

**ASSEMBLY SUBSTITUTE AMENDMENT 1,  
TO 2003 ASSEMBLY BILL 651**

February 5, 2004 – Offered by Representative MONTGOMERY.

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

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

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

2           16.007 **(6)** (a) Except as provided in par. (b), whenever the claims board by  
3 unanimous vote finds that payment to a claimant of not more than the amount  
4 specified in s. 799.01 (1) (d) is justified, it may order the amount that it finds justified  
5 to be paid on its own motion without submission of the claim in bill form to the  
6 legislature. The claim shall be paid on a voucher upon the certification of the  
7 chairperson and secretary of the board, and shall be charged as provided in sub. (6m).

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

9           **29.962 Worthless checks for approvals.** If a person tenders a check or other  
10 order for payment to an issuing agent appointed under s. 29.024 (6) (a) 3. to make  
11 payment for an approval issued under this chapter to an issuing agent, and the check  
12 is drawn on an account that does not exist or on an account with insufficient funds,  
13 or is otherwise worthless, the issuing agent may give notification to the department  
14 of the fact after having made an effort to receive payment from the person who  
15 tendered the check or other payment. If the issuing agent gives such notification, the  
16 department shall revoke the approval and send notification to the holder of the  
17 approval that it has been revoked for failure to make payment for the approval. The  
18 holder of the approval shall return the approval to the department within 7 days  
19 after receiving the notification.

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

21           218.04 **(9j)** CONSOLIDATION OF ACCOUNTS. (a) A licensee may, after receiving  
22 authorization from a creditor, consolidate the creditor's account or accounts relating  
23 to a particular debtor with those of any other creditor or creditors relating to that

1 debtor and may cause an action to be brought on behalf of the creditor or creditors.

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

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

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

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

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

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

19 812.34 (2) (a) Unless the court grants relief under s. 812.38 (2) or par. (b) or (c)  
20 applies, 80% of the debtor's disposable earnings are exempt from garnishment under  
21 this subchapter.

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

23 812.34 (2) (b) 1. The debtor's household income is below the poverty line, ~~or the~~  
24 ~~garnishment would cause that result; or,~~

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

1           812.34 (2) (c) If the garnishment of 20% of the debtor’s disposable income under  
2 this subchapter would result in the debtor’s household income being below the  
3 poverty line, the amount of the garnishment is limited to the debtor’s household  
4 income in excess of the poverty line before the garnishment is in effect.

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

6           812.37 (1) Except as provided in s. 812.34 (1), the debtor may claim an  
7 exemption under s. 812.34 (2) (b) or a limit to the garnishment under s. 812.34 (2)  
8 (c), or may assert any defense to the earnings garnishment, by completing the answer  
9 form and delivering or mailing it to the garnishee. The debtor or debtor’s spouse may  
10 file an answer or an amended answer at any time before or during the effective period  
11 of the earnings garnishment.

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

13           812.38 (1) (b) The debtor may file with the court a written petition for relief  
14 from the earnings garnishment if the exemption percentage under s. 812.34 (2) (a)  
15 is insufficient for the debtor to acquire the necessities of life for the debtor and his  
16 or her dependents. The petition shall state with reasonable specificity the grounds  
17 for the relief requested and shall include any additional information necessary to  
18 support the petition.

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

20           812.44 (4) (form) 1. Your household income is below the federal poverty level,  
21 ~~or this garnishment would cause that to happen.~~ See the enclosed schedules and  
22 worksheet to determine if you qualify for this exemption.

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

24           812.44 (4) (form) 3. At least 25% of your disposable earnings are assigned by  
25 court order for support.

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

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

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

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

14   IF YOU NEED ASSISTANCE

15   CONSULT AN ATTORNEY

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

22   PENALTIES

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

1           **SECTION 11.** 814.04 (1) (a) of the statutes is amended to read:

2           814.04 (1) (a) When the amount recovered or the value of the property involved  
3 is ~~\$1,000 or over~~ greater than the maximum amount specified in s. 799.01 (1) (d),  
4 attorney fees shall be ~~\$100~~ \$500; when it is equal to or less than \$1,000 and is \$500  
5 ~~or over, \$50~~ the maximum amount specified in s. 799.01 (1) (d), but is \$1,000 or more,  
6 attorney fees shall be \$300; when it is less than \$500 and is ~~\$200 or over, \$25~~; and  
7 ~~when it is less than \$200, \$15~~ \$1,000, attorney fees shall be \$100. In all other cases  
8 in which there is no amount recovered or that do not involve property, attorney fees  
9 shall be \$300.

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

11           **SECTION 13.** 814.04 (2) of the statutes is amended to read:

12           814.04 (2) DISBURSEMENTS. All the necessary disbursements and fees allowed  
13 by law; the compensation of referees; a reasonable disbursement for the service of  
14 process or other papers in an action when the same are served by a person authorized  
15 by law other than an officer, but the item may not exceed the authorized sheriff's fee  
16 for the same service; amounts actually paid out for certified and other copies of  
17 papers and records in any public office; postage, ~~telegraphing~~ photocopying,  
18 telephoning, electronic communications, facsimile transmissions, and express or  
19 overnight delivery; depositions including copies; plats and photographs, not  
20 exceeding ~~\$50~~ \$100 for each item; an expert witness fee not exceeding ~~\$100~~ \$300 for  
21 each expert who testifies, exclusive of the standard witness fee and mileage which  
22 shall also be taxed for each expert; and in actions relating to or affecting the title to  
23 lands, the cost of procuring an abstract of title to the lands. Guardian ad litem fees  
24 shall not be taxed as a cost or disbursement.

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

1           **814.07 Costs on motion.** Costs may be allowed on a motion, in the discretion  
2 of the court or judge, not exceeding \$50 ~~\$300~~, and may be absolute or directed to abide  
3 the event of the action.

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

5           815.18 (3) (k) *Depository accounts.* Depository accounts in the aggregate value  
6 of \$1,000, but only to the extent that the account is for the debtor's personal use and  
7 is not used as a business account.

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

10           895.035 (2) (a) The parent or parents with custody of a minor child, in any  
11 circumstances where he, she, or they may not be liable under the common law, are  
12 liable for damages to property, for the cost of repairing or replacing property or  
13 removing the marking, drawing, writing, or etching from property regarding a  
14 violation under s. 943.017, for the value of unrecovered stolen property, or for  
15 personal injury attributable to a willful, malicious, or wanton act of the child.

16           (b) 1. The parent or parents with custody of their minor child are jointly and  
17 severally liable with the child for the damages imposed under s. 943.51 for their  
18 child's violation of s. 943.50.

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

20           895.035 (2) (b) 2. If a parent is jointly and severally liable under this paragraph  
21 and has physical placement of the child, the parent's liability is limited to that  
22 percentage representing the time that the child actually spends with that parent.

23           3. Notwithstanding sub. (1), a parent does not have custody of a child for  
24 purposes of this paragraph if at the time of the violation the child has been freed from  
25 the care, custody, and control of the parent through marriage or emancipation or if

1 at the time of the violation the parent does not reasonably have the ability to exercise  
2 supervision and control of the child because the child is uncontrollable or because  
3 another person has interfered with that parent's exercise of supervision and control.

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

5 895.035 (4) Except for recovery under sub. (4a) or for retail theft under s.  
6 943.51, the maximum recovery under this section from any parent or parents may  
7 not exceed ~~the amount specified in s. 799.01 (1) (d) \$5,000~~ for damages resulting from  
8 any one act of a juvenile in addition to taxable costs and disbursements and  
9 reasonable attorney fees, as determined by the court. If 2 or more juveniles in the  
10 custody of the same parent or parents commit the same act the total recovery under  
11 this section may not exceed ~~the amount specified in s. 799.01 (1) (d) \$5,000~~, in  
12 addition to taxable costs and disbursements. The maximum recovery from any  
13 parent or parents for retail theft by their minor child is established under s. 943.51.

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

16 895.80 (1) Any person who suffers damage or loss by reason of intentional  
17 conduct that occurs on or after November 1, 1995, and that is prohibited under s.  
18 943.01, 943.20, 943.21, 943.24, 943.26, 943.34, 943.395, 943.41, 943.50, 943.61,  
19 943.74, or 943.76, or by reason of intentional conduct that occurs on or after April 28,  
20 1998, and that is prohibited under s. 943.201 or 943.203, or by reason of intentional  
21 conduct that occurs on or after the effective date of this subsection .... [revisor inserts  
22 date]. and that is prohibited under s. 943.011, 943.012, or 943.017, has a cause of  
23 action against the person who caused the damage or loss.

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



1           895.80 (2) The burden of proof in a civil action under sub. (1) is with the person  
2 who suffers damage or loss to prove ~~his or her case~~ a violation of s. 943.01, 943.011,  
3 943.012, 943.017, 943.20, 943.201, 943.203, 943.21, 943.24, 943.26, 943.34, 943.395,  
4 943.41, 943.50, 943.61, 943.74, or 943.76 by a preponderance of the credible evidence.  
5 A conviction under s. 943.01, 943.011, 943.012, 943.017, 943.20, 943.201, 943.203,  
6 943.21, 943.24, 943.26, 943.34, 943.395, 943.41, 943.50, 943.61, 943.74, or 943.76 is  
7 not required to bring an action, obtain a judgment, or collect on that judgment under  
8 this section.

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

10           895.80 (3) (a) Actual damages, including the retail or replacement value of  
11 damaged, used, or lost property, whichever is greater, for a violation of s. 943.01,  
12 943.011, 943.012, 943.017, 943.20, 943.201, 943.203, 943.21, 943.24, 943.26, 943.34,  
13 943.395, 943.41, 943.50, 943.61, 943.74, or 943.76.

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

15           895.80 (3) (b) All costs of investigation and litigation that were reasonably  
16 incurred, including the value of the time spent by any employee or agent of the  
17 victim.

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

19           895.80 (3) (c) Exemplary damages of not more than 3 times the amount  
20 awarded under par. (a). No additional proof is required under this section for an  
21 award of exemplary damages under this paragraph.

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

23           895.80 (4) Any recovery under this section shall be reduced by the amount  
24 recovered as restitution under ss. 800.093 and 973.20 and ch. 938.

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

1           895.80 **(6)** A person is not criminally liable under s. 943.30 for any action  
2 brought in good faith under this section.

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

4           938.245 **(2)** (a) 5. am. That the parent who has custody, as defined in s. 895.035  
5 (1), of the juvenile make reasonable restitution for any damage to the property of  
6 another, or for any actual physical injury to another excluding pain and suffering,  
7 resulting from the act for which the deferred prosecution agreement is being entered  
8 into. Except for recovery for retail theft under s. 943.51, the maximum amount of any  
9 restitution ordered under this subd. 5. am. for damage or injury resulting from any  
10 one act of a juvenile or from the same act committed by 2 or more juveniles in the  
11 custody of the same parent may not exceed ~~the amount specified in s. 799.01 (1) (d)~~  
12 \$5,000. Any order under this subd. 5. am. shall include a finding that the parent who  
13 has custody of the juvenile is financially able to pay the amount ordered and may  
14 allow up to the date of the expiration of the deferred prosecution agreement for the  
15 payment. Any recovery under this subd. 5. am. shall be reduced by the amount  
16 recovered as restitution for the same act under subd. 5. a.

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

18           938.32 **(1t)** (a) 1m. If the petition alleges that the juvenile has committed a  
19 delinquent act that has resulted in damage to the property of another, or in actual  
20 physical injury to another excluding pain and suffering, the judge or circuit court  
21 commissioner may require a parent who has custody, as defined in s. 895.035 (1), of  
22 the juvenile, as a condition of the consent decree, to make reasonable restitution for  
23 the damage or injury. Except for recovery for retail theft under s. 943.51, the  
24 maximum amount of any restitution ordered under this subdivision for damage or  
25 injury resulting from any one act of a juvenile or from the same act committed by 2

1 or more juveniles in the custody of the same parent may not exceed ~~the amount~~  
2 ~~specified in s. 799.01 (1) (d) \$5,000.~~ Any consent decree that includes a condition of  
3 restitution by a parent who has custody of the juvenile shall include a finding that  
4 the parent who has custody of the juvenile is financially able to pay the amount  
5 ordered and may allow up to the date of the expiration of the consent decree for the  
6 payment. Objection by the parent to the amount of damages claimed shall entitle the  
7 parent to a hearing on the question of damages before the amount of restitution is  
8 made part of the consent decree. Any recovery under this subdivision shall be  
9 reduced by the amount recovered as restitution for the same act under subd. 1.

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

11 938.45 (1r) (a) In a proceeding in which a juvenile has been found to have  
12 committed a delinquent act or a civil law or ordinance violation that has resulted in  
13 damage to the property of another, or in actual physical injury to another excluding  
14 pain and suffering, the court may order a parent who has custody, as defined in s.  
15 895.035 (1), of the juvenile to make reasonable restitution for the damage or injury.  
16 Except for recovery for retail theft under s. 943.51, the maximum amount of any  
17 restitution ordered under this paragraph for damage or injury resulting from any  
18 one act of a juvenile or from the same act committed by 2 or more juveniles in the  
19 custody of the same parent may not exceed ~~the amount specified in s. 799.01 (1) (d)~~  
20 \$5,000. Any order under this paragraph shall include a finding that the parent who  
21 has custody of the juvenile is financially able to pay the amount ordered and may  
22 allow up to the date of expiration of the order for the payment. Any recovery under  
23 this paragraph shall be reduced by the amount recovered as restitution for the same  
24 act under s. 938.34 (5) or 938.343 (4).

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

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

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

12          943.24 **(3)** (b) Proof that, at the time of issuance, the person did not have  
13          sufficient funds or credit with the drawee and that the person failed within 5 days  
14          after receiving written notice of nonpayment or dishonor to pay the check or other  
15          order, delivered by regular mail to either the person's last-known address or the  
16          address provided on the check or other order; or

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

18          943.24 **(3)** (c) Proof that, when presentment was made within a reasonable  
19          time, the person did not have sufficient funds or credit with the drawee and the  
20          person failed within 5 days after receiving written notice of nonpayment or dishonor  
21          to pay the check or other order, delivered by regular mail to either the person's  
22          last-known address or the address provided on the check or other order.

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

1           943.245 (3) Notwithstanding sub. (2) (c) and (d), the total amount awarded for  
2           exemplary damages and reasonable attorney fees may not exceed \$500 for each  
3           violation.

4           **SECTION 33.** 943.245 (4) of the statutes is amended to read:

5           943.245 (4) At least 20 days prior to commencing an action, as specified in s.  
6           801.02, under this section, the plaintiff shall notify the defendant, by mail, of his or  
7           her intent to bring the action. Notice of nonpayment or dishonor shall be sent by the  
8           payee or holder of the check or order to the drawer by regular mail supported by an  
9           affidavit of service of mailing ~~or by a certificate of mailing obtained from the U.S. post~~  
10          ~~office from which the mailing was made.~~ The plaintiff shall mail the notice to the  
11          defendant's last-known address or to the address provided on the check or order. If  
12          the defendant pays the check or order prior to the commencement of the action, he  
13          or she is not liable under this section.

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

15          943.51 (3) Notwithstanding sub. (2) and except as provided in sub. (3m), the  
16          total amount awarded for exemplary damages and reasonable attorney fees may not  
17          exceed \$500 for each violation.

18          **SECTION 35.** 943.51 (3m) of the statutes is amended to read:

19          943.51 (3m) Notwithstanding sub. (2), the total amount awarded for  
20          exemplary damages and reasonable attorney fees may not exceed \$300 for each  
21          violation if the action is brought against a minor or against the parent who has  
22          custody of their minor child for the loss caused by the minor.

23          **SECTION 36. Initial applicability.**

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

