

2003 DRAFTING REQUEST

Assembly Amendment (AA-AB651)

Received: **02/03/2004**

Received By: **rnelson2**

Wanted: **Today**

Identical to LRB:

For: **Director of State Courts**

By/Representing:

This file may be shown to any legislator: **NO**

Drafter: **rnelson2**

May Contact:

Addl. Drafters:

Subject: **Courts - civil procedure
Nat. Res. - fish and game**

Extra Copies: **Dan Rossmiller, state bar**

Submit via email: **YES**

Requester's email: **nancy.rottier@wicourts.gov**

Carbon copy (CC:) to: **drossmiller@wisbar.org**

Pre Topic:

No specific pre topic given

Topic:

Assignment of debt to collection agency

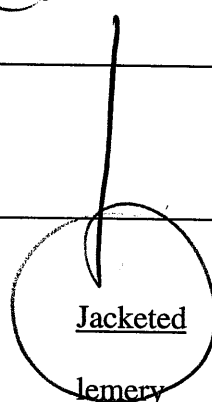
Instructions:

Use language in 99AB620 , SEC 22 to replace language in SECs 3 and 27

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	rnelson2	kfollett	pgreensl	_____	lemery	lemery	
	02/03/2004	02/03/2004	02/03/2004	_____	02/03/2004	02/03/2004	
				_____	lemery	lemery	
/2	rnelson2	kfollett	chaugen	_____	lemery	lemery	
	02/03/2004	02/03/2004	02/03/2004	_____	02/03/2004	02/03/2004	

*Jacket sent to
Rep Hebl per
(see email)*



Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

FE Sent For:

<END>

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Use language in 99AB620 , SEC 22 to repalce language in SECs 3 and 27

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/1	rnelson2 02/03/2004	kfollett 02/03/2004	pgreensl 02/03/2004		lemery 02/03/2004	lemery 02/03/2004	
			Ch 2-3	Ch 2-3 pv	lemery 02/03/2004	lemery 02/03/2004	

FE Sent For:

Forensic
(contact charge)

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For: Director of State Courts

By/Representing:

This file may be shown to any legislator: NO

Drafter: rnelson2

May Contact:

Addl. Drafters:

Subject: Courts - civil procedure
Nat. Res. - fish and game

Extra Copies: Dan Rossmiller, state bar

Submit via email: YES

drossmiller@
wisbar.org

Requester's email: sheryl.gervasi@courts.state.wi.us

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Assignment of debt to collection agency

Instructions:

Use Inaguage in 99AB620 , SEC 22 to repalce language in SECs 3 and 27

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/1	rnelson2	1/1 kjl 2/3	2/3 p v	2/3 p s l ch			
<END>							

FE Sent For:



FAX COVER SHEET

To

Name: **Atty. Robert P. Nelson**
Company: **Wisconsin Legislative Reference Bureau**
Fax: **(608) 264-8522**

From

Sender: **Dan Rossmiller**
Phone: **(608) 250-6140**
Fax: **(608) 257-4343**
Email: **drossmiller@wisbar.org**

Fax Status

Page count: **5 page(s) including cover sheet**
Date Sent: **February 3, 2004**

Message

Bob,

Thanks for speaking with me in regard to concerns about the unauthorized practice of law (UPL) and Section 3 of AB 651, which allows consolidation of claims by a collection agency. The concern of the State Bar is specifically with the sentence at p.4, line 20-22 which reads, "A licensee that brings an action under this subsection is the real party in interest under s. 803.01(2) for purposes of maintaining an action."

This language appears to conflict with the principles of the *Bonded Collections* case, 36 Wis. 2d 643 (1967), which held that "when one who is not the actual client, but on the strength of an assignment for collection purports to act as such, advises the true creditor of the necessity for suit and also directs an attorney in the initiation, conduct, and termination of a lawsuit, he is practicing law." The court described this as a fraud upon the court and the equivalent of the unauthorized practice of law (UPL).

Attached for your information are materials I received from DFI. The first is a form by which collection agencies may obtain suit authorization from creditors, the second is a letter dating back to 1974 from the former Office of the Commissioner of Banking (now under DFI) suggesting guidelines for collections agencies to follow in order to avoid UPL. If collection agencies follow the suggestions, they can avoid the UPL issues raised in the *Bonded Collections* case. In our view, DFI has it right by stating that agencies must have the lawyer bring an action in the name of the creditor—and after consolidation is approved, in the names of the creditors—not in the name of the agency. (See the numbered point 2 in the letter from the Mr. Noble of the Office of the Banking Commissioner.)

The language in section 3 of the bill highlighted above, by contravening this recommendation, appears to have the potential to foster UPL by collection agencies. Please feel free to contact me if you have any questions. I will call you back after you have had a chance to examine these materials.

State Bar of Wisconsin

5302 Eastpark Blvd. ♦ P.O. Box 7158 ♦ Madison, WI 53707-7158
(800)728-7788 ♦ (608)257-3838 ♦ Fax (608)257-5502 ♦ Internet: www.wisbar.org ♦ Email: service@wisbar.org



State of Wisconsin
Department of Financial Institutions

Jim Doyle, Governor

Lorrie Keating Heinemann, Secretary

FAX COVER LETTER

January 29, 2004

Please deliver the following pages to:

Name: Dan RossmillerFax Number: 257-4343Business Name: State Bar of Wisconsin

Phone: _____

From: Maggie SchmelzerFax Number: (608) 267-6889Total number of pages including this cover letter: 4

Comments: Attached is our "suggested" suit authorization that is provided to collection agencies. Also attached is a copy of the letter sent to collection agencies when this position was put in place.

If any problem occurs, or if you did not receive the entire document, please call (608) 261-2310 immediately.

CONFIDENTIALITY NOTICE

The documents accompanying this fax transmission may contain confidential information belonging to the Department of Financial Institutions, which is legally privileged. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or taking of any action in reliance on the contents of this faxed information is strictly prohibited. If you have received this fax in error, please notify us immediately by telephone to arrange for the return of the original documents to us. You will be reimbursed for your out-of-pocket postal and/or transmission expenses. Thank you.

(SUGGESTED)

SUIT AUTHORIZATION

1. () the undersigned elects to designate attorney _____ (name)

to handle this matter and authorizes _____ (collection agency)

as our agent, to retain this attorney for the undersigned under a retainer agreement consistent with the terms of this authorization.

OR

2. () the undersigned having elected not to exercise the privilege of selecting an attorney in this matter, herewith and by these presents authorizes

_____, as our agent, to retain an (collection agency)

attorney for the undersigned under a retainer agreement consistent with the terms of this authorization.

Counsel is hereby authorized to institute legal action against _____

_____ for the collection of an (open account) (note) (judgement) (other, describe _____)

in the principal sum of _____, with interest, and to conduct all necessary arrangements and correspondence with _____ (collection agency)

Suit shall be commenced in our name only, and the attorney shall be regarded as our attorney and he shall be free to report directly to us or through you, as our agent, as he desires. The attorney shall remit any money recovered less his legal fees and disbursements to you as our agent, and you shall forward to us said sum less your agreed commission and disbursements.

Dated this _____ day of _____, 19 _____

Name of Creditor



State of Wisconsin \ OFFICE OF COMMISSIONER OF BANKING

October 25, 1974

ERICH MILDENBERG
COMMISSIONERWILLIAM G. NOBLE
ADMINISTRATORDIVISION OF CONSUMER CREDIT
30 WEST MIFFLIN STREET
MADISON, WISCONSIN 53703

TO EACH COLLECTION AGENCY ADDRESSED:

Recent examinations have revealed instances of civil suits, including garnishment actions, commenced in the name of a licensee on accounts which have been assigned for collection. Participation by collection agencies in the commencement of civil actions as well as in the selection of counsel for account creditors may involve the unauthorized practice of law.

Where a collection agency represents itself as the plaintiff in a law suit it controls the litigation. Where the suit involves accounts assigned for collection, the collection agency intervenes between the account creditor and his attorney. In *State ex. rel. State Bar of Wisconsin v Bonded Collections, Inc.*, 36 Wis. 2nd 643 (1967), the Wisconsin Supreme Court described this intervention as a fraud on the court and the equivalent of the unauthorized practice of law.

The agency must purchase an account outright before representing in court that it is the real party in interest with respect to that account. Further recovery by the account creditor is not to be contingent upon the outcome of the law suit whenever the collection agency commences action in its own name. In such cases the account with respect to the creditor is to be cancelled and returned. Where the account represents a consumer credit transaction the procedural requirements of the Wisconsin Consumer Act relative to acceleration, notice of default and the commencement of any legal action must be observed.

In the discussions involving the Wisconsin Collectors Association that followed the Bonded Collection decision four procedures in the selection of counsel and participation in civil suits were agreed upon in cases where the agency has not purchased the account in order to avoid unauthorized practice of law by the agency. They are:

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20:33

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NO. 950 D004

OFFICE OF COMMISSIONER OF BANKING

-2-

1. Pleadings in each case must be prepared (drafted) and filed by an attorney.
2. The creditor's name must be used in the pleadings and in the caption of the case as the real party in interest and the collection agency's name shall not appear in the caption or pleadings.
3. The pleadings in the suit are to be verified by the creditor-client unless he is outside the jurisdiction making it inconvenient for him to do so in which case verification should be by the attorney and not the collection agency.
4. The creditor-client in each instance is to be given the opportunity to select the attorney to commence suit. The creditor may designate the collection agency as its agent to retain an attorney and forward the claim to the attorney in its behalf.

It is anticipated that each licensee will adhere closely to these procedures and will obtain written suit authorization from each account creditor before attempting to place an assigned account with an attorney for further collection action including suit.

Very truly yours,

William G. Noble
William G. Noble
Administrator

WGN:dm



now
State of Wisconsin
2003 - 2004 LEGISLATURE

LRBa2089/1

RPN: *[Signature]*

**ASSEMBLY AMENDMENT ,
TO 2003 ASSEMBLY BILL 651**

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

2 1. Page 4, line 20: delete lines 20 to 23 and substitute "debtor and bring action
3 on behalf of the creditor or creditors. (insert AA)

4 2. Page 12, line 22: delete the material beginning with that line and ending
5 with page 13, line 2.

6

(END)

Inser + AH

1 shall also be taxed for each expert; and in actions relating to or affecting the title to
2 lands, the cost of procuring an abstract of title to the lands. Guardian ad litem fees
3 shall not be taxed as a cost or disbursement.

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

5 **814.07 Costs on motion.** Costs may be allowed on a motion, in the discretion
6 of the court or judge, not exceeding \$50 ~~\$300~~, and may be absolute or directed to abide
7 the event of the action.

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

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

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

13 895.035 (2) The parent or parents with custody of a minor child, in any
14 circumstances where he, she or they may not be liable under the common law, are
15 liable for damages to property, for the cost of repairing or replacing property or
16 removing the marking, drawing, writing or etching from property regarding a
17 violation under s. 943.017, for the value of unrecovered stolen property or for
18 personal injury attributable to a wilful, malicious or wanton act of the child. The
19 parent or parents with custody of their minor child are jointly and severally liable
20 with the child for the damages imposed under s. 895.80, 943.212, 943.24, 943.245
21 or 943.51 for their child's violation of s. 943.01, 943.011, 943.012, 943.017, 943.20,
22 943.201, 943.21, 943.24, 943.26, 943.34, 943.395, 943.41, 943.50 or 943.61.

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

24 ~~895.08 Assignment of debt and right to sue. (1)~~ Any person may assign
25 a debt owed to that person to any other person, including a debt collection agency.

insert AA
- 10 -
continued

licensee

1 licensed by the department of financial institutions. That assignment shall be in
2 writing for consideration and shall state the amount owed to the original creditor, the
3 name of the debtor and the name of the person to whom the debt is assigned.

4 ~~(2) An assignee~~ ^{licensee} taking assignment of a debt under this section shall take the
5 assignment of the debt in ~~his or her own~~ ^{the licensee's} name as ~~real party~~ ^{a party} in interest for the
6 purpose of billing, collection, and bringing suit in ~~his or her own~~ ^{the licensee's} name. No suit
7 regarding an assigned debt may be instituted on behalf of a ~~collection agency~~ ^{licensee} in any
8 court unless the ~~collection agency~~ ^{licensee} appears by a duly authorized and licensed attorney

9 at law. When a suit is commenced under this subsection, the court may authorize
10 payment of reasonable attorney fees and costs to the prevailing party.

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

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

17 895.80 (2) The burden of proof in a civil action under sub. (1) is with the person
18 who suffers damage or loss to prove ~~his or her case~~ a violation of s. 943.01, 943.011,
19 943.012, 943.017, 943.20, 943.201, 943.21, 943.24, 943.26, 943.34, 943.395, 943.41,
20 943.50 or 943.61 by a preponderance of the credible evidence. A conviction under s.
21 943.01, 943.011, 943.012, 943.017, 943.20, 943.201, 943.21, 943.24, 943.26, 943.34,
22 943.395, 943.41, 943.50 or 943.61 is not required to bring an action, obtain a
23 judgment or collect on that judgment under this section.

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

Nelson, Robert P.

From: Dan Rossmiller [DRossmiller@wisbar.org]
Sent: Tuesday, February 03, 2004 2:24 PM
To: robert.nelson@legis.state.wi.us
Subject: FW: LRB 03a2089 Topic: Assignment of debt to collection agency

Bob,

I have reviewed the attached proposal and think it needs to be tweaked. It occurs to me that our discussion did not cover one important element—the procedures suggested by the Banking Commissioner--and as a result a crucial portion was left out of the draft.

I have borrowed from the DFI materials I faxed you to develop this proposed language:

In section 3 of the bill, newly created 218.04 (9j) should be re-captioned so it reads “consolidation of accounts” or something similar. It should read substantially as follows:

218.04 (9j) of the statutes is created to read:

replace in

218.04 (9j) 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 bring an action on behalf of the creditor or creditors. In any action brought by a licensee under this subsection,

- a) the summons and complaint shall be prepared by an attorney or at the direction of an attorney and shall be filed by an attorney;
- b) 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; and
- c) the creditor or creditors in each instance 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.

In any action brought by a licensee under this subsection, the licensee shall not appear on behalf of any creditor or creditors, 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.”

I believe the new language you added by the amendment draft starting at line 3 with: “Any person may assign a debt...and ending on line 10 with “attorney at law.”.” should be a new subsection in 218.04 (maybe (9i) ??) under a heading that reads “assignment of debt and civil action by licensee” or something similar.

Thanks for your help.

Please let me know if you have any questions.

02/03/2004

Sincerely,

Dan Rossmiller

Public Affairs Director

State Bar of Wisconsin

(608) 250-6140 (voice)

(608) 257-4343 (fax)

WISCONSIN LAWYERS.

Expert Advisers. Serving You.

-----Original Message-----

From: Emery, Lynn [<mailto:Lynn.Emery@legis.state.wi.us>]

Sent: Tuesday, February 03, 2004 12:37 PM

To: 'drossmiller@wisbar.org;'

Subject: LRB 03a2089 Topic: Assignment of debt to collection agency

Draft Requester: Director of State Courts

The attached proposal has been jacketed for introduction.

<<2089>>

(608) 250-6140 (voice)

(608) 257-4343 (fax)

WISCONSIN LAWYERS.

Expert Advisers. Serving You.



State of Wisconsin
2003 - 2004 LEGISLATURE

LRBa2089/1 ²

RPN:kjf/MA

new

ASSEMBLY AMENDMENT,
TO 2003 ASSEMBLY BILL 651

Insert 1-3

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

2 1. Page 4, line ¹⁷~~20~~: delete lines ¹⁷~~20~~ to 23 and substitute ~~debtor and bring action~~
3 ~~on behalf of the creditor or creditors.~~ Any person may assign a debt owed to that
4 person to any licensee. That assignment shall be in writing for consideration and
5 shall state the amount owed to the original creditor, the name of the debtor and the
6 name of the licensee. A licensee taking assignment of a debt under this section shall
7 take the assignment of the debt in the licensee's name as a real party in interest for
8 the purpose of billing, collection, and bringing suit in the licensee's name. No suit
9 regarding an assigned debt may be instituted on behalf of a licensee in any court
10 unless the licensee appears by a duly authorized and licensed attorney at law."

11 2. Page 12, line 22: delete the material beginning with that line and ending
12 with page 13, line 2.

13

(END)

Nelson, Robert P.

From: Dan Rossmiller [DRossmiller@wisbar.org]

Sent: Tuesday, February 03, 2004 2:37 PM

To: robert.nelson@legis.state.wi.us

Subject: Slight Change to Language I just sent you re: Amdt. to AB 651 (2003 LRB a2089/1

Insert 1-3

Dan Rossmiller of Bar
Use this language

Bob,

With respect to the first part of the amendment redraft I like this language better than the language I sent you a moment ago.

In section 3 of the bill, newly created 218.04 (9j) should be re-captioned so it reads "consolidation of accounts" or something similar. It should read substantially as follows:

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

218.04 (9j) ^(B) ^(CS) 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. ~~In~~ any action caused to be brought by a licensee on behalf of a creditor or creditors under this subsection

All of the following apply to

1. ~~the~~ summons and complaint shall be prepared by an attorney or at the direction of an attorney ~~and shall be filed by 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 ~~and~~.
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 brought by a licensee under this subsection, the licensee shall not appear on behalf of any creditor or creditors, 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.

Thanks again.
Dan Rossmiller
Public Affairs Director
State Bar of Wisconsin

SECTION 3^M. 218.04 (9k) of the statutes is created to read:
218.04 (9k) ^(B) Assignment of Accounts. No II

Emery, Lynn

From: Nancy Rottier [Nancy.Rottier@wicourts.gov]
Sent: Tuesday, February 03, 2004 4:21 PM
To: Lynn.Emery@legis.state.wi.us
Subject: Re: LRB 03a2089 Topic: Assignment of debt to collection agency

Please release LRB 03a2089/2 to Rep. Tom Hebl. (This is in addition to LRB 03a2094/1.) Thank you.

Nancy M. Rottier
Legislative Liaison
Supreme Court
16 East, State Capitol
P.O. Box 1688
Madison, WI 53701-1688
(608) 267-9733
(608) 267-0980 (fax)
Nancy.Rottier@wicourts.gov

>>> "Emery, Lynn" <Lynn.Emery@legis.state.wi.us> 02/03/04 03:46PM >>>
The attached proposal has been jacketed for introduction.

A copy has also been sent to: drossmiller@wisbar.org;