



2003 ASSEMBLY BILL 651

November 10, 2003 – Introduced by Representatives MONTGOMERY, OLSEN, MUSSER, HINES, LEMAHIEU, HAHN, GARD, VRAKAS, RHOADES, GROTHMAN, BIES, TOWNSEND, McCORMICK, HUNDERTMARK, OWENS, KRAWCZYK, J. FITZGERALD, KESTELL, SUDER, ALBERS, POWERS and GUNDERSON, cosponsored by Senators STEPP, KANAVAS, SCHULTZ, LASSA, WELCH, BRESKE, HANSEN, ROESSLER and COWLES. Referred to Committee on Judiciary.

1 **AN ACT** *to repeal* 814.04 (1) (b); *to amend* 16.007 (6) (a), 799.01 (1) (c), 799.01
2 (1) (d) (intro.), 799.01 (2), 802.04 (1), 812.34 (2) (a), 812.34 (2) (b) 1., 812.37 (1),
3 812.37 (2), 812.38 (1) (b), 812.38 (2), 812.44 (3) (form) 3., 812.44 (4) (form) 1.,
4 812.44 (4) (form) 3., 814.04 (1) (a), 814.04 (2), 814.07, 814.634 (1) (b) and (c),
5 815.18 (3) (k), 895.035 (2), 895.035 (4), 895.80 (1), 895.80 (2), 895.80 (3) (b),
6 938.245 (2) (a) 5. am., 938.32 (1t) (a) 1m., 938.45 (1r) (a), 938.45 (1r) (b), 943.212
7 (7), 943.24 (3) (b), 943.24 (3) (c), 943.245 (3), 943.245 (4), 943.245 (8), 943.51 (3),
8 943.51 (3m) and 943.51 (6); *to repeal and recreate* 895.80 (3) (a) and 895.80
9 (4); and *to create* 29.962, 218.04 (9j), 799.01 (1) (e), 812.34 (2) (c), 895.08, 895.80
10 (3) (c) and 895.80 (6) of the statutes; **relating to:** parental liability for acts of
11 their minor child, recovery of damages for certain criminal actions, increasing
12 the jurisdictional amount in small claims court, garnishment, attorney fees,
13 exemption from execution of accounts, civil actions by collection agencies,
14 earnings garnishment, retail theft, recovery in actions involving worthless

ASSEMBLY BILL 651

- 1 checks, and revocation of fish and game approvals for which payment is made
2 by worthless checks.

Analysis by the Legislative Reference Bureau

This bill increases the jurisdictional limit in small claims actions from \$5,000 to \$10,000, except for actions based on negligence, which remain at the \$5,000 limit. This change results in a corresponding increase in the amount that the claims board pays a claimant without submitting a bill to the legislature but maintains the \$5,000 limit on the amount a parent may have to pay for damages caused by his or her child.

Current law provides for limited payment of attorney fees by the unsuccessful litigant to the successful litigant in all civil actions. In a civil action concerning money damages or property, the successful litigant is entitled to attorney fees based on the following schedule:

<u>Amount recovered / value of property</u>	<u>Fee</u>
\$1,000 or more	\$100
\$500 to \$999.99	\$ 50
\$200 to \$499.99	\$ 25
Under \$200	\$ 15

This bill changes the amount of attorney fees allowed in these cases as follows:

<u>Amount recovered / value of property</u>	<u>Fee</u>
Greater than \$10,000	\$500
\$1,000 to \$9,999.99	\$300
Under \$1,000	\$100

The bill also increases the amount of attorney fees recoverable in civil cases that do not involve money damages or property from a maximum of \$100 to a maximum of \$300.

Under current law, in civil cases certain disbursements, such as those made for the costs of certified copies of public papers or records, postage, and depositions, are recoverable by the successful litigant, but are limited to \$50 for each item. This bill expands the list of disbursements that are recoverable to include such items as overnight delivery and facsimile transmissions and increases the limit to \$100 for each item. The bill also increases the amount that a successful litigant may recover for the cost of each expert witness testifying on behalf of the successful litigant from \$100 to \$300 and for filing a motion from \$50 to \$300.

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

ASSEMBLY BILL 651

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.

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 costs of the investigation and litigation, and the value of the time spent by an employee, and exemplary damages of not more than three 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.

This bill allows licensed collection agencies to consolidate a creditor's accounts related to a particular debtor with those of other creditors related to that debtor and bring an action on behalf of those creditors against the debtor. The bill provides that the collection agency that brings the action is a real party in interest for purposes of maintaining the action under the rules of civil procedure. The bill requires the collection agency, when it brings an action consolidated on behalf of a number of creditors, to include the names of the creditors in the caption of the action.

The bill also authorizes certain issuing agents appointed by the Department of Natural Resources (DNR) to report to DNR persons who pay for fish and game licenses, stamps, and other approvals with worthless checks. An issuing agent may make such a report after having attempted to receive payment from the person who paid for the approval. Upon receipt of the report, DNR must revoke the approval. The bill requires the approval holder to return the approval to DNR.

For further information see the *state* 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.** 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

ASSEMBLY BILL 651**SECTION 1**

1 to be paid on its own motion without submission of the claim in bill form to the
2 legislature. The claim shall be paid on a voucher upon the certification of the
3 chairperson and secretary of the board, and shall be charged as provided in sub. (6m).

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

5 **29.962 Worthless checks for approvals.** If a person tenders a check or other
6 order for payment to an issuing agent appointed under s. 29.024 (6) (a) 3. to make
7 payment for an approval issued under this chapter to an issuing agent, and the check
8 is drawn on an account that does not exist or on an account with insufficient funds,
9 or is otherwise worthless, the issuing agent may give notification to the department
10 of the fact after having made an effort to receive payment from the person who
11 tendered the check or other payment. If the issuing agent gives such notification, the
12 department shall revoke the approval and send notification to the holder of the
13 approval that it has been revoked for failure to make payment for the approval. The
14 holder of the approval shall return the approval to the department within 7 days
15 after receiving the notification.

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

17 **218.04 (9j) CIVIL ACTION BY LICENSEE.** A licensee may, after receiving
18 authorization from a creditor, consolidate the creditor's account or accounts relating
19 to a particular debtor with those of any other creditor or creditors relating to that
20 debtor and may bring an action on behalf of the creditor or creditors. A licensee that
21 brings an action under this subsection is the real party in interest under s. 803.01
22 (2) for purposes of maintaining an action. A licensee that brings an action under this
23 subsection shall comply with the caption requirements of s. 895.08.

24 **SECTION 4.** 799.01 (1) (c) of the statutes is amended to read:

ASSEMBLY BILL 651

1 799.01 (1) (c) *Replevins*. Actions for replevin under ss. 810.01 to 810.13 where
2 the value of the property claimed does not exceed ~~\$5,000~~ \$10,000.

3 **SECTION 5.** 799.01 (1) (d) (intro.) of the statutes is amended to read:

4 799.01 (1) (d) *Other civil actions*. (intro.) Other civil actions where the amount
5 claimed is ~~\$5,000~~ \$10,000 or less, if the actions or proceedings are:

6 **SECTION 6.** 799.01 (1) (e) of the statutes is created to read:

7 799.01 (1) (e) *Negligence claims*. Notwithstanding par. (d), civil actions arising
8 out of a claim based on negligence where the amount claimed is \$5,000 or less.

9 **SECTION 7.** 799.01 (2) of the statutes is amended to read:

10 799.01 (2) PERMISSIVE USE OF SMALL CLAIMS PROCEDURE. A taxing authority may
11 use the procedure in this chapter in an action to recover a tax from a person liable
12 for that tax where the amount claimed, including interest and penalties, is ~~\$5,000~~
13 \$10,000 or less. This chapter is not the exclusive procedure for those actions.

14 **SECTION 8.** 802.04 (1) of the statutes is amended to read:

15 802.04 (1) CAPTION. Every pleading shall contain a caption setting forth the
16 name of the court, the venue, the title of the action, the file number, and a designation
17 as in s. 802.01 (1). If a pleading contains motions, or an answer or reply contains
18 cross-claims or counterclaims, the designation in the caption shall state their
19 existence. In the complaint the caption of the action shall include the standardized
20 description of the case classification type and associated code number as approved
21 by the director of state courts, and the title of the action shall include the names and
22 addresses of all the parties, indicating the representative capacity, if any, in which
23 they sue or are sued and, in actions by or against a corporation, the corporate
24 existence and its domestic or foreign status shall be indicated. In pleadings other
25 than the complaint, it is sufficient to state the name of the first party on each side

ASSEMBLY BILL 651**SECTION 8**

1 with an appropriate indication of other parties. Every pleading commencing an
2 action under s. 814.61 (1) (a) or 814.62 (1) or (2) and every complaint filed under s.
3 814.61 (3) shall contain in the caption, if the action includes a claim for a money
4 judgment, a statement of whether the amount claimed is greater than the amount
5 under s. 799.01 (1) (d) or, if the claim is based on negligence, s. 799.01 (1) (e).

6 **SECTION 9.** 812.34 (2) (a) of the statutes is amended to read:

7 812.34 (2) (a) Unless the court grants relief under s. 812.38 (2) or par. (b) or (c)
8 applies, 80% of the debtor's disposable earnings are exempt from garnishment under
9 this subchapter.

10 **SECTION 10.** 812.34 (2) (b) 1. of the statutes is amended to read:

11 812.34 (2) (b) 1. The debtor's household income is below the poverty line, ~~or the~~
12 ~~garnishment would cause that result; or,~~

13 **SECTION 11.** 812.34 (2) (c) of the statutes is created to read:

14 812.34 (2) (c) If the garnishment of 20% of the debtor's disposable income under
15 this subchapter would result in the debtor's household income being below the
16 poverty line, the amount of the garnishment is limited to the debtor's household
17 income in excess of the poverty line before the garnishment is in effect.

18 **SECTION 12.** 812.37 (1) of the statutes is amended to read:

19 812.37 (1) Except as provided in s. 812.34 (1), the debtor may claim an
20 exemption under s. 812.34 (2) (b) or a limit to the garnishment under s. 812.34 (2)
21 (c), or may assert any defense to the earnings garnishment, by completing the answer
22 form and delivering or mailing it to the garnishee, along with the schedules and
23 worksheets provided under s. 812.35 (4) (b) and any other documents supporting his
24 or her answer, such as a wage statement, a court order regarding the payment of
25 support or a document showing the receipt of aid to families with dependent children,

ASSEMBLY BILL 651

1 relief funded by a relief block grant under ch. 49, relief provided by counties under
2 s. 59.53 (21), medical assistance, supplemental security income, food stamps, or
3 veterans benefits based on need under 38 USC 501 to 562 or s. 45.351 (1). The debtor
4 or debtor's spouse may file an answer or an amended answer and documentation at
5 any time before or during the effective period of the earnings garnishment.

6 **SECTION 13.** 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
10 debtor included with the answer to the creditor by the end of the 3rd business day
11 after receiving the debtor's answer and documents, writing on that copy the date of
12 receipt of the answer and documents by the garnishee.

13 **SECTION 14.** 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 (2) (a)
16 is insufficient for the debtor to acquire the necessities of life for the debtor and his
17 or her dependents. The petition shall state with reasonable specificity the grounds
18 for the relief requested and shall include any additional information necessary to
19 support the petition.

20 **SECTION 15.** 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

ASSEMBLY BILL 651

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 16.** 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 form to the creditor by the end of the 3rd business day after receipt of that
16 form. Include the date you received the answer form on the copy sent to the creditor.

17 **SECTION 17.** 812.44 (4) (form) 1. of the statutes is amended to read:

18 812.44 (4) (form) 1. Your household income is below the federal poverty level,
19 ~~or this garnishment would cause that to happen.~~ See the enclosed schedules and
20 worksheet to determine if you qualify for this exemption.

21 **SECTION 18.** 812.44 (4) (form) 3. of the statutes is amended to read:

22 812.44 (4) (form) 3. At least 25% of your disposable earnings are assigned by
23 court order for support.

ASSEMBLY BILL 651

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 along with the schedules and worksheets and any other documents supporting your
8 answer, such as a wage statement, a court order regarding the payment of support,
9 or a document showing the receipt of any of the benefits listed under paragraph 2
10 above in order to receive that increased exemption.

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

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

17 IF YOU NEED ASSISTANCE

18 CONSULT AN ATTORNEY

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

25 PENALTIES

ASSEMBLY BILL 651**SECTION 18**

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

4 **SECTION 19.** 814.04 (1) (a) of the statutes is amended to read:

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

13 **SECTION 20.** 814.04 (1) (b) of the statutes is repealed.

14 **SECTION 21.** 814.04 (2) of the statutes is amended to read:

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

ASSEMBLY BILL 651

1 lands, the cost of procuring an abstract of title to the lands. Guardian ad litem fees
2 shall not be taxed as a cost or disbursement.

3 **SECTION 22.** 814.07 of the statutes is amended to read:

4 **814.07 Costs on motion.** Costs may be allowed on a motion, in the discretion
5 of the court or judge, not exceeding ~~\$50~~ \$300, and may be absolute or directed to abide
6 the event of the action.

7 **SECTION 23.** 814.634 (1) (b) and (c) of the statutes are amended to read:

8 814.634 (1) (b) Notwithstanding par. (a), the clerk of circuit court shall charge
9 and collect a \$130 court support services fee from any person, including any
10 governmental unit as defined in s. 108.02 (17), paying a fee under s. 814.61 (1) (a) or
11 (3) or 814.62 (1) or (2), if the party paying the fee seeks the recovery of money and
12 the amount claimed exceeds the amount under s. 799.01 (1) (d) or, if the claim is based
13 on negligence, s. 799.01 (1) (e).

14 (c) Notwithstanding par. (a), the clerk of circuit court shall charge and collect
15 a \$39 court support services fee from any person, including any governmental unit
16 as defined in s. 108.02 (17), paying a fee under s. 814.62 (3) (a) or (b), or paying a fee
17 under s. 814.61 (1) (a) or (3) or 814.62 (1) or (2) if the party paying the fee seeks the
18 recovery of money and the amount claimed is equal to or less than the amount under
19 s. 799.01 (1) (d) or, if the claim is based on negligence, s. 799.01 (1) (e).

20 **SECTION 24.** 815.18 (3) (k) of the statutes is amended to read:

21 815.18 (3) (k) *Depository accounts.* Depository accounts in the aggregate value
22 of \$1,000, but only to the extent that the account is for the debtor's personal use and
23 is not used as a business account.

24 **SECTION 25.** 895.035 (2) of the statutes is amended to read:

ASSEMBLY BILL 651

1 895.035 (2) The parent or parents with custody of a minor child, in any
2 circumstances where he, she, or they may not be liable under the common law, are
3 liable for damages to property, for the cost of repairing or replacing property or
4 removing the marking, drawing, writing, or etching from property regarding a
5 violation under s. 943.017, for the value of unrecovered stolen property, or for
6 personal injury attributable to a willful, malicious, or wanton act of the child. The
7 parent or parents with custody of their minor child are jointly and severally liable
8 with the child for the damages imposed under s. 895.80, 943.212, 943.24, 943.245,
9 or 943.51 for their child's violation of s. 943.01, 943.011, 943.012, 943.017, 943.20,
10 943.201, 943.21, 943.24, 943.26, 943.34, 943.395, 943.41, 943.50, or 943.61.

11 **SECTION 26.** 895.035 (4) of the statutes is amended to read:

12 895.035 (4) Except for recovery under sub. (4a) or for retail theft under s.
13 943.51, the maximum recovery under this section from any parent or parents may
14 not exceed ~~the amount specified in s. 799.01 (1) (d) \$5,000~~ for damages resulting from
15 any one act of a juvenile in addition to taxable costs and disbursements and
16 ~~reasonable attorney fees, as determined by the court under s. 814.04.~~ If 2 or more
17 juveniles in the custody of the same parent or parents commit the same act the total
18 recovery under this section may not exceed ~~the amount specified in s. 799.01 (1) (d)~~
19 \$5,000, in addition to taxable costs and disbursements under s. 814.04. The
20 maximum recovery from any parent or parents for retail theft by their minor child
21 is established under s. 943.51.

22 **SECTION 27.** 895.08 of the statutes is created to read:

23 **895.08 Suit by collection agency.** In addition to the requirements of ss.
24 801.09 (1), 801.095, 802.04 (1), and 815.05 (intro.), in an action brought by a
25 collection agency under s. 218.04 (9j), the collection agency shall include in the

ASSEMBLY BILL 651

1 caption, under its name, the names of the creditors on whose behalf the action is
2 brought.

3 **SECTION 28.** 895.80 (1) of the statutes is amended to read:

4 895.80 (1) Any person who suffers damage or loss by reason of intentional
5 conduct that occurs on or after November 1, 1995, and that is prohibited under s.
6 943.01, 943.20, 943.21, 943.24, 943.26, 943.34, 943.395, 943.41, 943.50, 943.61,
7 943.74, or 943.76, or by reason of intentional conduct that occurs on or after April 28,
8 1998, and that is prohibited under s. 943.201, or by reason of intentional conduct that
9 occurs on or after the effective date of this subsection ... [revisor inserts date], and
10 that is prohibited under s. 943.011, 943.012, or 943.017, has a cause of action against
11 the person who caused the damage or loss.

12 **SECTION 29.** 895.80 (2) of the statutes is amended to read:

13 895.80 (2) The burden of proof in a civil action under sub. (1) is with the person
14 who suffers damage or loss to prove ~~his or her case~~ a violation of s. 943.01, 943.011,
15 943.012, 943.017, 943.20, 943.201, 943.21, 943.24, 943.26, 943.34, 943.395, 943.41,
16 943.50, or 943.61 by a preponderance of the credible evidence. A conviction under
17 s. 943.01, 943.011, 943.012, 943.017, 943.20, 943.201, 943.21, 943.24, 943.26, 943.34,
18 943.395, 943.41, 943.50, or 943.61 is not required to bring an action, obtain a
19 judgment, or collect on that judgment under this section.

20 **SECTION 30.** 895.80 (3) (a) of the statutes is repealed and recreated to read:

21 895.80 (3) (a) Actual damages, including the retail or replacement value of
22 damaged, used, or lost property, whichever is greater, for a violation of s. 943.01,
23 943.011, 943.012, 943.017, 943.20, 943.201, 943.21, 943.24, 943.26, 943.34, 943.395,
24 943.41, 943.50, or 943.61.

25 **SECTION 31.** 895.80 (3) (b) of the statutes is amended to read:

ASSEMBLY BILL 651**SECTION 31**

1 895.80 (3) (b) All costs of investigation and litigation that were reasonably
2 incurred, including the value of the time spent by any employee or agent of the
3 victim.

4 **SECTION 32.** 895.80 (3) (c) of the statutes is created to read:

5 895.80 (3) (c) Exemplary damages of not more than 3 times the amount
6 awarded under par. (a). No additional proof is required under this section for an
7 award of exemplary damages under this paragraph.

8 **SECTION 33.** 895.80 (4) of the statutes is repealed and recreated to read:

9 895.80 (4) Any recovery under this section shall be reduced by the amount
10 recovered as restitution under ss. 800.093 and 973.20 and ch. 938.

11 **SECTION 34.** 895.80 (6) of the statutes is created to read:

12 895.80 (6) A person is not criminally liable under s. 943.30 for any action
13 brought in good faith under this section.

14 **SECTION 35.** 938.245 (2) (a) 5. am. of the statutes is amended to read:

15 938.245 (2) (a) 5. am. That the parent who has custody, as defined in s. 895.035
16 (1), of the juvenile make reasonable restitution for any damage to the property of
17 another, or for any actual physical injury to another excluding pain and suffering,
18 resulting from the act for which the deferred prosecution agreement is being entered
19 into. Except for recovery for retail theft under s. 943.51, the maximum amount of any
20 restitution ordered under this subd. 5. am. for damage or injury resulting from any
21 one act of a juvenile or from the same act committed by 2 or more juveniles in the
22 custody of the same parent may not exceed ~~the amount specified in s. 799.01 (1) (d)~~
23 \$5,000. Any order under this subd. 5. am. shall include a finding that the parent who
24 has custody of the juvenile is financially able to pay the amount ordered and may
25 allow up to the date of the expiration of the deferred prosecution agreement for the

ASSEMBLY BILL 651

1 payment. Any recovery under this subd. 5. am. shall be reduced by the amount
2 recovered as restitution for the same act under subd. 5. a.

3 **SECTION 36.** 938.32 (1t) (a) 1m. of the statutes is amended to read:

4 938.32 (1t) (a) 1m. If the petition alleges that the juvenile has committed a
5 delinquent act that has resulted in damage to the property of another, or in actual
6 physical injury to another excluding pain and suffering, the judge or circuit court
7 commissioner may require a parent who has custody, as defined in s. 895.035 (1), of
8 the juvenile, as a condition of the consent decree, to make reasonable restitution for
9 the damage or injury. Except for recovery for retail theft under s. 943.51, the
10 maximum amount of any restitution ordered under this subdivision for damage or
11 injury resulting from any one act of a juvenile or from the same act committed by 2
12 or more juveniles in the custody of the same parent may not exceed ~~the amount~~
13 ~~specified in s. 799.01 (1) (d) \$5,000.~~ Any consent decree that includes a condition of
14 restitution by a parent who has custody of the juvenile shall include a finding that
15 the parent who has custody of the juvenile is financially able to pay the amount
16 ordered and may allow up to the date of the expiration of the consent decree for the
17 payment. Objection by the parent to the amount of damages claimed shall entitle the
18 parent to a hearing on the question of damages before the amount of restitution is
19 made part of the consent decree. Any recovery under this subdivision shall be
20 reduced by the amount recovered as restitution for the same act under subd. 1.

21 **SECTION 37.** 938.45 (1r) (a) of the statutes is amended to read:

22 938.45 (1r) (a) In a proceeding in which a juvenile has been found to have
23 committed a delinquent act or a civil law or ordinance violation that has resulted in
24 damage to the property of another, or in actual physical injury to another excluding
25 pain and suffering, the court may order a parent who has custody, as defined in s.

ASSEMBLY BILL 651

1 895.035 (1), of the juvenile to make reasonable restitution for the damage or injury.
2 Except for recovery for retail theft under s. 943.51, the maximum amount of any
3 restitution ordered under this paragraph for damage or injury resulting from any
4 one act of a juvenile or from the same act committed by 2 or more juveniles in the
5 custody of the same parent may not exceed ~~the amount specified in s. 799.01 (1) (d)~~
6 \$5,000. Any order under this paragraph shall include a finding that the parent who
7 has custody of the juvenile is financially able to pay the amount ordered and may
8 allow up to the date of expiration of the order for the payment. Any recovery under
9 this paragraph shall be reduced by the amount recovered as restitution for the same
10 act under s. 938.34 (5) or 938.343 (4).

11 **SECTION 38.** 938.45 (1r) (b) of the statutes is amended to read:

12 938.45 (1r) (b) In a proceeding in which the court has determined under s.
13 938.34 (8) or 938.343 (2) that the imposition of a forfeiture would be in the best
14 interest of the juvenile and in aid of rehabilitation, the court may order a parent who
15 has custody, as defined in s. 895.035 (1), of the juvenile to pay the forfeiture. The
16 amount of any forfeiture ordered under this paragraph may not exceed ~~the amount~~
17 specified in s. 799.01 (1) (d) \$5,000. Any order under this paragraph shall include
18 a finding that the parent who has custody of the juvenile is financially able to pay
19 the amount ordered and shall allow up to 12 months after the date of the order for
20 the payment. Any recovery under this paragraph shall be reduced by the amount
21 recovered as a forfeiture for the same act under s. 938.34 (8) or 938.343 (2).

22 **SECTION 39.** 943.212 (7) of the statutes is amended to read:

23 943.212 (7) Nothing in this section precludes a plaintiff from bringing the
24 action under ch. 799 if the amount claimed is within the jurisdictional limits of s.
25 799.01 (1) (d) or, if the claim is based on negligence, s. 799.01 (1) (e).

ASSEMBLY BILL 651

1 **SECTION 40.** 943.24 (3) (b) of the statutes is amended to read:

2 943.24 **(3)** (b) Proof that, at the time of issuance, the person did not have
3 sufficient funds or credit with the drawee and that the person failed within 5 days
4 after receiving written notice of nonpayment or dishonor to pay the check or other
5 order, delivered by regular mail to either the person's last-known address or the
6 address provided on the check or other order; or

7 **SECTION 41.** 943.24 (3) (c) of the statutes is amended to read:

8 943.24 **(3)** (c) Proof that, when presentment was made within a reasonable
9 time, the person did not have sufficient funds or credit with the drawee and the
10 person failed within 5 days after receiving written notice of nonpayment or dishonor
11 to pay the check or other order, delivered by regular mail to either the person's
12 last-known address or the address provided on the check or other order.

13 **SECTION 42.** 943.245 (3) of the statutes is amended to read:

14 943.245 **(3)** Notwithstanding sub. (2) (c) and (d), the total amount awarded for
15 exemplary damages and reasonable attorney fees may not exceed \$500 for each
16 violation.

17 **SECTION 43.** 943.245 (4) of the statutes is amended to read:

18 943.245 **(4)** At least 20 days prior to commencing an action, as specified in s.
19 801.02, under this section, the plaintiff shall notify the defendant, by mail, of his or
20 her intent to bring the action. Notice of nonpayment or dishonor shall be sent by the
21 payee or holder of the check or order to the drawer by regular mail supported by an
22 affidavit of service of mailing ~~or by a certificate of mailing obtained from the U.S. post~~
23 ~~office from which the mailing was made.~~ The plaintiff shall mail the notice to the
24 defendant's last-known address or to the address provided on the check or order. If

ASSEMBLY BILL 651

1 the defendant pays the check or order prior to the commencement of the action, he
2 or she is not liable under this section.

3 **SECTION 44.** 943.245 (8) of the statutes is amended to read:

4 943.245 (8) Nothing in this section precludes a plaintiff from bringing the
5 action under ch. 799 if the amount claimed is within the jurisdictional limits of s.
6 799.01 (1) (d) or, if the claim is based on negligence, s. 799.01 (1) (e).

7 **SECTION 45.** 943.51 (3) of the statutes is amended to read:

8 943.51 (3) Notwithstanding sub. (2) and except as provided in sub. (3m), the
9 total amount awarded for exemplary damages and reasonable attorney fees may not
10 exceed \$500 for each violation.

11 **SECTION 46.** 943.51 (3m) of the statutes is amended to read:

12 943.51 (3m) Notwithstanding sub. (2), the total amount awarded for
13 exemplary damages and reasonable attorney fees may not exceed \$300 for each
14 violation if the action is brought against a minor or against the parent who has
15 custody of their minor child for the loss caused by the minor.

16 **SECTION 47.** 943.51 (6) of the statutes is amended to read:

17 943.51 (6) Nothing in this section precludes a plaintiff from bringing the action
18 under ch. 799 if the amount claimed is within the jurisdictional limits of s. 799.01 (1)
19 (d) or, if the claim is based on negligence, s. 799.01 (1) (e).

20 **SECTION 48. Initial applicability.**

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

23 (2) The treatment of sections 895.035 (2) and (4), 895.80 (1), (2), (3) (a), (b), and
24 (c), (4), and (6), 938.245 (2) (a) 5. am., 938.32 (1t) (a) 1m., 938.45 (1r) (a) and (b),
25 943.212 (7), 943.24 (3) (b) and (c), 943.245 (3), (4), and (8), and 943.51 (3), (3m), and

ASSEMBLY BILL 651

1 (6) of the statutes first applies to violations committed on the effective date of this
2 subsection.

3 **SECTION 49. Effective date.**

4 (1) This act takes effect on the first day of the 4th month beginning after
5 publication.

6 (END)