

1991 Assembly Bill 194

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1991 WISCONSIN ACT 65

AN ACT to amend 814.04 (intro.), 943.21 (1) (a), 943.21 (2) (b), 943.21 (2) (c), 943.21 (2) (d), 943.21 (3) (a) and 943.21 (3) (b); and to create 943.21 (4), 943.21 (5) and 943.212 of the statutes, relating to: failure to pay for beverages, food, lodging, accommodation or service.

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

SECTION 1. 814.04 (intro.) of the statutes is amended to read:

814.04 Items of costs. (intro.) Except as provided in ss. 814.025, 814.245, 895.035 (4) and 895.75 (3), 943.212 (2) (b), 943.245 (2) (d) and 943.51 (2) (b), when allowed costs shall be as follows:

SECTION 1g. 943.21 (1) (a) of the statutes is amended to read:

943.21 (1) (a) Having obtained any beverage, food, lodging or other service or accommodation at any campground, hotel, motel, boarding or lodging house, or restaurant, intentionally absconds without paying for it.

SECTION 1r. 943.21 (2) (b) of the statutes is amended to read:

943.21 (2) (b) The failure or refusal of any guest at a campground, hotel, motel, boarding or lodging house, or restaurant, to pay, upon written demand, the established charge for any beverage, food, lodging or other service or accommodation actually rendered.

SECTION 2. 943.21 (2) (c) of the statutes is amended to read:

943.21 (2) (c) The giving of false information on a lodging registration form or the giving of false information or presenting of false or fictitious credentials for the purpose of obtaining any beverage or food, lodging or credit.

SECTION 2g. 943.21 (2) (d) of the statutes is amended to read:

943.21 (2) (d) The drawing, endorsing, issuing or delivering to any campground, hotel, motel, boarding or lodging house, or restaurant, of any check, draft or order for payment of money upon any bank or other depository, in payment of established charges for any beverage, food, lodging or other service or accommodation, knowing at the time that there is not sufficient credit with the drawee bank or other depository for payment in full of the instrument drawn.

SECTION 2m. 943.21 (3) (a) of the statutes is amended to read:

943.21 (3) (a) Is guilty of a Class A misdemeanor when the value of any beverage, food, lodging, accommodation or other service is \$500 or less.

SECTION 2r. 943.21 (3) (b) of the statutes is amended to read:

943.21 (3) (b) Is guilty of a Class E felony when the value of any beverage, food, lodging, accommodation or other service exceeds \$500.

SECTION 3. 943.21 (4) of the statutes is created to read:

943.21 (4) (a) In addition to the other penalties provided for violation of this section, a judge may order a violator to pay restitution under s. 973.20. A victim may not be compensated under this section and s. 943.212.

(b) This subsection is applicable in actions concerning violations of ordinances in conformity with this section.

SECTION 4. 943.21 (5) of the statutes is created to read:

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943.21 (5) A judgment may not be entered for a violation of this section or for a violation of an ordinance adopted in conformity with this section, regarding conduct that was the subject of a judgment including exemplary damages under s. 943.212.

SECTION 5. 943.212 of the statutes is created to read:

943.212 Fraud on hotel or restaurant keeper; civil liability. (1) Any person who incurs injury to his or her business or property as a result of a violation of s. 943.21 may bring a civil action against any adult or emancipated minor who caused the loss for all of the following:

(a) The retail value of the beverage, food, lodging, accommodation or service involved in the violation. A person may recover under this paragraph only if he or she exercises due diligence in demanding payment for the beverage, food, lodging, accommodation or service.

(b) Any property damages not covered under par. (a).

(2) In addition to sub. (1), if the person who incurs the injury prevails, the judgment in the action may grant any of the following:

(a) Exemplary damages of not more than 3 times the amount under sub. (1) (a) and (b). No additional proof is required for an award of exemplary damages under this paragraph. Exemplary damages may not be granted for conduct that was the subject of a judgment for violation of s. 943.21 or an ordinance adopted in conformity with that section.

(b) 1. Notwithstanding the limitations of s. 814.04, reasonable attorney fees for actions commenced under ch. 801.

2. Attorneys fees under s. 799.25 for actions commenced under ch. 799.

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(3) Notwithstanding sub. (2), the total amount awarded for exemplary damages and attorney fees may not exceed \$300.

(4) At least 20 days prior to commencing an action, as specified in s. 801.02, under this section, the plaintiff shall notify the defendant, by mail, of his or her intent to bring the action and of the acts constituting the basis for the violation of s. 943.21. The plaintiff shall send the notice by regular mail supported by an affidavit of service of mailing or by a certificate of mailing obtained from the U.S. post office from which the mailing was made. The plaintiff shall mail the notice to the defendant's last-known address or to the address provided on the check or order. If the defendant pays the amount due for the beverage, food, lodging, accommodation or service prior to the commencement of the action, he or she is not liable under this section.

(5) The plaintiff has the burden of proving by a preponderance of the evidence that a violation occurred under s. 943.21. A conviction under s. 943.21 is not a condition precedent to bringing an action, obtaining a judgment or collecting that judgment under this section.

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

(7) Nothing in this section precludes a plaintiff from bringing the action under ch. 799 if the amount claimed is within the jurisdictional limits of s. 799.01 (1) (d).

SECTION 6. Initial applicability. This act first applies to offenses that occur or causes of action that accrue on the effective date of this SECTION.