

2003 Assembly Bill 651

Date of enactment: **March 10, 2004**

Date of publication\*: **March 24, 2004**

## 2003 WISCONSIN ACT 138

AN ACT *to repeal* 814.04 (1) (b); *to renumber and amend* 895.035 (2); *to amend* 16.007 (6) (a), 799.29 (1) (c), 812.34 (2) (a), 812.34 (2) (b) 1., 812.37 (1), 812.38 (1) (b), 812.44 (4) (form) 1., 812.44 (4) (form) 3., 814.04 (1) (a), 814.04 (2), 814.07, 815.18 (3) (k), 895.035 (4), 895.80 (1), 895.80 (2), 895.80 (3) (b), 938.245 (2) (a) 5. am., 938.32 (1t) (a) 1m., 938.45 (1r) (a), 938.45 (1r) (b), 943.24 (3) (b), 943.24 (3) (c), 943.245 (3), 943.245 (4), 943.51 (3) and 943.51 (3m); *to repeal and recreate* 895.80 (3) (a) and 895.80 (4); and *to create* 29.962, 218.04 (9j), 812.34 (2) (c), 895.035 (2) (b) 2. and 3., 895.80 (3) (c) and 895.80 (6) of the statutes; **relating to:** parental liability for acts of their minor child, recovery of damages for certain criminal actions, garnishment, attorney fees, exemption from execution of accounts, civil actions by collection agencies, earnings garnishment, retail theft, recovery in actions involving worthless checks, reopening judgments in small claims court, and revocation of fish and game approvals for which payment is made by worthless checks.

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

**SECTION 1.** 16.007 (6) (a) of the statutes is amended to read:

16.007 (6) (a) Except as provided in par. (b), whenever the claims board by unanimous vote finds that payment to a claimant of not more than the amount specified in s. 799.01 (1) (d) is justified, it may order the amount that it finds justified to be paid on its own motion without submission of the claim in bill form to the legislature. The claim shall be paid on a voucher upon the certification of the chairperson and secretary of the board, and shall be charged as provided in sub. (6m).

**SECTION 2.** 29.962 of the statutes is created to read:

**29.962 Worthless checks for approvals.** If a person tenders a check or other order for payment to an issuing agent appointed under s. 29.024 (6) (a) 3. to make payment for an approval issued under this chapter to an issuing agent, and the check is drawn on an account that does

not exist or on an account with insufficient funds, or is otherwise worthless, the issuing agent may give notification to the department of the fact after having made an effort to receive payment from the person who tendered the check or other payment. If the issuing agent gives such notification, the department shall revoke the approval and send notification to the holder of the approval that it has been revoked for failure to make payment for the approval. The holder of the approval shall return the approval to the department within 7 days after receiving the notification.

**SECTION 3.** 218.04 (9j) of the statutes is created to read:

218.04 (9j) CONSOLIDATION OF ACCOUNTS. (a) A licensee may, after receiving authorization from a creditor, consolidate the creditor's account or accounts relating to a particular debtor with those of any other creditor or creditors relating to that debtor and may cause an action to be brought on behalf of the creditor or creditors.

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\* Section 991.11, WISCONSIN STATUTES 2001-02 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

All of the following apply to any action caused to be brought by a licensee on behalf of a creditor or creditors under this subsection:

1. The summons and complaint shall be prepared by an attorney or at the direction of an attorney.

2. The name or names of the creditor or creditors shall appear in the pleadings and in the caption of the case as the real party or parties in interest and the licensee's name shall not appear in the caption or pleadings.

3. The creditor or creditors in each instance shall be given the opportunity either to select an attorney to commence the action or to designate, as a part of the authorization process, the collection agency as the agent of the creditor or creditors to retain an attorney and forward the claim or claims to the attorney on behalf of the creditor or creditors.

(b) In any action caused to be brought by a licensee under this subsection, the licensee shall not appear on behalf of any creditor or creditors before any court, including the clerk of any small claims court in an action on the debt or in garnishment proceedings, except when called as a witness by the plaintiff's attorney in open court.

**SECTION 3m.** 799.29 (1) (c) of the statutes is amended to read:

799.29 (1) (c) In other actions under this chapter, the notice of motion must be made within 6 12 months after entry of judgment unless venue was improper under s. 799.11. The court shall order the reopening of a default judgment in an action where venue was improper upon motion or petition duly made within one year after the entry of judgment.

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

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

**SECTION 5.** 812.34 (2) (b) 1. of the statutes is amended to read:

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

**SECTION 6.** 812.34 (2) (c) of the statutes is created to read:

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

**SECTION 7.** 812.37 (1) of the statutes is amended to read:

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

assert any defense to the earnings garnishment, by completing the answer form and delivering or mailing it to the garnishee. The debtor or debtor's spouse may file an answer or an amended answer at any time before or during the effective period of the earnings garnishment.

**SECTION 8.** 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 (2) (a) 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 9.** 812.44 (4) (form) 1. of the statutes is amended to read:

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

**SECTION 10.** 812.44 (4) (form) 3. of the statutes is amended to read:

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

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

If you qualify for a complete exemption or for a limit on the amount of the garnishment to the amount that your household's income exceeds the poverty line, you must give or mail a copy of the enclosed debtor's answer form to the garnishee in order to receive that increased exemption.

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

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

**IF YOU NEED ASSISTANCE  
CONSULT AN ATTORNEY**

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

**PENALTIES**

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

**SECTION 11.** 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~~ greater than the maximum amount specified in s. 799.01 (1) (d), attorney fees shall be ~~\$100~~ \$500; when it is equal to or 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 \$300.

**SECTION 12.** 814.04 (1) (b) of the statutes is repealed.

**SECTION 13.** 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 sheriff's 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 transmissions, 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.

**SECTION 14.** 814.07 of the statutes is amended to read:

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

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

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

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

895.035 (2) (a) 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 cost of repairing or replacing property or removing the marking, drawing, writing, or etching from property regarding a violation under s. 943.017, for the value of unrecovered stolen property, or for personal injury attributable to a willful, malicious, or wanton act of the child.

(b) 1. 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.

**SECTION 17.** 895.035 (2) (b) 2. and 3. of the statutes are created to read:

895.035 (2) (b) 2. If a parent is jointly and severally liable under this paragraph and has physical placement of the child, the parent's liability is limited to that percentage representing the time that the child actually spends with that parent.

3. Notwithstanding sub. (1), a parent does not have custody of a child for purposes of this paragraph if at the time of the violation the child has been freed from the care, custody, and control of the parent through marriage or emancipation or if at the time of the violation the parent does not reasonably have the ability to exercise supervision and control of the child because the child is uncontrollable or because another person has interfered with that parent's exercise of supervision and control.

**SECTION 18.** 895.035 (4) of the statutes is amended to read:

895.035 (4) Except for recovery under sub. (4a) or for retail theft under s. 943.51, the maximum recovery under this section from any parent or parents may not exceed ~~the amount specified in s. 799.01 (1) (d)~~ \$5,000 for damages resulting from any one act of a juvenile in addition to taxable costs and disbursements and reasonable attorney fees, as determined by the court. If 2 or more juveniles in the custody of the same parent or parents commit the same act the total recovery under this section may not exceed ~~the amount specified in s. 799.01 (1) (d)~~ \$5,000, 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.

**SECTION 19.** 895.80 (1) of the statutes, as affected by 2003 Wisconsin Act 36, is amended to read:

895.80 (1) Any person who suffers damage or loss by reason of intentional 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, 943.395, 943.41, 943.50, 943.61, 943.74, or 943.76, or by reason of intentional conduct that occurs on or after April 28, 1998, and that is prohibited under s. 943.201 or 943.203, or by reason of intentional conduct that occurs on or after the effective date of this subsection .... [revisor inserts date], and that is prohibited under s. 943.011, 943.012, or 943.017, has a cause of action against the person who caused the damage or loss.

**SECTION 20.** 895.80 (2) of the statutes is amended to read:

895.80 (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 a violation of s. 943.01, 943.011, 943.012, 943.017, 943.20, 943.201, 943.203, 943.21, 943.24, 943.26, 943.34, 943.395, 943.41, 943.50, 943.61, 943.74, or 943.76 by a preponderance of the credible evidence. A conviction under s. 943.01, 943.011, 943.012, 943.017, 943.20, 943.201, 943.203, 943.21, 943.24, 943.26, 943.34, 943.395, 943.41, 943.50, 943.61, 943.74, or 943.76 is not required to bring an action, obtain a judgment, or collect on that judgment under this section.

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

895.80 (3) (a) Actual damages, including the retail or replacement value of damaged, used, or lost property, whichever is greater, for a violation of s. 943.01, 943.011, 943.012, 943.017, 943.20, 943.201, 943.203, 943.21, 943.24, 943.26, 943.34, 943.395, 943.41, 943.50, 943.61, 943.74, or 943.76.

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

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

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

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

**SECTION 24.** 895.80 (4) of the statutes is repealed and recreated to read:

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

**SECTION 25.** 895.80 (6) of the statutes is created to read:

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

**SECTION 26.** 938.245 (2) (a) 5. am. of the statutes is amended to read:

938.245 (2) (a) 5. am. That the parent who has custody, as defined in s. 895.035 (1), of the juvenile make reasonable restitution for any damage to the property of another, or for any actual physical injury to another excluding pain and suffering, resulting from the act for which the deferred prosecution agreement is being entered into. Except for recovery for retail theft under s. 943.51, the maximum amount of any restitution ordered under this subd. 5. am. for damage or injury resulting from any one act of a juvenile or from the same act committed by 2 or more juveniles in the custody of the same

parent may not exceed ~~the amount specified in s. 799.01 (1) (d) \$5,000.~~ Any order under this subd. 5. am. shall include a finding that the parent who has custody of the juvenile is financially able to pay the amount ordered and may allow up to the date of the expiration of the deferred prosecution agreement for the payment. Any recovery under this subd. 5. am. shall be reduced by the amount recovered as restitution for the same act under subd. 5. a.

**SECTION 27.** 938.32 (1t) (a) 1m. of the statutes is amended to read:

938.32 (1t) (a) 1m. If the petition alleges that the juvenile has committed a delinquent act that has resulted in damage to the property of another, or in actual physical injury to another excluding pain and suffering, the judge or circuit court commissioner may require a parent who has custody, as defined in s. 895.035 (1), of the juvenile, as a condition of the consent decree, to make reasonable restitution for the damage or injury. Except for recovery for retail theft under s. 943.51, the maximum amount of any restitution ordered under this subdivision for damage or injury resulting from any one act of a juvenile or from the same act committed by 2 or more juveniles in the custody of the same parent may not exceed ~~the amount specified in s. 799.01 (1) (d) \$5,000.~~ Any consent decree that includes a condition of restitution by a parent who has custody of the juvenile shall include a finding that the parent who has custody of the juvenile is financially able to pay the amount ordered and may allow up to the date of the expiration of the consent decree for the payment. Objection by the parent to the amount of damages claimed shall entitle the parent to a hearing on the question of damages before the amount of restitution is made part of the consent decree. Any recovery under this subdivision shall be reduced by the amount recovered as restitution for the same act under subd. 1.

**SECTION 28.** 938.45 (1r) (a) of the statutes is amended to read:

938.45 (1r) (a) In a proceeding in which a juvenile has been found to have committed a delinquent act or a civil law or ordinance violation that has resulted in damage to the property of another, or in actual physical injury to another excluding pain and suffering, the court may order a parent who has custody, as defined in s. 895.035 (1), of the juvenile to make reasonable restitution for the damage or injury. Except for recovery for retail theft under s. 943.51, the maximum amount of any restitution ordered under this paragraph for damage or injury resulting from any one act of a juvenile or from the same act committed by 2 or more juveniles in the custody of the same parent may not exceed ~~the amount specified in s. 799.01 (1) (d) \$5,000.~~ Any order under this paragraph shall include a finding that the parent who has custody of the juvenile is financially able to pay the amount ordered and may allow up to the date of expiration of the order for the payment. Any recovery under this paragraph shall be

reduced by the amount recovered as restitution for the same act under s. 938.34 (5) or 938.343 (4).

**SECTION 29.** 938.45 (1r) (b) of the statutes is amended to read:

938.45 (1r) (b) In a proceeding in which the court has determined under s. 938.34 (8) or 938.343 (2) that the imposition of a forfeiture would be in the best interest of the juvenile and in aid of rehabilitation, the court may order a parent who has custody, as defined in s. 895.035 (1), of the juvenile to pay the forfeiture. The amount of any forfeiture ordered under this paragraph may not exceed ~~the amount specified in s. 799.01 (1) (d) \$5,000.~~ Any order under this paragraph shall include a finding that the parent who has custody of the juvenile is financially able to pay the amount ordered and shall allow up to 12 months after the date of the order for the payment. Any recovery under this paragraph shall be reduced by the amount recovered as a forfeiture for the same act under s. 938.34 (8) or 938.343 (2).

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

943.24 (3) (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 within 5 days after receiving written notice of nonpayment or dishonor to pay the check or other order, delivered by regular mail to either the person's last-known address or the address provided on the check or other order; or

**SECTION 31.** 943.24 (3) (c) of the statutes is amended to read:

943.24 (3) (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 within 5 days after receiving written notice of nonpayment or dishonor to pay the check or other order, delivered by regular mail to either the person's last-known address or the address provided on the check or other order.

**SECTION 32.** 943.245 (3) of the statutes is amended to read:

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.

**SECTION 33.** 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 34.** 943.51 (3) of the statutes is amended to read:

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 35.** 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 36. Initial applicability.**

(1) Except as provided in subsection (2), this act first applies to actions commenced or claims made on the effective date of this subsection.

(2) The treatment of sections 895.035 (2) and (4), 895.80 (1), (2), (3) (a), (b), and (c), (4), and (6), 938.245 (2) (a) 5. am., 938.32 (1t) (a) 1m., 938.45 (1r) (a) and (b), 943.24 (3) (b) and (c), 943.245 (3) and (4), and 943.51 (3) and (3m) of the statutes first applies to violations committed on the effective date of this subsection.

**SECTION 37. Effective date.**

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