

2001 DRAFTING REQUEST

Bill

Received: 12/07/2000

Received By: nelsorp1

Wanted: As time permits

Identical to LRB:

For: Michael Powers (608) 266-1192

By/Representing: Vince Williams

This file may be shown to any legislator: NO

Drafter: nelsorp1

May Contact:

Alt. Drafters:

Subject: Courts - costs and fees

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Creditor's payment of jail costs for jailed debtor

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>Required</u>
/1	nelsorp1 12/19/2000	rschluet 01/16/2001	pgreensl 01/24/2001		lrb_docadmin 01/24/2001		
/2	nelsorp1 01/25/2001	gilfokm 02/01/2001	martykr 02/01/2001		lrb_docadmin 02/01/2001		
	nelsorp1 02/07/2001	gilfokm 02/07/2001					
/3			martykr 02/08/2001		lrb_docadmin 02/08/2001	lrb_docadmin 02/08/2001	

FE Sent For:

<END>

↳ Not Needed

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FE Sent For: 13-2/Kmg
 17-01 Jim S Jim S

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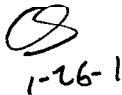
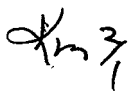
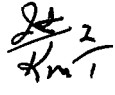
Creditor's payment of jail costs for jailed debtor

Instructions:

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FE Sent For:  1-26-1  3/1  3/1
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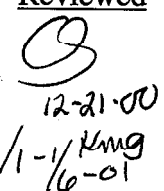
Creditor's payment of jail costs for jailed debtor

Instructions:

12/19 Talked to PJH - knows of no reason to keep sub. (2).

See Attached

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1?	nelsorp1	 12-21-00 1-1/16-01	1/24 PB	1/24 PBT/hmh			

FE Sent For:

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**WISCONSIN LEGISLATIVE COUNCIL
STAFF MEMORANDUM**

TO: REPRESENTATIVE MICHAEL POWERS

FROM: Rachel E. Letzing, Staff Attorney

RE: Section 898.14, Stats.

DATE: December 5, 2000

In response to your questions regarding s. 898.14, Stats., this memorandum discusses the available historical information and current usage of the statute.

A constituent of yours has concerns regarding s. 898.14 (1), which provides that when a judgment debtor is committed to jail in connection with a judgment recovered in a civil action or on civil arrest, the judgment creditor, or agent or attorney, must advance to the jailer sufficient money for the prisoner's support, including medical care, during the time of imprisonment. Specifically, the statute provides:

898.14 (1) Except as hereinafter provided, whenever a person is committed to jail on execution issued on a judgement recovered in a civil action, or on civil arrest under ch. 818, the creditor, agent, or attorney shall advance to the jailer within 24 hours after such commitment, sufficient money to pay for the support of said prisoner during the time for which the prisoner may be imprisoned; and in case the money shall not be so advanced, or if during the time the prisoner may be in confinement the money shall be expended in the support of such prisoner, the jailer shall forthwith discharge such prisoner from custody, and such discharge shall have the same effect as a discharge by order of the court. The word "support" as used herein shall include medical and hospital care.

It appears that your constituent is a creditor who is attempting to recover from a debtor money owed the creditor's heating and air conditioning business. The debtor apparently failed to make a required court appearance in connection with the debt and was found in contempt of court. A "body attachment," ordering the sheriff to arrest the debtor, was then issued by the court. A "civil warrant worksheet" was apparently supplied to the constituent creditor. The worksheet provides in part that, "Per State Statute 898.14 (1) the Sheriff's Dept. will charge a Jail fee of \$30 per day, for the support of a

defendant held in Jail on a Civil Warrant. Plaintiff may also be responsible for the medical and hospital care for the defendant.”

Section 898.14 (1) first appeared in the 1849 Wisconsin Revised Statutes. [Chapter 129, section 14, 1849 Wisconsin Revised Statutes.] Since that time, the statutory language has remained substantially unchanged. According to the Wisconsin Supreme Court, the requirement of prepayment of support for the debtor is to protect the public against the expense of attempting to collect a tort judgment by imposing that expense on the creditor. [See *Schuijer v. Kuswa*, 176 Wis. 48, 50 (1922).] A tort judgment is an obligation or debt imposed upon someone by a court decision in a matter involving damage, injury or a wrongful act.

Although the language in current s. 898.14, Stats., has been in effect for over 150 years, it appears that s. 898.14 (1) was utilized sporadically in the early part of the 20th Century. Currently, with the exception of the constituent's case, use of the statutes appears to be virtually nil. Various attorneys in state government and in private practice, the Dane County Clerk of Courts Office and a Dane County Circuit Court judge indicated they are unaware of the existence or utilization of the statute. The jail administrator and the sheriff's department in Rock County are also unaware of s. 898.14 and its requirements, even though the sheriff department's "civil warrant worksheet" cites the statute and its fee requirement.

Given the apparent lack of knowledge of and use by the legal community concerning the statute in question, the constituent may want to ask his attorney about its applicability to his situation and its utilization in Rock County.

If you have any questions or need additional information, please contact me directly at the Legislative Council Staff offices.

Nelson, Robert P.

From: Williams, Vincent
Sent: Wednesday, December 06, 2000 11:35 AM
To: Nelson, Robert P.
Subject: Drafting Request- 898.14

Bob,

I'm including the Leg. Council memo on 898.14 (1). We are interested in a draft that would repeal this statute. You can look at para. (2) and determine whether or not that is still necessary.

If you have any additional questions, please call me at 266-1192.

Thank you,

Vince Williams
Research Assistant
Rep. Mike Powers' Office



05powers_rel



RPN.....
OSEKMG

2001 BILL

*Gen
cost*

1 AN ACT ...; relating to: payment of the jail costs of a jailed debtor.

Analysis by the Legislative Reference Bureau

Under current law, a debtor may be committed to jail as the result of the execution of a judgment recovered in a civil action, such as for contempt of court for failure to appear before the court regarding a debt, or as the result of an arrest in a civil action, such as in an ~~an~~ action to recover personal property that has been concealed from execution by the sheriff. If a debtor is committed to jail under one of * these situations, ~~the~~ ^{the} creditor, agent, or attorney involved in the underlying civil action is required to advance to the jailer, within 24 hours of the imprisonment, an amount sufficient to pay for the debtor's costs while in jail, including any medical and hospital costs. Under current law, this requirement to make an advance payment to the jailer for the debtor's jail costs does not apply if the debtor is jailed for failure to pay maintenance payments in a divorce or legal separation action.

* This bill repeals the requirement that the creditor, agent, or attorney involved in the underlying civil action advance to the jailer, within 24 hours of the debtor's imprisonment, an amount sufficient to pay for the debtor's costs while in jail.

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

2 SECTION 1. 818.05 of the statutes is amended to read:

BILL

1 **818.05 Bond, liability of plaintiff for support.** Before making the order for
2 arrest the court or judge shall require a bond of the plaintiff, with or without sureties,
3 to the effect that if the plaintiff fails to recover, the plaintiff will pay all costs that may
4 be awarded to the defendant and all damages which the defendant may sustain by
5 reason of the arrest, not exceeding the sum specified in the bond, which shall be at
6 least \$100. If the bond be executed by the plaintiff without sureties the plaintiff shall
7 annex thereto an affidavit that the plaintiff is a resident and householder or
8 freeholder within the state and worth double the sum specified in the bond above all
9 of the plaintiff's debts and liabilities in property in this state not exempt from
10 execution. ~~The plaintiff shall be liable for support of the defendant while the~~
11 ~~defendant is in jail, as specified in s. 898.14 (1).~~ This section does not apply to an
12 order for arrest in an action to determine paternity or to any action under ch. 767
13 brought by the state or its designee.

History: Sup. Ct. Order, 67 Wis. 2d 585, 758 (1975); Stats. 1975 s. 809.05; Sup. Ct. Order, 83 Wis. 2d xiiiv (1978); Stats. 1977 s. 818.05; 1983 a. 447; 1989 a. 212; 1993
a. 486.

14 **SECTION 2.** 898.14 of the statutes is repealed.

15

(END)



2001 BILL

1 **AN ACT to repeal 898.14; and to amend 818.05 of the statutes; relating to:**
2 **payment of the jail costs of a jailed debtor.**

Analysis by the Legislative Reference Bureau

Under current law, a debtor may be committed to jail as the result of the execution of a judgment recovered in a civil action, such as for contempt of court for failure to appear before the court regarding a debt, or as the result of an arrest in a civil action, such as in an action to recover personal property that has been concealed from execution by the sheriff. If a debtor is committed to jail under one of these situations, the creditor, agent, or attorney involved in the underlying civil action is required to advance to the jailer, within 24 hours of the imprisonment, an amount sufficient to pay for the debtor's costs while in jail, including any medical and hospital costs. Under current law, this requirement to make an advance payment to the jailer for the debtor's jail costs does not apply if the debtor is jailed for failure to pay maintenance payments in a divorce or legal separation action.

This bill repeals the requirement that the creditor, agent, or attorney involved in the underlying civil action advance to the jailer, within 24 hours of the debtor's imprisonment, an amount sufficient to pay for the debtor's costs while in jail.

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

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① **818.05 Bond, ~~liability of plaintiff for support.~~** Before making the order for
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13 brought by the state or its designee.

14 **SECTION 2.** 898.14 of the statutes is repealed.

15 (END)



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-1377/2³

RPN:rs&kmg:km

2001 BILL

SOON

- 1 **AN ACT to repeal 898.14; and to amend 818.05 of the statutes; relating to:**
2 payment of the jail costs of a jailed debtor.

Analysis by the Legislative Reference Bureau

Under current law, a debtor may be committed to jail as the result of the execution of a judgment recovered in a civil action, such as for contempt of court for failure to appear before the court regarding a debt, or as the result of an arrest in a civil action, such as in an action to recover personal property that has been concealed from execution by the sheriff. If a debtor is committed to jail under one of these situations, the creditor, agent, or attorney involved in the underlying civil action is required to advance to the jailer, within 24 hours of the imprisonment, an amount sufficient to pay for the debtor's costs while in jail, including any medical and hospital costs. Under current law, this requirement to make an advance payment to the jailer for the debtor's jail costs does not apply if the debtor is jailed for failure to pay maintenance payments in a divorce or legal separation action.

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STEPHEN R. MILLER
CHIEF

State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
5TH FLOOR
MADISON, WI 53701-2037

LEGAL SECTION: (608) 266-3561
LEGAL FAX: (608) 264-6948

February 8, 2001

MEMORANDUM

To: Representative Powers

From: Robert P. Nelson, Senior Legislative Attorney

Re: LRB-1377 Creditor's payment of jail costs for jailed debtor

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

JACKET FOR ASSEMBLY JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 267-7511 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.