1989 Senate Bill 259

Date of enactment: **April 20, 1990**
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1989 WISCONSIN ACT 278

AN ACT ***to amend*** 20.921 (1) (e), 49.41, 71.63 (6) (L), 700.16 (4) (f), 701.09 (4), 812.18 (2m) (b) and 990.01 (14); ***to repeal and recreate*** 701.09 (4) and 815.18; and ***to create*** 242.01 (2) (bm) of the statutes, **relating to:** property exempt from execution.

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

SECTION 1. 20.921 (1) (e) of the statutes is amended to read:

20.921 **(1)** (e) No portion of the salary so requested to be used for the purchase of savings bonds, not exceeding 10% of the salary, is liable to seizure on execution or on any provisional or final process issued from any court or any proceedings in aid ~~thereof, and such exemption shall be in addition to any exemption provided by s. 815.18 (15)~~ of that process. Section 241.09 relating to assignments shall not apply to the requests made under par. (a).

SECTION 2. 49.41 of the statutes is amended to read:

49.41 Assistance grants exempt from levy. All grants of aid to families with dependent children, payments made for social services, and benefits under ~~s.~~ ss. 49.032, 49.046 and 49.177 or federal Title XVI, are exempt from every tax, and from execution, garnishment, attachment and every other process and shall be inalienable.

SECTION 3. 71.63 (6) (L) of the statutes is amended to read:

71.63 **(6)** (L) To, or on behalf of, an employe or beneficiary from a plan or contract described in s. 815.18 ~~(31) (a)~~ (3) (j) under which the benefits are fully funded by life insurance or annuities.

SECTION 4. 242.01 (2) (bm) of the statutes is created to read:

242.01 **(2)** (bm) Property to the extent it is exempt under s. 815.18.

SECTION 5. 700.16 (4) (f) of the statutes is amended to read:

700.16 **(4)** (f) Employes' trusts created as part of a plan ~~as~~ or contract described in s. 815.18 ~~(31)~~ (3) (j).

SECTION 6. 701.09 (4) of the statutes is amended to read:

701.09 **(4)** EMPLOYE BENEFITS TRANSFERRED TO TRUST OF EMPLOYE. A trustee named or to be named in the will of an employe covered by any employe benefit plan or contract described in s. 815.18 ~~(31)~~ (3) (j) or any annuity or insurance contract purchased by an employer ~~which~~ that is a religious, scientific, educational, benevolent or other corporation or association not organized or conducted for pecuniary profit may be designated payee of any benefits payable after the death of the employe if the designation is made in accordance with the terms of the plan or contract. After admission of the employe's will to probate and issuance of letters to ~~such~~ the trustee, the death benefits shall be paid to the trustee to be administered in accordance with the terms of the trust as they exist at the death of the employe, and ~~such~~ the benefits may be commingled with other assets passing to the trust. Death benefits paid to a testamentary trustee because of his or her designation as payee ~~shall~~ are not ~~be~~ subject to inheritance tax to any greater extent than if ~~such~~ the benefits were payable to a beneficiary other than the employe's estate. ~~Such~~ The benefits shall be inventoried for tax purposes only and ~~shall~~ are not ~~be~~ subject to taxes, debts or charges enforceable against the estate ~~nor~~ or otherwise considered assets of the employe's estate to any greater extent than if ~~such~~ the benefits were payable to a beneficiary other than the employe's estate.

SECTION 7. 701.09 (4) of the statutes, as affected by 1987 Wisconsin Act 27 and 1989 Wisconsin Act .... (this act), is repealed and recreated to read:

701.09 **(4)** EMPLOYE BENEFITS TRANSFERRED TO TRUST OF EMPLOYE. A trustee named or to be named in the will of an employe covered by any employe benefit plan or contract described in s. 815.18 (3) (j) or any annuity or insurance contract purchased by an employer that is a religious, scientific, educational, benevolent or other corporation or association not organized or conducted for pecuniary profit may be designated payee of any benefits payable after the death of the employe if the designation is made in accordance with the terms of the plan or contract. After admission of the employe's will to probate and issuance of letters to the trustee, the death benefits shall be paid to the trustee to be administered in accordance with the terms of the trust as they exist at the death of the employe, and the benefits may be commingled with other assets passing to the trust. Death benefits paid to a testamentary trustee because of his or her designation as payee are not subject to the death tax to any greater extent than if the benefits were payable to a beneficiary other than the employe's estate. The benefits shall be inventoried for tax purposes only and are not subject to taxes, debts or charges enforceable against the estate or otherwise considered assets of the employe's estate to any greater extent than if the benefits were payable to a beneficiary other than the employe's estate.

SECTION 8. 812.18 (2m) (b) of the statutes is amended to read:

812.18 **(2m)** (b) If the property which is the subject of a garnishment action is the proceeds from the sale of crops, livestock, dairy products or another product grown or produced by a person or by his or her minor children, the garnishee shall pay over to the defendant on the date when the payment would normally be made any exempt amount under s. 815.18 ~~(15), except the maximum exemption under s. 815.18 (15) (b) is $500 for each 30–day period and the maximum exemption under s. 815.18 (15) (c) is $500 plus an additional $50 for each dependent for each 30–day period~~ (3) (h).

SECTION 9. 815.18 of the statutes, as affected by 1989 Wisconsin Act 56, is repealed and recreated to read:

815.18 Property exempt from execution. (1) STATUTORY CONSTRUCTION. This section shall be construed to secure its full benefit to debtors and to advance the humane purpose of preserving to debtors and their dependents the means of obtaining a livelihood, the enjoyment of property necessary to sustain life and the opportunity to avoid becoming public charges.

(2) DEFINITIONS. In this section:

(a) "Aggregate value" means the sum total of the debtor's equity in the property claimed exempt.

(b) "Business" means any lawful activity, including a farm operation, conducted primarily for the purchase, sale, lease or rental of property, for the manufacturing, processing or marketing of property, or for the sale of services.

(c) "Debtor" means an individual. "Debtor" does not include an association, corporation, partnership, cooperative or political body.

(d) "Dependent" means any individual, including a spouse, who requires and is actually receiving substantial support and maintenance from the debtor.

(e) "Depository account" means a certificate of deposit, demand, negotiated order of withdrawal, savings, share, time or like account maintained with a bank, credit union, insurance company, savings and loan association, securities broker or dealer or like organization. "Depository account" does not include a safe deposit box or property deposited in a safe deposit box.

(f) "Equipment" means goods used or bought for use primarily in a business, including farming and a profession.

(g) "Equity" means the fair market value of the debtor's interest in property, less the valid liens on that property.

(h) "Exempt" means free from any lien obtained by judicial proceedings and is not liable to seizure or sale on execution or on any provisional or final process issued from any court, or any proceedings in aid of court process.

(i) "Farm products" has the meaning given under s. 409.109 (3).

(j) "Inventory" has the meaning given under s. 409.109 (4).

(k) "Life insurance" means a policy issued by a stock or mutual life insurance company or by any mutual beneficiary or fraternal corporation, society, order or association to insure the life of an individual.

(m) "Motor vehicle" means a self–propelled vehicle. "Motor vehicle" does not include equipment.

(n) "Net income" means gross receipts paid or payable for personal services or derived from rents, dividends or interest less federal and state tax deductions required by law to be withheld.

(r) "Resident" means an individual who intends to maintain his or her principal dwelling in this state.

(t) "To the extent reasonably necessary for the support of the debtor and the debtor's dependents" means what the court determines is required to meet the present and anticipated needs of the debtor and the debtor's dependents, after consideration of the debtor's responsibilities, and the debtor's present and anticipated income and property, including exempt property.

(3) EXEMPT PROPERTY. The debtor's interest in or right to receive the following property is exempt, except as specifically provided in this section and ss. 70.20 (2), 71.91 (5m) and (6), 74.55 (2) and 102.28 (5):

(a) *Provisions for burial.* Cemetery lots, aboveground burial facilities, burial monuments, tombstones, coffins or other articles for the burial of the dead owned by the debtor and intended for the burial of the debtor or the debtor's family.

(b) *Business and farm property.* Equipment, inventory, farm products and professional books used in the business of the debtor or the business of a dependent of the debtor, not to exceed $7,500 in aggregate value.

(c) *Child support, family support or maintenance payments.* Alimony, child support, family support, maintenance or separate maintenance payments to the extent reasonably necessary for the support of the debtor and the debtor's dependents.

(d) *Consumer goods.* Household goods and furnishings, wearing apparel, keepsakes, jewelry and other articles of personal adornment, appliances, books, musical instruments, firearms, sporting goods, animals or other tangible personal property held primarily for the personal, family or household use of the debtor or a dependent of the debtor, not to exceed $5,000 in aggregate value.

(df) *County fairs and agricultural societies.* All sums paid as state aid under s. 93.23 (1) to county fairs and agricultural societies.

(ds) *Federal disability insurance benefits.* All moneys received or receivable by a person as federal disability insurance benefits under subchapter II of 42 USC.

(e) *Fire and casualty insurance.* For a period of 2 years after the date of receipt, insurance proceeds on exempt property payable to and received by the debtor, if the exempt property has been destroyed or damaged by fire or casualty of any nature.

(ef) *Fire and police pension fund.* All money paid or ordered to be paid to any member of any fire or police department or to the surviving spouse or guardian of the minor child or children of a deceased or retired member of any such department, which money has been paid or ordered to be paid to any such person as a pension on account of the service of any person in any such department in any city in this state whose population exceeds 100,000.

(em) *Fire engines and equipment.* All fire engines, apparatus and equipments, including hose, hose carts and hooks and ladders, belonging to or which may hereafter belong to any town, city or village in this state, and which are or may be kept and used for the protection of property in such town, city or village from fire, together with the engine houses and hooks and ladder houses for the protection of the same, and the lot or lots on which such engine and hook and ladder houses may be situated, when owned by any such town, city or village; and any lot or lots owned, used and occupied by any such town, city or village for corporate purposes.

(f) *Life insurance.* Any unmatured life insurance contract owned by the debtor and insuring the debtor, the debtor's dependent or an individual of whom the debtor is a dependent, other than a credit life insurance contract, and the debtor's aggregate interest, not to exceed $4,000 in value, in any accrued dividends, interest or loan value of all unmatured life insurance contracts owned by the debtor and insuring the debtor, the debtor's dependent or an individual of whom the debtor is a dependent.

(g) *Motor vehicles.* Motor vehicles not to exceed $1,200 in aggregate value. Any unused amount of the aggregate value from par. (d) may be added to this exemption to increase the aggregate exempt value of motor vehicles under this paragraph.

(h) *Net income.* Seventy–five percent of the debtor's net income for each one week pay period. The benefits of this exemption are limited to the extent reasonably necessary for the support of the debtor and the debtor's dependents, but to not less than 30 times the greater of the state or federal minimum wage.

(i) *Life insurance claims, personal injury or wrongful death claims.* 1. Any of the following payments:

a. A payment to the debtor under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of that individual's death, to the extent reasonably necessary for the support of the debtor and the debtor's dependents.

b. A payment resulting from the wrongful death of an individual of whom the debtor was a dependent, in an amount reasonably necessary for the support of the debtor and the debtor's dependents.

c. A payment, not to exceed $25,000, resulting from personal bodily injury, including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent.

d. A payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent in an amount reasonably necessary for the support of the debtor and the debtor's dependents.

2. Any property traceable to payments under subd. 1 is exempt.

(j) *Retirement benefits.* 1. Assets held or amounts payable under any retirement, pension, disability, death benefit, stock bonus, profit sharing plan, annuity, individual retirement account, individual retirement annuity, Keogh, 401–K or similar plan or contract providing benefits by reason of age, illness, disability, death or length of service and payments made to the debtor therefrom.

2. The plan or contract must meet one of the following requirements:

a. The plan or contract complies with the provisions of the internal revenue code.

b. The employer created the plan or contract for the exclusive benefit of the employer, if self–employed, or of some or all of the employes, or their dependents or beneficiaries and that plan or contract requires the employer or employes or both to make contributions for the purpose of distributing to the employer, if self–employed, the employes, or their dependents or beneficiaries, the earnings or the principal or both of a trust, annuity, insurance or other benefit created under the plan or contract and makes it impossible, at any time prior to the satisfaction of all liabilities with respect to beneficiaries under a trust created by the plan or contract, for any part of the principal or income of the trust to be used for or diverted to purposes other than for the exclusive benefit of those beneficiaries.

3. The plan or contract may permit the income created from personal property held in a trust created under the plan or contract to accumulate in accordance with the terms of the trust. The trust may continue until it accomplishes it purposes. The trust is not invalid as violating the rule against perpetuities or any law against perpetuities or the suspension of the power of alienation of title to property.

4. The benefits of this exemption with respect to the assets held or amounts payable under or traceable to an owner–dominated plan for or on behalf of a debtor who is an owner–employe shall be limited to the extent reasonably necessary for the support of the debtor and the debtor's dependents.

5. This exemption does not apply to an order of a court concerning child support, family support or maintenance payments, or to any judgment of annulment, divorce or legal separation.

6. In this paragraph:

a. "Employer" includes a group of employers creating a combined plan or contract for the benefit of their employes or the beneficiaries of those employes.

b. "Owner–dominated plan" means any plan or contract that meets the requirements of subd. 2 and under which 90% or more of the present value of the accrued benefits or 90% or more of the aggregate of the account is for the benefit of one or more individuals who are owner–employes. For purposes of this definition, the accrued benefits or account of an owner–employe under a plan or contract shall include the accrued benefits or account of the spouse and any ancestor, lineal descendant or spouse of a lineal descendant of the owner–employe under the same plan or contract.

c. "Owner–employe" means any individual who owns, directly or indirectly, the entire interest in an unincorporated trade or business, or 50% or more of the combined voting of all classes of stock entitled to vote or the total value of shares of all classes of stock of a corporation, or 50% or more of the capital interest or profits interest of a partnership.

(k) *Depository accounts.* Depository accounts in the aggregate value of $1,000.

(m) *Private property from execution against municipalities.* All private property shall be exempt from seizure and sale upon any execution or other process issued to enforce any judgment or decree of any court that has been rendered against any county, town, city, village, vocational, technical and adult education district or school district in this state.

(n) *War pension.* All money received by a person, a resident of this state, as pension, compensation, government insurance, or adjusted compensation, back pension, compensation or insurance from the U.S. government on account of military or naval service, and all other money received by a person on account of military or naval service from the U.S. government administered by the U.S. department of veterans affairs, whether the same is in the actual possession of such person, on deposit, or loaned.

(4) TRACING. Property traceable to property that would be exempt under this section in the form of cash proceeds or otherwise is not exempt unless expressly provided for in this section.

(5) AVAILABILITY. A resident is entitled to the exemptions provided by this section. A nonresident is entitled to the exemptions provided by the law of the jurisdiction of his or her residence.

(6) CLAIMING EXEMPTIONS. (a) A debtor shall affirmatively claim an exemption or select specific property in which to claim an exemption. The debtor may make the claim at the time of seizure of property or within a reasonable time after the seizure, but shall make the claim prior to the disposition of the property by sale or by court order. Exempt property is not exempt unless affirmatively claimed as exempt. With respect to property partially exempt under this section, the claiming of an exemption includes the process of selection required of the debtor. The debtor or a person acting on the debtor's behalf shall make any required affirmative claim, either orally or in writing, to the creditor, the creditor's attorney or the officer seeking to impose a lien by court action upon the property in which the exemption is claimed. A debtor waives his or her exemption rights by failing to follow the procedure under this paragraph. A contractual waiver of exemption rights by any debtor before judgment on the claim is void. The court, in making a determination as to the extent property is reasonably necessary for the support of the debtor and the debtor's dependents, is not limited to the standard of living to which the debtor and the debtor's dependents have become accustomed. The court shall consider the amount and use of any income of any person claimed as a dependent when determining if that person is a dependent of a debtor.

(b) Notwithstanding sub. (13), this subsection does not apply to any of the following:

1. Public employe trust funds exempt under s. 40.08 (1).

2. Retirement benefits and allowances from retirement systems of 1st class cities exempt under s. 66.81.

3. Retirement benefits and allowances from retirement systems of counties having a population of 500,000 or more exempt under chapter 201, laws of 1937, section 11.

4. A homestead exempt under s. 815.20.

(7) VALUATION OF PROPERTY. The value of any property subject to exemption under this section shall be determined by agreement of the parties or by a commercially reasonable manner.

(8) MARITAL PROPERTY RIGHTS. Each spouse is entitled to and may claim the exemptions under this section. If the property exempt under this section is limited to a specified maximum dollar amount, each spouse is entitled to one exemption. That exemption is limited to the specified maximum dollar amount, which may be combined with the other spouse's exemption in the same property or applied to different property included under the same exemption. The exemption under sub. (3) (h) may not be combined with the other spouse's exemption under sub. (3) (h) and applied to the same property.

(9) PARTIALLY EXEMPT PROPERTY. In the case of property that is partially exempt, the debtor or any person acting on the debtor's behalf is entitled to claim the exempt portion of property. The exempt portion claimed shall be set apart for the debtor, or for the debtor's dependents, and the nonexempt portion shall be subject to a creditor's claim. If partially exempt property is indivisible, the property may be sold and the exempt value of the property paid to the debtor or the debtor's dependents. Any proceeds paid to the debtor or to the debtor's dependents shall be exempt while held by the debtor or the debtor's dependents as cash or in a depository account.

(10) FRAUDULENT TRANSFERS. A conveyance or transfer of wholly exempt property shall not be considered a fraudulent conveyance or transfer. Property that is not totally exempt in value under this section may be subject to a fraudulent transfer action under ch. 242 to set aside that transfer to the extent that the property's value is not exempt under this section. If a court is required to satisfy the claim of a creditor and if that relief is demanded, the court may determine the manner of dividing fraudulently transferred property into exempt and nonexempt portions, or may order the sale of the whole property and an accounting of the exempt portion. Any or all of the exemptions granted by this section may be denied if, in the discretion of the court having jurisdiction, the debtor procured, concealed or transferred assets with the intention of defrauding creditors.

(11) CONSUMER CREDIT TRANSACTION EXEMPTIONS. The debtor may claim either the exemptions listed in s. 425.106 or the exemptions under this section for an obligation arising from a consumer credit transaction.

(12) LIMITATIONS ON EXEMPTIONS. No property otherwise exempt may be claimed as exempt in any proceeding brought by any person to recover the whole or part of the purchase price of the property or against the claim or interest of a holder of a security interest, land contract, condominium or homeowners association assessment or maintenance lien or both, mortgage or any consensual or statutory lien.

(13) APPLICABILITY TO OTHER PROPERTY. Subsections (2), (4) to (7), (9), (10) and (12) apply to the following exempt property except as otherwise provided by law:

(a) Assistance benefits exempt under s. 49.41.

(b) Crime victim awards exempt under s. 949.07.

(c) Fraternal benefits exempt under s. 614.96.

(d) A homestead exempt under s. 815.20.

(e) Partnership property exempt under s. 178.21 (3) (c).

(f) Public employe trust fund benefits exempt under s. 40.08 (1).

(g) Salary used to purchase savings bonds exempt under s. 20.921 (1) (e).

(h) Retirement benefits and allowances from retirement systems of 1st class cities exempt under s. 66.81.

(hm) Retirement benefits and allowances from retirement systems of counties having a population of 500,000 or more exempt under chapter 201, laws of 1937, section 11.

(i) Tenant's lease and stock interest of a housing corporation exempt under s. 182.004 (6).

(j) Unemployment compensation benefits exempt under s. 108.13.

(k) Veterans benefits exempt under s. 45.35 (8) (b).

(14) REVIEW OF DOLLAR AMOUNTS. By January 15, 1994, and by January 15 every 4 years thereafter, the legislative council shall review the dollar amounts in this section and determine if those dollar amounts should be changed. The legislative council shall report its recommendation to the speaker of the assembly and the president of the senate within 15 days of making its determination. If the legislative council recommends that an adjustment should be made in the dollar amounts, its report shall include proposed statutory language to accomplish that recommendation.

SECTION 10. 990.01 (14) of the statutes is amended to read:

990.01 **(14)** HOMESTEAD EXEMPTION. ~~The words "exempt~~ "Exempt homestead" ~~mean that part of the homestead~~ means the dwelling, including a building, condominium, mobile home, house trailer or cooperative, and so much of the land surrounding it as is reasonably necessary for its use as a home, but not less than 0.25 acre, if available, and not exceeding 40 acres, within the limitation as to value ~~set forth in~~ under s. 815.20, except as to liens attaching or rights of devisees or heirs of persons dying before the effective date of any increase of that limitation as to value.

SECTION 11. Initial applicability. This act first applies to exemptions claimed on the effective date of this SECTION.

SECTION 12. Effective date. This act takes effect on the day after publication, except as follows:

(1) The repeal and recreation of section 701.09 (4) of the statutes takes effect on January 1, 1992.