

**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 1999 ASSEMBLY BILL 620**

March 6, 2000 – Offered by Representatives MONTGOMERY and WALKER.

1 **AN ACT** *to repeal* 814.04 (1) (b); *to amend* 812.34 (1) (a), 812.34 (2) (a), 812.34
2 (2) (b) 1., 812.37 (1), 812.37 (2), 812.38 (1) (b), 812.38 (2), 812.44 (3) (form) 3.,
3 812.44 (4) (form) 1., 812.44 (4) (form) 3., 814.04 (1) (a), 814.04 (2), 814.07, 815.18
4 (3) (k), 895.035 (2), 895.80 (1), 895.80 (2), 895.80 (3) (b), 943.24 (3) (b), 943.24
5 (3) (c), 943.245 (3), 943.245 (4), 943.51 (3) and 943.51 (3m); ***to repeal and***
6 ***recreate*** 895.80 (3) (a) and 895.80 (4); and ***to create*** 218.04 (9j), 812.34 (2) (c),
7 895.08, 895.80 (3) (c) and 895.80 (6) of the statutes; **relating to:** parental
8 liability for acts of their minor child, recovery of damages for certain criminal
9 actions, garnishment, attorney fees, exemption from execution of accounts, civil
10 actions by collection agencies, earnings garnishment, retail theft and recovery
11 in actions involving worthless checks.

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

12 **SECTION 1.** 218.04 (9j) of the statutes is created to read:

1 218.04 **(9j)** CIVIL ACTION BY LICENSEE. A licensee may, after receiving
2 authorization from a creditor, consolidate the creditor’s account or accounts relating
3 to a particular debtor with those of any other creditor or creditors relating to that
4 debtor and may bring an action on behalf of the creditor or creditors. A licensee that
5 brings an action under this subsection is the real party in interest under s. 803.01
6 (2) for purposes of maintaining an action. A licensee that brings an action under this
7 subsection shall comply with the caption requirements of s. 895.08.

8 **SECTION 2.** 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 any court of the United States under Title 11, USC 1301 to 1330.

11 **SECTION 3.** 812.34 (2) (a) of the statutes is amended to read:

12 812.34 **(2)** (a) Unless the court grants relief under s. 812.38 (2) or par. (b) or (c)
13 applies, 80% of the debtor’s disposable earnings are exempt from garnishment under
14 this subchapter.

15 **SECTION 4.** 812.34 (2) (b) 1. of the statutes is amended to read:

16 812.34 **(2)** (b) 1. The debtor’s household income is below the poverty line, ~~or the~~
17 ~~garnishment would cause that result;~~ or

18 **SECTION 5.** 812.34 (2) (c) of the statutes is created to read:

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

23 **SECTION 6.** 812.37 (1) of the statutes is amended to read:

24 812.37 **(1)** Except as provided in s. 812.34 (1), the debtor may claim an
25 exemption under s. 812.34 (2) (b) or a limit to the garnishment under s. 812.34 (2)

1 (c), or may assert any defense to the earnings garnishment, by completing the answer
2 form and delivering or mailing it to the garnishee, along with the schedules and
3 worksheets provided under s. 812.35 (4) (b) and any other documents supporting his
4 or her answer, such as a wage statement, a court order regarding the payment of
5 support or a document showing the receipt of aid to families with dependent children,
6 relief funded by a relief block grant under ch. 49, relief provided by counties under
7 s. 59.07 (154), medical assistance, supplemental security income, food stamps or
8 veterans benefits based on need under 38 USC 501 to 562 or s. 45.351 (1). The debtor
9 or debtor's spouse may file an answer or an amended answer and documentation at
10 any time before or during the effective period of the earnings garnishment.

11 **SECTION 7.** 812.37 (2) of the statutes is amended to read:

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

18 **SECTION 8.** 812.38 (1) (b) of the statutes is amended to read:

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

25 **SECTION 9.** 812.38 (2) of the statutes is amended to read:

1 812.38 (2) A motion or petition under sub. (1) may be made at any time during
2 the pendency of the earnings garnishment. Within 5 business days after a motion
3 or petition is filed under sub. (1), the court shall schedule the matter for a hearing
4 to be held as promptly as practicable. The court shall notify the parties of the time
5 and place of the hearing. Upon conclusion of the hearing, the court shall make
6 findings of fact and conclusions of law. If the debtor has failed to produce the
7 schedules and worksheets or other documents necessary to support a claim for
8 exemptions or other defenses, the court shall award the creditor his or her costs
9 related to the motion in an amount of not less than \$50. An award under this
10 subsection may not substitute for or replace an award made under sub. (3). The court
11 shall make such order as required by these findings and conclusions. If the order
12 permits the garnishment to proceed, the date on which the order is served upon the
13 garnishee shall substitute for the original date of service of the garnishment upon
14 the garnishee under s. 812.35 (3) for the purpose of determining any 13-week period
15 under s. 812.35 (5) or (6). A court order shall bind the garnishee from the time the
16 order is served upon him or her.

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

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

22 **SECTION 11.** 812.44 (4) (form) 1. of the statutes is amended to read:

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

1 agree in writing with the creditor to extend it for additional 13-week periods until
2 the debt is paid.

3 **PENALTIES**

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

7 **SECTION 13.** 814.04 (1) (a) of the statutes is amended to read:

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

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

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

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

1 exceeding ~~\$50~~ \$100 for each item; an expert witness fee not exceeding ~~\$100~~ \$300 for
2 each expert who testifies, exclusive of the standard witness fee and mileage which
3 shall also be taxed for each expert; and in actions relating to or affecting the title to
4 lands, the cost of procuring an abstract of title to the lands. Guardian ad litem fees
5 shall not be taxed as a cost or disbursement.

6 **SECTION 16.** 814.07 of the statutes is amended to read:

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

10 **SECTION 17.** 815.18 (3) (k) of the statutes is amended to read:

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

14 **SECTION 18.** 895.035 (2) of the statutes is amended to read:

15 895.035 (2) The parent or parents with custody of a minor child, in any
16 circumstances where he, she or they may not be liable under the common law, are
17 liable for damages to property, for the cost of repairing or replacing property or
18 removing the marking, drawing, writing or etching from property regarding a
19 violation under s. 943.017, for the value of unrecovered stolen property or for
20 personal injury attributable to a wilful, malicious or wanton act of the child. The
21 parent or parents with custody of their minor child are jointly and severally liable
22 with the child for the damages imposed under s. 895.80, 943.212, 943.24, 943.245 or
23 943.51 for their child's violation of s. 943.01, 943.011, 943.012, 943.017, 943.20,
24 943.201, 943.21, 943.24, 943.26, 943.34, 943.395, 943.41, 943.50 or 943.61.

25 **SECTION 19.** 895.08 of the statutes is created to read:

1 **895.08 Suit by collection agency.** In addition to the requirements of ss.
2 801.09 (1), 801.095, 802.04 (1) and 815.05 (intro.), in an action brought by a collection
3 agency under s. 218.04 (9j), the collection agency shall include in the caption, under
4 its name, the names of the creditors on whose behalf the action is brought.

5 **SECTION 20.** 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, or
9 by reason of intentional conduct that occurs on or after April 28, 1998, and that is
10 prohibited under s. 943.201, or by reason of intentional conduct that occurs on or
11 after the effective date of this subsection [revisor inserts date], and that is
12 prohibited under s. 943.011, 943.012 or 943.017, has a cause of action against the
13 person who caused the damage or loss.

14 **SECTION 21.** 895.80 (2) of the statutes is amended to read:

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

22 **SECTION 22.** 895.80 (3) (a) of the statutes is repealed and recreated to read:

23 **895.80 (3) (a)** Actual damages, including the retail or replacement value of
24 damaged, used or lost property, whichever is greater, for a violation of s. 943.01,

1 943.011, 943.012, 943.017, 943.20, 943.201, 943.21, 943.24, 943.26, 943.34, 943.395,
2 943.41, 943.50 or 943.61.

3 **SECTION 23.** 895.80 (3) (b) of the statutes is amended to read:

4 895.80 (3) (b) All costs of investigation and litigation that were reasonably
5 incurred, including the value of the time spent by any employe or agent of the victim.

6 **SECTION 24.** 895.80 (3) (c) of the statutes is created to read:

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

10 **SECTION 25.** 895.80 (4) of the statutes is repealed and recreated to read:

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

13 **SECTION 26.** 895.80 (6) of the statutes is created to read:

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

16 **SECTION 27.** 943.24 (3) (b) of the statutes is amended to read:

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

22 **SECTION 28.** 943.24 (3) (c) of the statutes is amended to read:

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

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

3 **SECTION 29.** 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 30.** 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 31.** 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.

21 **SECTION 32.** 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
24 violation if the action is brought against a minor or against the parent who has
25 custody of their minor child for the loss caused by the minor.

