a) of the statutes is amended to read:

5 8 14.04 (1) (a) When the amount recovered or the value of the property involved
6 is ~~\$1,000~~ \$3,000 or over, attorney fees shall be ~~\$100~~ \$200; when it is less than ~~\$1,000~~
7 \$3,000 and is ~~\$500~~ \$1,000 or over, ~~\$50~~ \$150; when it is less than ~~\$500~~ \$1,000 and is
8 ~~\$200~~ \$500 or over, ~~\$25~~ \$75; and when it is less than ~~\$200~~, ~~\$15~~ \$500, \$50.

9 **SECTION 16.** 815.18 (3) (k) of the statutes is amended to read:

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

13 **SECTION 17.** 895.035 (2) of the statutes is amended to read:

14 895.035 (2) The parent or parents with custody of a minor child, in any
15 circumstances where he, she or they may not be liable under the common law, are
16 liable for damages to property, for the cost of repairing or replacing property or
17 removing the marking, drawing, writing or etching from property regarding a
18 violation under s. 943.017, for the value of unrecovered stolen property or for
19 personal injury attributable to a wilful, malicious or wanton act of the child. The
20 parent or parents with custody of their minor child are jointly and severally liable
21 with the child for the damages imposed under s. 895.80, 943.212, 943.24, 943.245
22 or 943.51 for their child's violation of s. 943.01, 943.20, 943.21, 943.24, 943.26,
23 943.34, 943.395, 943.41, 943.50 or 943.61.

****NOTE: Sections 943.011, 943.201 and **943.30** are newly created crimes. Do you
want those added to the list?

1 SECTION 18. 895.08 of the statutes is created to read:

2 895.08 Assignments of debt. Any person may assign a debt owed to that
3 person to any other person. The person assigning the debt shall send a notice to the
4 debtor of the assignment by mail at the debtor la&known address within 30 days
5 after the assignment. If the person assigning the debt fails to send a notice to the
6 debtor within the 30-day period required by this section, the assignment is
7 ineffective until the notice is sent to the debtor.

8 SECTION 19. 895.80 (2) of the statutes is amended to read:

9 895.80 (2) The burden of proof in a civil action under sub. (1) is with the person
10 who suffers damage or loss to prove his or her case a violation of s. 943.01, 943.20,
11 943.21, 943.24, 943.26, 943.34, 943.395, 943.41, 943.50 or 943.61 by a preponderance
12 of the credible evidence. A conviction under s. 943.01, 943.20, 943.21, 943.24, 943.26,
13 943.34, 943.395, 943.41, 943.50 or 943.61 is not required to bring an action, obtain
14 a judgment or collect on that judgment under this section.

***NOTE: See the ***NOTE after s. 895.035 (2).

15 SECTION 20. 895.80 (3) (a) of the statutes is repealed and recreated to read:

16 895.80 (3) (a) Actual damages, including the retail or replacement value of
17 damaged, used or lost property, whichever is greater, for a violation of s. 943.01,
18 943.20, 943.21, 943.24, 943.26, 943.34, 943.395, 943.41, 943.50 or 943.61.

***NOTE: See the ***NOTE after s. 895.035 (2).

19 SECTION 21. 895.80 (3) (b) of the statutes is amended to read:

20 895.80 (3) (b) All costs of investigation and litigation that were reasonably
21 incurred, including the value of the time snent by any emnlove or agent of the victim,
22 court costs and reasonable attorney fees.

23 SECTION 22. 895.80 (3) (c) of the statutes is created to read:

✓
Insert
8-7

✓ 943.011, 943.012,
943.017

943.201

✓ 943.011, 943.012,
943.017

X

1 895.80 (3) (c) Exemplary damages of not more than 3 times the amount
2 awarded under par. (a). No additional proof is required under this section for an
3 award of exemplary damages under this paragraph.

4 **SECTION 23.** 895.80 (4) of the statutes is repealed and recreated to read:

5 895.80 (4) Any recovery under this section shall be reduced by the amount
6 recovered as restitution under ss. 800.093 and 973.20 and ch. 938.

7 **SECTION 24.** 895.80 (6) of the statutes is created to read:

8 895.80 (6) A person is not criminally liable under s. 943.30 for any action
9 brought in good faith under this section.

10 **SECTION 25.** 943.245 (3) of the statutes is amended to read:

11 943.245 (3) Notwithstanding sub. (2) (c) and (d), the total amount awarded for
12 exemplary damages and reasonable attorney fees may not exceed \$500 for each
13 violation.

14 **SECTION 26.** 943.245 (4) of the statutes is amended to read:

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

24 **SECTION 27.** 943.50 (3) of the statutes is amended to read:

✓
insert
9-9

1 . 943.50 (3) A merchant, a merchant's adult employe or a merchant's security
2 agent who has reasonable cause for believing that a person has violated this section
3 in his or her presence may detain the person in a reasonable manner for a reasonable
4 length of time ~~to deliver the person to a peace officer, or to his or her parent or~~
5 ~~guardian in the case of a minor.~~ The detained person must be promptly informed of
6 the purpose for the detention and be permitted to make phone calls, but he or she
7 shall not be interrogated or searched against his or her will ~~before the arrival of a~~
8 ~~peace officer who may conduct a lawful interrogation of the accused person.~~ The
9 ~~merchant, merchant's adult employe or merchant's security agent may release the~~
10 ~~detained person before the arrival of a peace officer or parent or guardian.~~ Any
11 merchant, merchant's adult employe or merchant's security agent who acts in good
12 faith in any act authorized under this section is immune from civil or criminal
13 liability for those acts.

14 **SECTION 28.** 943.51 (3) of the statutes is amended to read:

15 943.51 (3) Notwithstanding sub. (2) and except as provided in sub. (3m), the
16 total amount awarded for exemplary damages and reasonable attorney fees may not
17 exceed \$500 for each violation.

18 **SECTION 29.** 943.51 (3m) of the statutes is amended to read:

19 943.51 **(3m)** Notwithstanding, sub. (2), the total amount awarded for
20 exemplary damages and reasonable attorney fees may not exceed \$300 for each
21 violation if the action is brought against a minor or against the parent who has
22 custody of their minor child for the loss caused by the minor.

23 **SECTION 30. Initial applicability.**

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

BILL

Inserf An 2-1

deoxyribonucleic acid data bank of sex offenders, human immunodeficiency virus (HIV) testing when certain persons have been significantly exposed to HIV, adult jurisdiction and criminal penalties for certain persons who commit assault, transfers to a state treatment facility, aftercare planning, escape, notification of victims and witnesses when a juvenile is released or escapes from correctional custody, taking runaways into custody, strip searches and an exception to the open records law when disclosing a record would endanger the security of an institution. This bill applies those laws to juveniles who are placed in a secured group home in the same manner as those laws apply to juveniles who are placed in a secured correctional facility or a secured CCI.

Under current law, DOC provides a corrective sanctions program for juveniles who have been placed under the supervision of DOC. Under the corrective sanctions program, DOC must place a participant in the community, provide intensive surveillance of the participant and provide an average of \$5,000 per year per slot to purchase community-based treatment services for participants. This bill reduces the amount that DOC must provide to purchase community-based treatment services for corrective sanctions program participants to \$3,000 per year per slot.

COURTS AND PROCEDURE

CIRCUIT COURTS

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, not to exceed</u> |
|---|---------------------------|
| Greater than \$5,000 ^{\$10,000} | \$500 |
| \$1,000 to \$5,000 ^{\$10,000} | \$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 the bill, the court may reduce the fee for demonstrated hardships.*

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

↙

BILL

Insert
an-1

recoverable by the **successful** litigant, but are limited to \$60 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. (end an-1)

Under current law, when the clerk of circuit court collects a fee from a person commencing a civil action, including garnishment, small claims and forfeiture actions, the clerk is also required to collect a \$7 justice information system fee. Four-sevenths of the \$7 fee is used to pay the costs incurred by the department of administration to develop and operate the automated justice information system. Two-sevenths of the \$7 fee is used to pay the costs incurred by the director of state courts for the operation of the circuit court, court of appeals and supreme court automated information systems and for the payment of interpreter fees. The remaining \$1 of the fee does not have a specified purpose.

This bill raises the justice information system fee from \$7 to \$9 and uses the additional \$2 of each fee to pay the costs incurred by the director of state courts for the operation of the circuit court, court of appeals and supreme court automated information systems and for the payment of interpreter fees.

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Under current law, the state public defender (SPD) provides legal representation to indigent persons in criminal, delinquency and certain related cases. The SPD assigns cases either to staff attorneys in the agency's trial division or local private attorneys. A staff attorney working in the trial division is expected to meet an annual caseload standard. This bill provides that, beginning on July 1, 2000, the SPD may exempt up to ten staff attorneys in the trial division from the annual caseload standards based on the need of those attorneys to perform other assigned duties.

OTHER COURTS AND PROCEDURE

Under current law, the department of agriculture, trade and consumer protection (DATCP) administers and enforces certain consumer protection and trade practices laws. These laws include laws prohibiting or regulating methods of competition, fraudulent representations, fraudulent drug advertising, prize notices, mail-order sales, purchases of vegetables and dairy products from farmers and advertising of telecommunication services. They also include laws relating to weights and measures. A person found to have violated one of these laws is subject to a forfeiture or a fine.

This bill requires a court to impose an assessment equal to 15% of the fine or forfeiture if the court imposes a fine or forfeiture for a violation of any of these laws or local ordinances enacted pursuant to these laws. The assessments that are

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1588/lins
RPN:pgt&jlg:lp

1 insert 3-10:

2 **SECTION 1.** 812.34 (2) (a) ^X of the statutes is amended to read:

3 812.34 (2) (a) Unless the court grants relief under s. 812.38 (2) or par. (b) or ^(c)
4 applies, 80% of the debtor's disposable earnings are exempt ~~from~~ garnishment under
5 this subchapter.

6 **History:** 1993 a. 80.

7 insert 6-3:

8 ~~¶~~ If the garnishment of 20%[✓] of your disposable income would result in the income
9 of your household being below the poverty line, the garnishment is limited to the
10 amount of your household's income in excess of the novertv line.

11
12 insert 64:

13 ~~¶~~ or for a limit on the amount of the garnishment to the amount that your
14 household's income exceeds the novertv line. ~~¶~~

15
16 insert 9-9:

17 **SECTION 2.** 943.24 (3) (b) ^X of the statutes is amended to read:

18 943.24 (3) (b) Proof that, at the time of issuance, the person did not have
19 sufficient funds or credit with the drawee and that the person failed within 5 days
20 after receiving written[✓] notice of nonpayment or dishonor to pay the check or other
21 order, delivered by regular mail to either the person's lastknown address, or to the
22 address provided on the check or other order; or

23 **History:** 1977 c. 173; 1985 a. 179; 1987a. 398; 1991 a. 39, 40; 1993a. 71.

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



INS 9-9 cont

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 nerson's
5 last-known address, or to the address provided on the check or other order. ✓

History: 1977 c. 173; 1985 a. 179; 1987 a. 398; 1991 a. 39, 40; 1993 a. 71.

(end ins)

BILL

Insert 7-8 cont.

1 telephoning, electronic communications, facsimile transmissions and express or
2 overnight delivery; depositions including copies; plats and photographs, not
3 exceeding ~~\$50~~ \$100 for each item; an expert witness fee not exceeding ~~\$100~~ \$300 for
4 each expert who **testifies**, exclusive of the standard **witness** fee and mileage which
5 shall also be taxed for each expert; and in actions relating to or affecting the title to
6 lands, the cost of procuring an abstract of title to the lands. Guardian ad litem fees
7 shall not be taxed as a cost or disbursement.

8 **SECTION ~~3094~~ [#] 814.07** of the statutes is amended to read:

9 **814.07 Costs on motion.** Costs may be allowed on a motion, in the discretion
10 of the court or judge, not exceeding ~~\$50~~ \$300, and may be absolute or directed to abide
11 the event of the action. *(end insert 7-8)*

12 **SECTION 3094. 814.60 (2) (a)** of the statutes is amended to read:

13 **814.60 (2) (a)** Penalty assessment imposed by s. ~~165.87~~ 757.05;

14 **SECTION 3095. 814.60 (2) (ai)** of the statutes is created to read:

15 **814.60 (2) (ai)** Consumer information assessment imposed by s. 100.261.

16 **SECTION 3096. 814.613** of the statutes is created to read:

17 **814.613 Fees for driver's license suspensions or revocations.** A court
18 may require a person to pay a fee upon ordering the suspension or revocation of that
19 person's operating privilege under s. 345.47 (1), 800.09 (1) (c), 800.095 (4) (b) 4.,
20 938.17 (2) (d), ~~938.34~~ (8) or 938.343 (2), if the operating privilege was suspended or
21 revoked solely for failure to pay a forfeiture imposed for violating an ordinance that
22 is unrelated to the violator's operation of a motor vehicle. The amount of the fee may
23 not exceed the amount that the court is required to pay under s. 85.135.

24 **SECTION 3097; 814.63 (3) (a)** of the statutes is amended to read:

2 5 **814.63 (3) (a)** Penalty assessment imposed by s. ~~165.87~~ 757.05.

end of insert
↑

↑

Insert 8-7

(B) Assignment

Assignment Right to Sue

Any person may assign a debt owed to that person to any other person, including a debt collection agency licensed by the Wisconsin Department of Financial Institutions ~~which~~ incorporated or unincorporated entity.

Such an assignment shall be in writing for consideration and shall state the amount owed to the original creditor, the name of the debtor and the name of the person to whom the debt is assigned.

(2) An assignee taking assignment of a debt under this section shall take the assignment of the debt in ~~his~~ own name as real parties in interest for the purpose of billing and collection and bringing suit in ~~his~~ own name, ~~provided that~~ no suit ^{regarding an assigned debt} authorized by this section may be instituted on behalf of a collection agency in any court unless the collection agency appears by a duly authorized and licensed attorney at law. In ^{when} such a suit ^{is commenced under this subsection}, the court may, ~~in its discretion~~ ^{may} authorize payment of reasonable attorney's fees and costs to the prevailing party ~~as otherwise provided by law~~.

(3) The person assigning the debt shall send notice to the debtor of the assignment by mail at the debtor's last known address within ~~thirty~~ ³⁰ calendar days ^{making} after the assignment.

If the person assigning the debt fails to send notice to the debtor within the ~~thirty~~ ³⁰ day/period required by this ~~section~~ ^{subsection}, the assignment ~~shall~~ ^{may} not be effective until such notice is sent to the debtor.

(end of insert 8-7)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1588/1dn
RPN: ~~ljl~~ljl:lp

I made some changes in ss. 812.34 (2) (a) and (c), 812.37 (1) and 812.44 (4) (form) 3. to clarify the language related to the limited reduction in the garnishment when the household income dips below the poverty line.

I added some crimes in ss. 895.035 (2), 895.80 (2) and (3) (a).

I made changes in s. 895.08, as proposed, to comply with our drafting conventions.

I did not add the phrase, "but not limited to" after "including" in s. 895.80 (3) (a), because that phrase is redundant.

The changes made to ss. 943.24 (3) (b) and (c) appear to limit the way notice of nonpayment can be made, to only delivery of regular mail. Thus, for example, the bank could not hand the notice to the person while he or she was at the bank. Also, the proposal did not change the requirement that the person actually received the notice.

Robert I? Nelson
Senior Legislative Attorney
Phone: (608) 267-7511

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1588/1dn
RPN;jlg:hmh

September 8, 1999

I made some changes in ss. 812.34 (2) (a) and (c), 812.37 (1) and 812.44 (4) (form) 3. to clarify the language related to the limited reduction in the garnishment when the household income dips below the poverty line.

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Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511

DRAFTER'S NOTE

FROM THE

LEGISLATIVE REFERENCE BUREAU

LRB-1588/1da

RPN;jlg:hmh

10-4

~~REDACTED~~ - '99

September 8, 1999 .

TO: Bob Nelson

6-5648

FROM: Doug Johnson

I made some changes in ss. 812.34 (2) (a) and (c), 812.37 (1) and 812.44 (4) (form) 3. to clarify the language **related to** the limited reduction in the garnishment **when** the household income dips below the poverty line. **Fine**

I added some crimes in ss. 895.035 (2) and 895.80 (2) and (3) (a). **Fine**

I made changes in s. 895.08, **as** proposed, to comply with our drafting conventions. **Fine**

I did not add the phrase, **'but not limited to'** after 'including' in s. 895.80 (3) (a), **because** that phrase is redundant. **Fine**

The changes made to s. 943.24 (3) (b) and (c) appear **to** limit the way notice of nonpayment can be made, to only delivery **of regular** mail. Thus, for example, the bank could not hand the notice to the person while her *or* she was at the bank. Also, the proposal did not change the requirement that the person actually received the notice.

**Not a problem
in day to
day practice.**

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511

See Attached



)



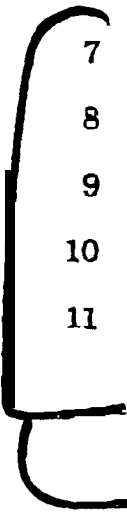
State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-1588/1
RPN:pgt&jlg:hmb

1999 BILL

Re-draft /2 9-23-'99

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., 812.47 (l), 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), 896.035 (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,



→ revise as appropriate re: /2



BILL

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 |
| \$240 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> |
|---|-------------------------------|
| \$5,000 to \$10,000 Greater than \$10,000 | \$500 \$750 |
| \$1,000 to \$10,000 \$1,000 to 4,999.99 | \$300 \$500 |
| 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 the bill, the court may reduce the fee for demonstrated hardship

delete

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 answer to the garnishment the schedules and worksheets that were given to them

1999 - 2000 Legislature

BILL

Revise

LRB-1588/1
RPN:pgt&jlg:hmh
SECTION 16

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

~~814.04 (1) (a) When the amount recovered or the value of the property involved is \$1,000 or over equal to or greater than the maximum amount specified in s. 799.01 (1) (d), attorney fees shall be \$100 \$500; when it is less than \$1,000 and is \$500 or over, \$50 the maximum amount specified in s. 799.01 (1) (d), but is \$1,000 or more, attorney fees shall be \$300; when it is less than \$500 and is \$200 or over, \$25; and when it is less than \$200, \$15 \$1,000, attorney fees shall be \$100. In all other cases in which there is no amount recovered or that do not involve property, attorney fees shall be \$500. The court may award a lower fee if the person required to pay the fee shows the court that payment of the fee would create a hardship.~~

delete

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

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

814.04 (2) DISBURSEMENTS. All the necessary disbursements and fees allowed by law; the **compensation** of referees; a reasonable **disbursement** for the **service** of process or other papers in an action when **the same** are served by a person authorized by law other than an **officer**, but the item may not exceed the authorized sheriffs fee for the same service; amounts actually paid out for certified **and other** copies of papers and records in any **public office**; postage, ~~telegraphing~~ **photocopying, telephoning, electronic communications, facsimile trans** and express **or overnight delivery**; depositions including copies; plats and photographs, **not** exceeding ~~\$50~~ **\$100** for each item; **an** expert witness fee not exceeding ~~\$100~~ **\$300** for each expert who testifies, exclusive of the standard witness fee and mileage which **shall also** be taxed for each expert; and in actions relating to or **affecting** the **title** to lands, the cost of procuring an abstract of title to the lands. Guardian ad **litem** fees shall not be taxed as a cost or disbursement.

BILL

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

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

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

14 895.80 (2) The burden of proof in a civil action under sub. **(1)** is with the **person**
 15 who suffers damage or loss to prove ~~his or her case a violation of s. 943.01, 943.011,~~
 16 ~~943.012, 943.017, 943.20, 943.201, 943.21, 943.24, 943.26, 943.34, 943.395, 943.41,~~
 17 ~~943.50~~ **CA conviction under s.** derance of the credible evidence.
 18 ~~943.01, 943.011, 943.012, 943.017, 943.20, 943.201, 943.21, 943.24, 943.26, 943.34,~~
 19 ~~943.395, 943.41, 943.50~~ o r ~~943.61~~ **is not required to bring an a**
 20 **judgment or collect on that judgment under this section.**

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

22 895.80 **(3) (a)** Actual damages, including the **retail or** replacement value of
 23 damaged, used or lost property, whichever is greater, for a violation of s. **943.01,**
 24 **943.011, 943.012, 943.017, 943.20, 943.201, 943.21, 943.24, 943.26, 943.34, 943.395,**
 25 **943.41, 943.50 or 943.61.**



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-1588/1
RPN: ~~hmm~~:hmm
cjs/jlg/pgt

1999 BILL

gen

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) l., 812.37 (l), 812.37 (2),
3 812.38 (1) (b), 812.38 (2), 812.44 (3) (form) 3., 812.44 (4) (form) l., 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,

BILL

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:

WFO -
Line up
dollar
amounts

| <u>Amount of property value</u> | <u>Fee</u> |
|---------------------------------|---------------|
| Greater than \$10,000 | \$500 → \$750 |
| \$1,000 to \$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 the bill, the court may reduce the fee for demonstrated hardship.~~

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 answer to the garnishment the schedules and worksheets that were given to them

BILL

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 ~~assigning~~ ^{re 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 employe, 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:

10 799.01 (2) **PERMISSIVE USE OF SMALL CLAIMS PROCEDURE.** A taxing authority may

11 use the procedure in this chapter in an action to recover a tax from a person liable

BILL

1 for that tax where the amount claimed, including interest and penalties, is \$5,000
2 ~~10,000~~ ~~Chapter~~ is not the exclusive procedure for those actions.

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

4 812.34 (1) (a) Was ordered by a court under s. 128.2 1 or by a court of bankruptcy
5 under ~~Title 11,~~ USC 1301 to 1330.

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

7 812.34 (2) (a) Unless the court grants relief under s. 812.38 (2) or par. (b) or (c)
8 applies, 80% of the debtor's disposable earnings are exempt from garnishment under
9 this subchapter.

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

11 812.34 (2) (b) 1. The debtor's household income is below the poverty line, ~~or the~~
12 ~~garnishment would cause that result;~~ or

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

14 812.34 (2) (c) If the garnishment of 20% of the debtor's disposable income under
15 this subchapter would result in the debtor's household income being below the
16 poverty line, the amount of the garnishment is limited to the debtor's household
17 income in excess of the poverty line before the garnishment is in effect.

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

19 812.37 (1) Except as provided in s. 812.34 (l), the debtor may claim an
20 exemption under s. 812.34 (2) (b), a limit to the garnishment under s. 812.34 (2) (c),
21 or may assert any defense to the earnings garnishment, by completing the answer
22 form and delivering or mailing it to the garnishee, along with the schedules and
23 worksheets provided under s. 812.35 (4) (b) and any other documents supporting his
24 or her answer, such as a wage statement, a court order regarding the payment of
25 support or a document showing the receipt of any of the benefits listed under s.

BILL

1 ~~812.44 (4) (form) 2.~~ The debtor or debtor's spouse may file an answer or an amended
2 answer and documentation at any time before or during the effective period of the
3 earnings garnishment.

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

5 812.37 (2) Whenever the garnishee receives a debtor's answer or amended
6 answer and the schedules, worksheets and other documents, the garnishee shall
7 mail a copy of the answer, schedules, worksheets and any other documents the debtor
8 included with the answer to the creditor by the end of the 3rd business day after
9 receiving the debtor's answer and documents, writing on that copy the date of receipt
10 of the answer and documents by the garnishee.

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

12 812.38 (1) (b) The debtor may file with the court a written petition for relief
13 from the earnings garnishment if the exemption percentage under s. 812.34 (2) (a)
14 is insufficient for the debtor to acquire the necessities of life for the debtor and his
15 or her dependents. The petition shall state with reasonable specificity the grounds
16 for the relief requested and shall include any additional information necessary to
17 support the petition.

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

19 812.38 (2) A motion or petition under sub. (1) may be made at any time during
20 the pendency of the earnings garnishment. Within 5 business days after a motion
21 or petition is filed under sub. (1), the court shall schedule the matter for a hearing
22 to be held as promptly as practicable. The court shall notify the parties of the time
23 and place of the hearing. Upon conclusion of the hearing, the court shall make
24 findings of fact and conclusions of law. If the debtor has failed to produce the
25 schedules and worksheets or other documents necessary to support a claim for

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

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

11 812.44 (3) (form) 3. Whenever you receive a debtor's answer form from the
12 debtor, mail a copy of the answer form and any documents the debtor included with
13 the answer to the creditor by the end of the 3rd business day after receipt of that form.
14 Include the date you received the answer form on the copy sent to the creditor.

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

16 812.44 (4) (form) 1. Your household income is below the federal poverty level,
17 ~~or this garnishment would cause that to happen.~~ See the enclosed schedules and
18 worksheet to determine if you qualify for this exemption.

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

20 812.44 (4) (form) 3. At least 25% of your disposable earnings are assigned by
21 court order for support.

22 If the garnishment of 20% of your disposable income would result in the income
23 of your household being below the poverty line. the garnishment is limited to the
24 amount of your household's income in excess of the poverty line.

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1 If you qualify for a complete exemption or for a limit on the amount of the
2 garnishment to the amount that your household's income exceeds the noverty line,
3 you must give or mail a copy of the enclosed debtor's answer form to the garnishee,
4 along with the schedules and worksheets and any other documents supporting your
5 answer. such as a wage statement. a court order regarding the payment of support
6 or a document showing the receipt of any of the benefits listed under paragraph 2
7 above in order to receive that increased exemption.

8 If your circumstances change while the garnishment is in effect, you may file
9 a new answer at any time.

10 If you do not qualify for a complete exemption, but you will not be able to acquire
11 the necessities of life for yourself and your dependents if your earnings are reduced
12 by this earnings garnishment, you may ask the court in which this earnings
13 garnishment was filed to increase your exemption or grant you other relief.

IF YOU NEED ASSISTANCE

CONSULT AN ATTORNEY

16 If you have earnings that are being garnisheed that are exempt or subject to a
17 defense, the sooner you file your answer or seek relief from the court, the sooner such
18 relief can be provided. This earnings garnishment affects your earnings in pay
19 periods beginning within 13 weeks after it was served on the garnishee. You may
20 agree in writing with the creditor to extend it for additional 13-week periods until
21 the debt is paid.

PENALTIES

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

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

2 814.04 (1) (a) When the amount recovered or the value of the property involved

3 is ~~\$1,000 or over~~ equal to or greater than the maximum amount specified in s. 799.01

4 (1)(d), attorney fees shall be ~~\$100~~ ^{\$750} ~~\$500~~; when it is ^{equal to or} less than \$1,000 and is \$500 or

5 over, ~~\$50~~ ^{\$5,000} the maximum amount specified in s. 799.01 (1)(d), but is \$1,000 or more,

6 attorney fees shall be \$200; when it is less than \$500 and is \$200 or over, \$25; and

7 when it is less than \$200, \$15; \$1,000, attorney fees shall be \$100. In all other cases

8 in which there is no amount recovered or that do not involve property, attorney fees

9 shall be \$500. ^{plain} The court may award a lower fee if the person required to pay the fee

10 shows the court that payment of the fee would create a hardship.

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

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

13 814.04 (2) DISBURSEMENTS. All the necessary disbursements and fees allowed

14 by law; the compensation of referees; a reasonable disbursement for the service of

15 process or other papers in an action when the same are served by a person authorized

16 by law other than an officer, but the item may not exceed the authorized sheriff's fee

17 for the same service; amounts actually paid out for certified and other copies of

18 papers and records in any public office; postage, telegraphing photocopying,

19 telephoning, electronic communications, facsimile transmissions and express or

20 overnight delivery; depositions including copies; plats and photographs, not

21 exceeding \$50 \$100 for each item; an expert witness fee not exceeding ~~\$100~~ \$300 for

22 each expert who testifies, exclusive of the standard witness fee and mileage which

23 shall also be taxed for each expert; and in actions relating to or affecting the title to

24 lands, the cost of procuring an abstract of title to the lands. Guardian ad litem fees

25 shall not be taxed as a cost or disbursement.

be \$300; ^{and} when it is less than \$1,000

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

2 **814.07 Costs on motion.** Costs may be allowed on a motion, in the discretion
3 of the court or judge, not ~~exceeding \$50~~ \$300, and may be absolute or directed to abide
4 the event of the action.

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

6 815.18 (3) (k) **Depository accounts.** Depository accounts in the aggregate value
7 of \$1,000, but only to the extent that the account is for the debtor's personal use and
8 is not used as a business account.

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

10 895.035 (2) The parent or parents with custody of a minor child, in any
11 circumstances where he, she or they may not be liable under the common law, are
12 liable for damages to property, for the cost of repairing or replacing property or
13 removing the marking, drawing, writing or etching from property regarding a
14 violation under s. 943.017, for the value of unrecovered stolen property or for
15 personal injury attributable to a wilful, malicious or wanton act of the child. The
16 parent or parents with custody of their minor child are jointly and severally liable
17 with the child for the damages imposed under s. 895.80.943.212.943.24.943.245
18 or 943.51 for their child's violation of s. 943.01, 943.011, 943.012, 943.017, 943.20,
19 943.201, 943.21, 943.24, 943.26, 943.34, 943.395, 943.41, 943.50 or 943.61.

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

21 **895.08 Assignment of debt and right to sue. (1)** Any person may assign
22 a debt owed to that person to any other person, including a debt collection agency
23 licensed by the department of financial institutions. That assignment shall be in
24 writing for consideration and shall state the amount owed to the original creditor, the
25 name of the debtor and the name of the person to whom the debt is assigned.

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

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

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

14 895.80 (2) The burden of proof in a civil action under sub. (1) is with the person
 15 who suffers damage or loss to prove ~~his or her case a violation of s. 943.01.943.011,~~
 16 943.012. 943.017.943.20. 943.201, 943.21, 943.24.943.26. 943.34.943.395.943.41,
 17 943.50 or 943.61 by a preponderance of the credible evidence. A conviction under s.
 18 943.01. 943.011.943.012.943.017.943.20.943.201.943.21.943.24.943.26. 943.34,
 19 943.395. 943.41. 943.50 or 943.61 is not required to bring an action. obtain a
 20 judgment or collect on that judgment under this section.

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

22 895.80 (3) (a) Actual damages, including the retail or replacement value of
 23 damaged, used or lost property, whichever is greater, for a violation of s. 943.01,
 24 943.011, 943.012, 943.017, 943.20, 943.201, 943.21, 943.24, 943.26, 943.34, 943.395,
 25 943.41, 943.50 or 943.61.

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

2 895.80 (3) (b) All costs of investigation and litigation that were reasonably
3 incurred, including the value of the time spent by any employee or agent of the victim,
4 court costs and reasonable attorney fees.

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

6 895.80 (3) (c) Exemplary damages of not more than 3 times the amount
7 awarded under par. (a). No additional proof is required under this section for an
8 award of exemplary damages under this paragraph.

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

10 895.80 (4) Any recovery under this section shall be reduced by the amount
11 recovered as restitution under ss. 800.093 and 973.20 and ch. 938.

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

13 895.80 (6) A person is not criminally 'liable under s. 943.30 for any action
14 brought in good faith under this section.

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

16 943.24 (3) (b) Proof that, at the time of issuance, the person did not have
17 sufficient funds or credit with the drawee and that the person failed within 5 days
18 after receiving written notice of nonpayment or dishonor to pay the check or other
19 order, delivered by regular mail to either the person's last-known address, or to the
20 address provided on the check or other order; or

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

22 943.24 (3) (c) Proof that, when presentment was made within a reasonable
23 time, the person did not have sufficient funds or credit with the drawee and the
24 person failed within 5 days after receiving written notice of nonpayment or dishonor

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1 to pay the check or other order, delivered by regular mail to either the person's
2 last-known address, or to the address provided on the check or other order.

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

4 943.245 (3) Notwithstanding sub. (2) (c) and (d), the total amount awarded for
5 exemplary damages and reasonable attorney fees may not exceed \$500 for each
6 violation.

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

8 943.245 (4) At least 20 days prior to commencing an action, as specified in s.
9 801.02, under this section, the plaintiff shall notify the defendant, by mail, of his or
10 her intent to bring the action. Notice of nonpayment or dishonor shall be sent by the
11 payee or holder of the check or order to the drawer by regular mail ~~supported by an~~
12 ~~affidavit of service of mailing or by a certificate of mailing obtained from the U.S. post~~
13 ~~office from which the mailing was made.~~ The plaintiff shall mail the notice to the
14 defendant's last-known address or to the address provided on the check or order. If
15 the defendant pays the check or order prior to the commencement of the action, he
16 or she is not liable under this section.

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

18 943.50 (3) A merchant, a merchant's adult employe or a merchant's security
19 agent who has reasonable cause for believing that a person has violated this section
20 in his or her presence may detain the person in a reasonable manner for a reasonable
21 length of time ~~to deliver the person to a peace officer, or to hi-~~
22 ~~guardian in the case of a minor.~~ The detained person must be promptly informed of
23 the purpose for the detention and be permitted to make phone calls, but he or she
24 shall not be interrogated or searched against his or her will ~~before the arrival of a~~
25 ~~peace officer who may conduct~~ ^{C O} lawful interrogation of the accused person. The

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1 ~~merchant, merchant's adult employe or merchant's security agent may release the~~
2 ~~detained person before the arrival of a peace officer or parent or guardian.~~ Any
3 merchant, merchant's adult employe or merchant's security agent who acts in good
4 faith in any act authorized under this section is immune from civil or criminal
5 liability for those acts.

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

7 943.51 (3) Notwithstanding sub. (2) and except as provided in sub. (3m), the
8 total amount awarded for exemplary damages and reasonable attorney fees may not
9 exceed \$500 for each violation.

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

11 943.51 **(3m)** Notwithstanding sub. (2), the total amount awarded for
12 exemplary damages and reasonable attorney fees may not exceed \$300 for each
13 violation if the action is brought against a minor or against the parent who has
14 custody of their minor child for the loss caused by the minor.

15 **SECTION 36. Initial applicability.**

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

18 **SECTION 37. Effective date.**

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

21 (END)

**SUBMITTAL
FORM**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

Date: 10/04/1999

To: Representative Montgomery

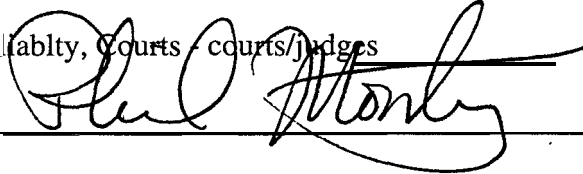
Relating to LRB drafting number: LRB-1588

Topic

Parental liability, small claims jurisdictional amount, garnishment, exemptions from execution, recovery in cases involving retail theft or worthless checks

Subject(s)

Courts - miscellaneous, Courts - immunity liability, Courts - courts/judges



11-16-99

1. **JACKET** the draft for introduction _____
in the ~~Senate~~ or the **Assembly** (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached _____
A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction _____
If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Robert P. Nelson, Senior Legislative Attorney
Telephone: (608) 267-75 11

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