

2009 DRAFTING REQUEST

Bill

Received: 01/21/2010

Received By: **chanaman**

Wanted: **As time permits**

Identical to LRB:

For: **Kristen Dexter (608) 266-9172**

By/Representing: **Ilsa Peterson**

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

Drafter: **chanaman**

May Contact:

Addl. Drafters:

Subject: **Courts - miscellaneous**
Fin. Inst. - miscellaneous

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Dexter@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Freezing bank accounts of elder adults at risk or adults at risk

Instructions:

See attached--identical to -2933

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>
/?	chanaman 01/21/2010	csicilia 01/21/2010		_____			S&L
/1			jfrantze 01/21/2010	_____	cduerst 01/21/2010	cduerst 01/21/2010	

FE Sent For:

<END>

↳ At Intro.

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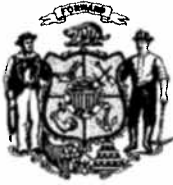
See attached--identical to -2933

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FE Sent For:

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State of Wisconsin
2009 - 2010 LEGISLATURE

From
-4159/1
LRB-2933/1
CMH/RPN/ARG:cjs:md
Stays

2009 BILL

companion
bill -
no changes
PDH please

SN

refer cat

1 AN ACT *to amend* 757.69 (1) (j), 813.06, 814.61 (1) (a) and (b), 814.70 (1) and
2 814.70 (3) (intro.); and *to create* 46.90 (5g), 55.043 (1t), 801.50 (5u), 813.124
3 and 814.61 (1) (dm) of the statutes; **relating to:** requiring certain county
4 agencies to petition a court to freeze accounts of certain individuals being
5 financially exploited.

Analysis by the Legislative Reference Bureau

Under current law, if a county elder-adult-at-risk agency receives a report of alleged abuse, financial exploitation, neglect, or self-neglect (abuse) of an individual who is over 60 and who has experienced, is currently experiencing, or is at risk of experiencing abuse (elder adult at risk), the agency generally must respond to the report or refer the report to another agency for investigation. Similarly, if a county adult-at-risk agency believes that an adult who has a physical or mental condition that substantially impairs his or her ability to care for his or her needs and who has experienced, is experiencing, or is at risk of experiencing abuse (adult at risk) is the subject of abuse, the adult-at-risk agency may investigate to determine whether the adult at risk is in need of protective services. Current law provides several options for investigation and response, including visits to the person's residence, observation, or reviews of certain records.

Under this bill, if either the elder-adult-at-risk agency or the adult-at-risk agency conducts an investigation that indicates that an individual at risk is the subject of financial exploitation, the agency must file a petition with a court to

BILL

require the individual's financial institution to refuse transfers or withdrawals from, or "freeze," an account held by the individual. The bill requires that the petition specify the account and the financial institution and name the person who is likely, without court action, to exploit financially the individual at risk. The court must order the financial institution to freeze the account if the court finds reasonable grounds to believe that the account has been used to exploit the individual at risk, or is likely to be used by the named person to exploit the individual at risk, based upon the named person's prior conduct or based upon the findings of the agency. The court may hear testimony from the individual at risk; the individual's guardian or agent, if any; the person alleged to be the financial exploiter; and a representative of the financial institution. If the court issues an order freezing the account, the court has discretion to permit some activity on the account and to set the length of the freeze for any period up to one year.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 46.90 (5g) of the statutes is created to read:

2 **46.90 (5g)** RESPONSE TO FINANCIAL EXPLOITATION. An elder–adult–at–risk
3 agency shall, in response to an investigation under sub. (5) that indicated that an
4 elder adult at risk is the subject of financial exploitation, file a petition under s.
5 813.124 (2) to request a court to order a financial institution, as defined in s. 705.01
6 (3), to refuse any transfers and withdrawals from any account the elder adult at risk
7 holds, individually or jointly, at the financial institution. The petition shall comply
8 with all requirements under s. 813.124 (2) (b).

9 **SECTION 2.** 55.043 (1t) of the statutes is created to read:

10 **55.043 (1t)** RESPONSE TO FINANCIAL EXPLOITATION. An adult–at–risk agency
11 shall, in response to an investigation under sub. (1r) that indicated that an adult at
12 risk is the subject of financial exploitation, file a petition under s. 813.124 (2) to
13 request a court to order a financial institution, as defined in s. 705.01 (3), to refuse
14 any transfers and withdrawals from any account the adult at risk holds, individually

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1 or jointly, at the financial institution. The petition shall comply with all
2 requirements under s. 813.124 (2) (b).

3 **SECTION 3.** 757.69 (1) (j) of the statutes is amended to read:

4 757.69 (1) (j) Hold hearings, make findings and issue temporary restraining
5 orders under s. 813.122 ~~or~~, 813.123, or 813.124.

6 **SECTION 4.** 801.50 (5u) of the statutes is created to read:

7 801.50 (5u) Venue of an action under s. 813.124 shall be in the county in which
8 the cause of action arose or in which the petitioning agency is located.

9 **SECTION 5.** 813.06 of the statutes is amended to read:

10 **813.06 Security for damages.** In proceedings under s. 767.225 the court or
11 judge may, and in all other proceedings except proceedings under ss. 813.12, 813.122,
12 813.124, 813.125, and 823.113 the court or judge shall, require a bond of the party
13 seeking an injunction, with sureties, to the effect that he or she will pay to the party
14 enjoined such damages, not exceeding an amount to be specified, as he or she may
15 sustain by reason of the injunction if the court finally decides that the party was not
16 entitled thereto. Copies of ~~such~~ the bond, affidavit, or other pleading shall be served
17 upon the party enjoined and the officer serving the same shall, within 8 days after
18 such service, file his or her return in the office of the clerk of the court.

19 **SECTION 6.** 813.124 of the statutes is created to read:

20 **813.124 Account injunctions for individuals at risk. (1) DEFINITIONS.** In
21 this section:

22 (a) "Account" means a contract of deposit of funds between a depositor and a
23 financial institution, and includes a checking or savings account, certificate of
24 deposit, share account, and other like arrangement.

25 (am) "Adult at risk" has the meaning given in s. 55.01 (1e).

BILL**SECTION 6**

- 1 (b) “Adult-at-risk agency” has the meaning given in s. 55.01 (1f).
- 2 (c) “Elder adult at risk” has the meaning given in s. 46.90 (1) (br).
- 3 (d) “Elder-adult-at-risk agency” has the meaning given in s. 46.90 (1) (bt).
- 4 (dm) “Financial institution” has the meaning given in s. 705.01 (3).
- 5 (e) “Financial exploitation” has the meaning given in s. 46.90 (1) (ed).
- 6 (f) “Individual at risk” means an elder adult at risk or an adult at risk.
- 7 (g) “Individual-at-risk agency” means an adult-at-risk agency or an
8 elder-adult-at-risk agency.
- 9 **(2) PETITION.** (a) An action under this section may be commenced only by a
10 petition filed by an individual-at-risk agency.
- 11 (b) The petition shall allege facts sufficient to show the following:
- 12 1. The name of the individual at risk.
- 13 2. a. If the individual at risk named under subd. 1. is an elder adult at risk, that
14 a report of financial exploitation against the individual at risk under s. 46.90 (5) has
15 been investigated and confirmed.
- 16 b. If the individual at risk named under subd. 1. is an adult at risk, that a report
17 of financial exploitation against the individual at risk under s. 55.043 (1r) has been
18 investigated and confirmed.
- 19 3. The financial institution at which the financial exploitation has occurred or
20 is likely to occur and the accounts that may be affected.
- 21 4. The name of the person who has conducted or is likely to conduct the financial
22 exploitation.
- 23 **(3) GENERAL PROCEDURE.** Procedure for an action under this section is in 2 parts.
24 First, the court or circuit court commissioner shall issue or refuse to issue a
25 temporary restraining order. Second, the court shall hold a hearing under sub. (5)

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1 on whether to issue an injunction, which is the final relief. If the court or circuit court
2 commissioner issues a temporary restraining order, the order shall set forth the date
3 for the hearing on an injunction. If the court or circuit court commissioner does not
4 issue a temporary restraining order, the date for the hearing shall be set upon motion
5 by either party.

6 **(4) TEMPORARY RESTRAINING ORDER.** (a) A judge or circuit court commissioner
7 shall issue a temporary restraining order, as specified in par. (b), if all of the following
8 occur:

9 1. The petitioner submits to the judge or circuit court commissioner a petition
10 alleging the elements set forth under sub. (2) (b).

11 2. The judge or circuit court commissioner finds reasonable grounds to believe
12 any of the following:

13 a. That the individual at risk has been the subject of financial exploitation and
14 that an account at the financial institution identified under sub. (2) (b) 3. has been
15 used to aid the financial exploitation of the individual at risk.

16 b. That the the individual at risk is likely to be the subject of financial
17 exploitation conducted by the person named under sub. (2) (b) 4. and that an account
18 at the financial institution identified under sub. (2) (b) 3. is likely to be used to aid
19 the financial exploitation of the individual at risk.

20 (b) A temporary restraining order issued under par. (a) shall order the financial
21 institution identified under sub. (2) (b) 3. to refuse transfers or withdrawals from any
22 account the individual at risk holds, individually or jointly, at the financial
23 institution. In the order the judge may, as he or she determines is appropriate, order
24 the refusal to be of any of the following:

25 1. All transfers and withdrawals from the account.

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1 2. Any withdrawal by a specified person.

2 3. All transfers and withdrawals with specified exceptions for regular transfers
3 or withdrawals.

4 (c) If a judge or circuit court commissioner issues a temporary restraining
5 order, notice shall be given to the individual at risk.

6 (d) The temporary restraining order is in effect until a hearing is held on
7 issuance of an injunction under sub. (5). A judge shall hold a hearing on issuance of
8 an injunction within 14 days after the temporary restraining order is issued, unless
9 the time is extended upon the written consent of the parties or extended once for 14
10 days upon a finding that the respondent has not been served with a copy of the
11 temporary restraining order although the petitioner has exercised due diligence.

12 **(5) INJUNCTION.** (a) The judge shall issue an injunction, as specified in par. (c)
13 if all of the following occur:

14 1. The petitioner has filed a petition alleging the elements set forth under sub.

15 (2) (b).

16 2. The petitioner serves a copy of the petition and notice of the time for hearing
17 on the issuance of the injunction upon all of the following:

18 a. The financial institution identified under sub. (2) (b) 3.

19 b. The individual at risk named under sub. (2) (b) 1.

20 c. The person named under sub. (2) (b) 4.

21 d. Any person with whom the individual at risk holds a joint account at the
22 financial institution identified under sub. (2) (b) 3. if the petitioner knows of any such
23 account holder.

24 e. Any guardian, or agent under an activated power of attorney, of the
25 individual at risk, if the petitioner knows of any such guardian or agent.

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1 3. After a hearing, the judge finds reasonable grounds to believe any of the
2 following:

3 a. That the individual at risk has been the subject of financial exploitation and
4 that an account at the financial institution identified under sub. (2) (b) 3. has been
5 used to aid the financial exploitation of the individual at risk.

6 b. That the individual at risk is likely to be the subject of financial exploitation
7 conducted by the person named under sub. (2) (b) 4. and that an account at the
8 financial institution identified under sub. (2) (b) 3. is likely to be used to aid the
9 financial exploitation of the individual at risk.

10 (b) In determining whether there are reasonable grounds under par. (a) 3., the
11 judge may, in his or her discretion, consider the petition filed under sub. (2), any other
12 factors the judge finds appropriate, and any of the following:

13 1. The preferences of the individual at risk, but the judge shall note any
14 coercion the individual-at-risk agency has identified in the investigation described
15 under sub. (2) (b) 2.

16 2. Any preferences of a guardian, or agent under an activated power of attorney,
17 of the individual at risk, if any.

18 3. Any testimony given by the person named under sub. (2) (b) 4., given by any
19 person with whom the individual at risk holds a joint account that may be subject
20 to the petition filed under sub. (2), or given by a representative of the financial
21 institution identified under sub. (2) (b) 3.

22 (c) An injunction issued under par. (a) shall order the financial institution
23 identified under sub. (2) (b) 3. to refuse transfers and withdrawals from any account
24 the individual at risk holds, individually or jointly, at the financial institution. In the

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1 order the judge may, as he or she determines is appropriate, order the refusal to be
2 of any of the following:

- 3 1. All transfers and withdrawals from the account.
- 4 2. Any withdrawal by a specified person.
- 5 3. All transfers and withdrawals with specified exceptions for regular transfers
6 or withdrawals.

7 (d) An order under this subsection is effective according to its terms, but for not
8 more than one year.

9 **(6) FINANCIAL INSTITUTIONS SUBJECT TO COURT ORDERS.** (a) A financial institution
10 that complies with any order issued under sub. (4) or (5) is not liable to any person
11 for complying with the order or for any other action arising from, or related to, the
12 financial institution's compliance with the order.

13 (b) Notwithstanding any order issued under sub. (4) or (5), a financial
14 institution may close an account identified in an order under sub. (4) or (5), or take
15 any other action with respect to the account that is authorized in the account contract
16 with the depositor, if the proceeds of the account are not distributed to any person
17 named under sub. (2) (b) 4. or any other person identified in the order as being
18 prohibited from making a withdrawal from the account.

19 **SECTION 7.** 814.61 (1) (a) and (b) of the statutes are amended to read:

20 814.61 **(1)** (a) Except as provided under pars. (c), (d), ~~(dm)~~, and (e), at the
21 commencement of all civil actions and special proceedings not specified in ss. 814.62
22 to 814.66, \$75. Of the fees received by the clerk under this paragraph, the county
23 treasurer shall pay \$45 to the secretary of administration for deposit in the general
24 fund and shall retain the balance for the use of the county. The secretary of
25 administration shall credit \$15 of the \$45 to the appropriation under s. 20.680 (2) (j).

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1 (b) Except as provided in pars. (c), (d), (dm), and (e), in addition to the fee under
2 par. (a), at the commencement of an action affecting the family as defined in s.
3 767.001 (1), a fee of \$20 to be deposited by the county treasurer in a separate account
4 to be used by the county exclusively for the purposes specified in s. 767.405.

5 **SECTION 8.** 814.61 (1) (dm) of the statutes is created to read:

6 814.61 **(1)** (dm) No fee charged under this subsection in any action commenced
7 under s. 813.124 may be collected from a petitioner under s. 813.124 or an individual
8 at risk, as defined in s. 813.124 (1) (f), who is named under s. 813.124 (2) (b) 1. The
9 fee charged under this subsection for petitions filed and granted under s. 813.124
10 shall be collected from the person named under s. 813.124 (2) (b) 4. if that person is
11 convicted of violating a temporary restraining order or injunction issued under s.
12 813.123 (4) or (5) if the violation included a violation of an order under s. 813.123 (4)
13 (ar) 2. or (5) (ar) 2. to cease engaging in or threatening to engage in financial
14 exploitation of the individual at risk who was named under s. 813.124 (2) (b) 1.

15 **SECTION 9.** 814.70 (1) of the statutes is amended to read:

16 814.70 **(1)** SERVICE OF PROCESS. For each service or attempted service of a
17 summons or any other process for commencement of an action, a writ, an order of
18 injunction, a subpoena, or any other order, \$12 for each defendant or person. If there
19 is more than one defendant or person to be served at a given address, \$6 for each
20 additional defendant or person. No fee charged under this subsection in any action
21 commenced under s. 813.12, 813.122, or 813.123 may be collected from a petitioner
22 under s. 813.12, 813.122, or 813.123. The fee charged under this subsection in any
23 action commenced under s. 813.12, 813.122, 813.123, or 813.125 shall be collected
24 from the respondent under s. 813.12, 813.122, or 813.123 if he or she is convicted of
25 violating a temporary restraining order or injunction issued under s. 813.12 (3) or (4),

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1 813.122 (4) or (5), 813.123 (4) or (5), or 813.125 (3) or (4). No fee charged under this
2 subsection in any action commenced under s. 813.124 may be collected from a
3 petitioner under s. 813.124 or an individual at risk, as defined in s. 813.124 (1) (f),
4 who is named under s. 813.124 (2) (b) 1. The fee charged under this subsection in any
5 action commenced under s. 813.124 shall be collected from the person named under
6 s. 813.124 (2) (b) 4, if that person is convicted of violating a temporary restraining
7 order or injunction issued under s. 813.123 (4) or (5) if the violation included a
8 violation of an order under s. 813.123 (4) (ar) 2. or (5) (ar) 2. to cease engaging in or
9 threatening to engage in financial exploitation of the individual at risk who was
10 named under s. 813.124 (2) (b) 1. No fee charged under this subsection in any action
11 commenced under s. 813.125 may be collected from a petitioner under s. 813.125 if
12 the petition alleges conduct that is the same as or similar to conduct that is
13 prohibited by s. 940.32 or that is listed in s. 813.12 (1) (am) 1. to 6. If no fee is collected
14 under this subsection from a petitioner under s. 813.125, the fee charged under this
15 subsection in any action commenced under s. 813.125 shall be collected from the
16 respondent under s. 813.125 if he or she is convicted of violating a temporary
17 restraining order or injunction issued under s. 813.125 (3) or (4).

18 **SECTION 10.** 814.70 (3) (intro.) of the statutes is amended to read:

19 814.70 (3) (intro.) For travel in serving any summons, writ or other process,
20 except criminal warrants, and except that a fee under this subsection in any action
21 commenced under s. 813.12, 813.122, or 813.123 may not be collected from a
22 petitioner but shall be collected from the respondent if he or she is convicted of
23 violating a temporary restraining order or injunction issued under s. 813.12 (3) or (4),
24 813.122 (4) or (5), 813.123 (4) or (5), or 813.125 (3) or (4), except that a fee under this
25 subsection in any action commenced under s. 813.124 may not be collected from a

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1 petitioner under s. 813.124 or an individual at risk, as defined in s. 813.124 (1) (f),
2 who is named under s. 813.124 (2) (b) 1. but shall be collected from the person named
3 under s. 813.124 (2) (b) 4. if that person is convicted of violating a temporary
4 restraining order or injunction issued under s. 813.123 (4) or (5) if the violation
5 included a violation of an order under s. 813.123 (4) (ar) 2. or (5) (ar) 2. to cease
6 engaging in or threatening to engage in financial exploitation of the individual at
7 risk who was named under s. 813.124 (2) (b) 1., and except that a fee under this
8 subsection in any action commenced under s. 813.125 may not be collected from a
9 petitioner if the petition alleges conduct that is the same as or similar to conduct that
10 is prohibited by s. 940.32 or that is listed in s. 813.12 (1) (am) 1. to 6. but shall be
11 collected from the respondent if he or she is convicted of violating a temporary
12 restraining order or injunction issued under s. 813.125 (3) or (4):

SECTION 11. Initial applicability.

14 (1) The treatment of section 46.90 (5g) of the statutes first applies to
15 investigations conducted under section 46.90 (5) of the statutes on the effective date
16 of this subsection.

17 (2) The treatment of section 55.043 (1t) of the statutes first applies to
18 investigations conducted under section 55.043 (1r) of the statutes on the effective
19 date of this subsection.

SECTION 12. Effective date.

21 (1) This act takes effect on the first day of the 3rd month beginning after
22 publication.

23 (END)

Basford, Sarah

From: Peterson, Ilsa

Sent: Thursday, January 21, 2010 12:23 PM

To: LRB.Legal

Subject: Draft Review: LRB 09-4159/1 Topic: Freezing bank accounts of elder adults at risk or adults at risk

Please Jacket LRB 09-4159/1 for the ASSEMBLY.

01/21/2010