

1999 DRAFTING REQUEST

Assembly Amendment (AA-AB620)

Received: **01/25/2000**

Received By: **nelsorpl**

Wanted: **Soon**

Identical to LRB:

For: **Pedro Colon (608) 267-7669**

By/Representing: **andy**

This file may be shown to any legislator: NO

Drafter: **nelsorpl**

May Contact:

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Subject: **Courts - miscellaneous**

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Pre Topic:

No specific pre topic given

Topic:

Worthless checks

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Reaured</u>
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FE Sent For:

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AMENDMENTS TO AB 620

1. Delete the increases in the **jurisdictional** amount in SECTIONS 2, 3, and 4 of the bill. This leaves **the current law jurisdictional** amount for **Small Claims** at \$5000,
2. Delete the underscored material in SECTIONS 9 and 15 of the bill relating to the filing of worksheets, **wage statements**, court **order for support**, or documentation relating to the assertion of a defense or a limitation to garnishment. This **leaves** current law, where **the employee is required to file** these statements, but **not** as a **condition precedent to invoking** his or **her right** to a defense or limitation to the garnishment.
3. Delete SECTION 12 of **the** bill which **penalizes** an **employee** for not having filed the documents **referred to above by awarding** costs to the creditor in an amount not less than **\$50**. This **leaves** current law, which penalizes **an** employee, under 812.38 (3) (b) if the court **finds** the employe**acted in bad faith** in asserting a defense or limitation, by **warding** the creditor **with actual damages**, costs and reasonable **attorney's fees**, **The underscored material in this bill which automatically penalizes an employee for not having the right documentation is excessive and will serve only to deter employees from exercising their lawful rights.**
4. Delete SECTION 16 of the draft, This **increases attorney fees in Small Claims actions** -- for example from **\$100 to \$750; \$50 to \$500; etc.** This leaves current law, **which awards "nominal" attorney fees and not anything close to actual attorney fees** for what are straight damage claims, **Current law does not allow actual attorney fees, or anything close to it, for straight damage claims in large claims actions.** There should be no difference for **Small Claims** actions.
5. Delete SECTION 22, relating to the assignment of 'debt and right to sue, Among other things, this provision allows a **court** to award "reasonable attorney fees and **costs**" for debt collection, on page 10, line **10**.
6. Delete SECTION 29, which makes it a crime to pass a check with insufficient **funds as** long as written notice of **insufficient funds** is sent to a "**last known address**." This provision makes it a **crime**, even though the accused may never have known that there were insufficient funds. The notice may well go to a different **address** than the one where the accused is living. **If the notice were to have been sent to the right address, the accused may well have had sufficient funds.** Besides being a very terrible **policy**, this provision of the bill is very likely unconstitutional, because you cannot make something a **crime** based on an assumption of intent drawn from a **failure to respond to a notice sent to a last known address.** **Unlike civil remedies**, crimes are subject to special prerequisites of

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Due Process of **Law**. By deleting this section, current law remains intact, requiring that the accused receive actual notice and that the **accused** is unable to cover the check, in order for the accused to be guilty of a crime.

7. Delete SECTIONS 31 and 34, which penalize bad checks and **shoplifting** by extending the \$500 maximum (for exemplary damages and attorney fees) so that it applies to each bad check or each item **shoplifted**. Under this provision of this bill, the defendant in a civil action can be penalized by an additional assessment of \$500 for each bad check written or each item **shoplifted**. This means, for example, that a person who shoplifts three small and cheap items in his or her pocket can have a judgment entered against them for \$1500. To make matters worse, that judgment may well be entered against them by default. The person with the judgement against them does not know that they have a judgement for \$1500 until they later get a job and have their wages garnished. The problem with this bill, and current law, is that no distinction is made in the law for the value of the items shoplifted. People have been charged with exemplary damages for stealing small things like a bra or a fuse. By deleting these sections of the bill, current law remains, where the maximum is \$500 for the act of shoplifting the item or items -- not for each individual item.



1126 am
State of Wisconsin
1999 - 2000 LEGISLATURE

LRBa1215/1

RPN.....

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D-NOTE

**ASSEMBLY AMENDMENT,
TO 1999 ASSEMBLY BILL 620**

1 At the locations indicated, amend the bill as follows:

2 1 . Page 11, line 19: delete the material beginning with that line and ending
3 with page 12, line 5.

4 (END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBa1215/1dn

RPN
CML

✓
I deleted both sections 29 and 30 because they both seemed to be related to your concern. If this is incorrect, please return the stripes to me and I will redo this draft.

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

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

LRBa1215/1dn
RPN:cmh:km

January 26, 2000

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