



1997 ASSEMBLY BILL 924

March 17, 1998 - Introduced by Representatives GREEN and MURAT, cosponsored by Senators PANZER and SHIBILSKI. Referred to Committee on Judiciary.

1 **AN ACT to amend** 799.01 (1) (c), 799.01 (1) (d) (intro.), 799.01 (2), 812.34 (1) (a),
2 812.34 (2) (b) (intro.) and 1., 812.37 (1), 812.37 (2), 812.38 (1) (b), 812.38 (2),
3 812.44 (3) (form) 3., 812.44 (4) (form) 3., 814.04 (1) (a), 815.18 (3) (k), 895.035
4 (2), 895.80 (2), 895.80 (3) (b), 943.245 (3), 943.245 (4), 943.50 (3), 943.51 (3) and
5 943.51 (3m); **to repeal and recreate** 895.80 (3) (a) and 895.80 (4); and **to**
6 **create** 757.69 (1) (n), 812.34 (2) (c), 895.08, 895.80 (3) (c) and 895.80 (6) of the
7 statutes; **relating to:** parental liability for acts of their minor child, recovery
8 of damages for certain criminal actions, increasing the jurisdictional amount
9 in small claims court, powers of court commissioners, garnishment, attorney
10 fees, exemption from execution of accounts, assignment of debt, earnings
11 garnishment retail theft and recovery in actions involving worthless checks.

Analysis by the Legislative Reference Bureau

This bill increases the jurisdictional limit in small claims actions from \$5,000 to \$7,500 and increases the statutory attorney fees, including increasing the maximum fee from \$100 to \$200.

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Under current law, the earnings exemption in earnings garnishment actions provides that a debtor's earnings are totally exempt if the debtor's income is below the poverty line or if the garnishment would cause that result. Under this bill, a debtor's earnings are totally exempt if the debtor's income is below the poverty line, but if the garnishment would result in the debtor's income being below the poverty line, the amount garnished is limited to the debtor's income in excess of the poverty line. The bill requires debtors who claim earnings exemptions to submit with their answer to the garnishment the schedules and worksheets that were given to them with the garnishment, plus any supporting documents. The bill restricts the exemption from execution for depository accounts to those depository accounts that are for the debtor's personal use.

The bill allows any person to assign a debt owed to that person. The bill requires the person assigning a debt to notify the debtor within 30 days of that assignment. Under the bill, if the notice is not sent within 30 days, the assignment is ineffective until the notice is sent.

Under current law, a person who suffers damage as a result of certain crimes against property may sue the person that caused the damage. Currently, the person may recover treble damages plus the costs of the investigation and litigation. Under the bill, the person may recover his or her actual damages, including the value of the damaged property, the court costs, the costs of the investigation and litigation, including attorney fees and the value of the time spent by an employe, and exemplary damages of not more than 3 times the amount of actual damages. Any recovery is reduced by any amount received as restitution.

Current law provides that the total amount a person may receive for exemplary damages and attorney fees in an action to recover damages resulting from the issuance of a worthless check or retail theft is limited to \$500. This bill provides that the \$500 limit applies for each violation.

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

- 1 **SECTION 1.** 757.69 (1) (n) of the statutes is created to read:
- 2 757.69 (1) (n) Hold hearings, make findings and issue orders under s. 812.38.
- 3 **SECTION 2.** 799.01 (1) (c) of the statutes is amended to read:
- 4 799.01 (1) (c) *Replevins.* Actions for replevin under ss. 810.01 to 810.13 where
- 5 the value of the property claimed does not exceed \$5,000 \$7,500.
- 6 **SECTION 3.** 799.01 (1) (d) (intro.) of the statutes is amended to read:

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1 799.01 (1) (d) *Other civil actions.* (intro.) Other civil actions where the amount
2 claimed is \$5,000 \$7,500 or less, if the actions or proceedings are:

3 **SECTION 4.** 799.01 (2) of the statutes is amended to read:

4 799.01 (2) PERMISSIVE USE OF SMALL CLAIMS PROCEDURE. A taxing authority may
5 use the procedure in this chapter in an action to recover a tax from a person liable
6 for that tax where the amount claimed, including interest and penalties, is \$5,000
7 \$7,500 or less. This chapter is not the exclusive procedure for those actions.

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

9 812.34 (1) (a) Was ordered by a court under s. 128.21 or by a court of bankruptcy
10 under Title 11, USC 1301 et. seq.

11 **SECTION 6.** 812.34 (2) (b) (intro.) and 1. of the statutes are amended to read:

12 812.34 (2) (b) (intro.) The debtor's earnings are totally exempt from
13 garnishment under this subchapter if:

14 1. The debtor's household income is below the poverty line, ~~or the garnishment~~
15 ~~would cause that result;~~ or

16 **SECTION 7.** 812.34 (2) (c) of the statutes is created to read:

17 812.34 (2) (c) If a garnishment under this subchapter would result in the
18 debtor's household income being below the poverty line, the amount of the
19 garnishment is limited to the debtor's household income in excess of the poverty line
20 before the garnishment is in effect.

21 **SECTION 8.** 812.37 (1) of the statutes is amended to read:

22 812.37 (1) The debtor may claim an exemption under s. 812.34 (2) (b), or assert
23 any defense to the earnings garnishment, by completing the answer form and
24 delivering or mailing it to the garnishee, along with the schedules and worksheets
25 provided under s. 812.35 (4) (b) and any other documents supporting his or her

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1 answer, such as a wage statement, a court order regarding the payment of support
2 or a document showing the receipt of any of the benefits listed under s. 812.44 (4)
3 (form) 2. The debtor or debtor's spouse may file an answer or an amended answer
4 and documentation at any time before or during the effective period of the earnings
5 garnishment.

6 **SECTION 9.** 812.37 (2) of the statutes is amended to read:

7 812.37 (2) Whenever the garnishee receives a debtor's answer or amended
8 answer and the schedules, worksheets and other documents, the garnishee shall
9 mail a copy of the answer, schedules, worksheets and any other documents the debtor
10 included with the answer to the creditor by the end of the 3rd business day after
11 receiving the debtor's answer and documents, writing on that copy the date of receipt
12 of the answer and documents by the garnishee.

13 **SECTION 10.** 812.38 (1) (b) of the statutes is amended to read:

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

20 **SECTION 11.** 812.38 (2) of the statutes is amended to read:

21 812.38 (2) A motion or petition under sub. (1) may be made at any time during
22 the pendency of the earnings garnishment. Within 5 business days after a motion
23 or petition is filed under sub. (1), the court shall schedule the matter for a hearing
24 to be held as promptly as practicable. The court shall notify the parties of the time
25 and place of the hearing. Upon conclusion of the hearing, the court shall make

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1 findings of fact and conclusions of law. If the debtor has failed to produce the
2 schedules and worksheets or other documents necessary to support a claim for
3 exemptions or other defenses, the court shall award the creditor his or her costs
4 related to the motion in an amount of not less than \$50. An award under this
5 subsection may not substitute for or replace an award made under sub. (3). The court
6 shall make such order as required by these findings and conclusions. If the order
7 permits the garnishment to proceed, the date on which the order is served upon the
8 garnishee shall substitute for the original date of service of the garnishment upon
9 the garnishee under s. 812.35 (3) for the purpose of determining any 13-week period
10 under s. 812.35 (5) or (6). A court order shall bind the garnishee from the time the
11 order is served upon him or her.

12 **SECTION 12.** 812.44 (3) (form) 3. of the statutes is amended to read:

13 812.44 (3) (form) 3. Whenever you receive a debtor's answer form from the
14 debtor, mail a copy of the answer form and any documents the debtor included with
15 the answer to the creditor by the end of the 3rd business day after receipt of that form.
16 Include the date you received the answer form on the copy sent to the creditor.

17 **SECTION 13.** 812.44 (4) (form) 3. of the statutes is amended to read:

18 812.44 (4) (form) 3. At least 25% of your disposable earnings are assigned by
19 court order for support.

20 If you qualify for a complete exemption, you must give or mail a copy of the
21 enclosed debtor's answer form to the garnishee, along with the schedules and
22 worksheets and any other documents supporting your answer, such as a wage
23 statement, a court order regarding the payment of support or a document showing
24 the receipt of any of the benefits listed under paragraph 2 above in order to receive
25 that increased exemption.

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

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

5 895.035 (2) The parent or parents with custody of a minor child, in any
6 circumstances where he, she or they may not be liable under the common law, are
7 liable for damages to property, for the cost of repairing or replacing property or
8 removing the marking, drawing, writing or etching from property regarding a
9 violation under s. 943.017, for the value of unrecovered stolen property or for
10 personal injury attributable to a wilful, malicious or wanton act of the child. The
11 parent or parents with custody of their minor child are jointly and severally liable
12 with the child for the damages imposed under s. 895.80, 943.212, 943.24, 943.245
13 or 943.51 for their child's violation of s. 943.01, 943.20, 943.21, 943.24, 943.26,
14 943.34, 943.395, 943.41, 943.50 or 943.61.

15 **SECTION 17.** 895.08 of the statutes is created to read:

16 **895.08 Assignments of debt.** Any person may assign a debt owed to that
17 person to any other person. The person assigning the debt shall send a notice to the
18 debtor of the assignment by mail at the debtor last-known address within 30 days
19 after the assignment. If the person assigning the debt fails to send a notice to the
20 debtor within the 30-day period required by this section, the assignment is
21 ineffective until the notice is sent to the debtor.

22 **SECTION 18.** 895.80 (2) of the statutes is amended to read:

23 895.80 (2) The burden of proof in a civil action under sub. (1) is with the person
24 who suffers damage or loss to prove ~~his or her case~~ a violation of s. 943.01, 943.20,
25 943.21, 943.24, 943.26, 943.34, 943.395, 943.41, 943.50 or 943.61 by a preponderance

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1 of the credible evidence. A conviction under s. 943.01, 943.20, 943.21, 943.24, 943.26,
2 943.34, 943.395, 943.41, 943.50 or 943.61 is not required to bring an action, obtain
3 a judgment or collect on that judgment under this section.

4 **SECTION 19.** 895.80 (3) (a) of the statutes is repealed and recreated to read:

5 895.80 (3) (a) Actual damages, including the retail or replacement value of
6 damaged, used or lost property, whichever is greater, for a violation of s. 943.01,
7 943.20, 943.21, 943.24, 943.26, 943.34, 943.395, 943.41, 943.50 or 943.61.

8 **SECTION 20.** 895.80 (3) (b) of the statutes is amended to read:

9 895.80 (3) (b) All costs of investigation and litigation that were reasonably
10 incurred, including the value of the time spent by any employe or agent of the victim,
11 court costs and reasonable attorney fees.

12 **SECTION 21.** 895.80 (3) (c) of the statutes is created to read:

13 895.80 (3) (c) Exemplary damages of not more than 3 times the amount
14 awarded under par. (a). No additional proof is required under this section for an
15 award of exemplary damages under this paragraph.

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

17 895.80 (4) Any recovery under this section shall be reduced by the amount
18 recovered as restitution under ss. 800.093 and 973.20 and ch. 938.

19 **SECTION 23.** 895.80 (6) of the statutes is created to read:

20 895.80 (6) A person is not criminally liable under s. 943.30 for any action
21 brought in good faith under this section.

22 **SECTION 24.** 943.245 (3) of the statutes is amended to read:

23 943.245 (3) Notwithstanding sub. (2) (c) and (d), the total amount awarded for
24 exemplary damages and reasonable attorney fees may not exceed \$500 for each
25 violation.

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1 **SECTION 25.** 943.245 (4) of the statutes is amended to read:

2 943.245 (4) At least 20 days prior to commencing an action, as specified in s.
3 801.02, under this section, the plaintiff shall notify the defendant, by mail, of his or
4 her intent to bring the action. Notice of nonpayment or dishonor shall be sent by the
5 payee or holder of the check or order to the drawer by regular mail supported by an
6 affidavit of service of mailing or by a certificate of mailing obtained from the U.S. post
7 office from which the mailing was made. The plaintiff shall mail the notice to the
8 defendant's last-known address or to the address provided on the check or order. If
9 the defendant pays the check or order prior to the commencement of the action, he
10 or she is not liable under this section.

11 **SECTION 26.** 943.50 (3) of the statutes is amended to read:

12 943.50 (3) A merchant, a merchant's adult employe or a merchant's security
13 agent who has reasonable cause for believing that a person has violated this section
14 in his or her presence may detain the person in a reasonable manner for a reasonable
15 length of time to deliver the person to a peace officer, or to his or her parent or
16 guardian in the case of a minor. The detained person must be promptly informed of
17 the purpose for the detention and be permitted to make phone calls, but he or she
18 shall not be interrogated or searched against his or her will before the arrival of a
19 peace officer who may conduct a lawful interrogation of the accused person. The
20 merchant, merchant's adult employe or merchant's security agent may release the
21 detained person before the arrival of a peace officer or parent or guardian. Any
22 merchant, merchant's adult employe or merchant's security agent who acts in good
23 faith in any act authorized under this section is immune from civil or criminal
24 liability for those acts.

25 **SECTION 27.** 943.51 (3) of the statutes is amended to read:

