

State of Wisconsin



2005 Senate Bill 145

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2005 WISCONSIN ACT 462

AN ACT *to amend* 218.04 (1) (a), 943.245 (1m) (intro.), 943.245 (3m) and 943.245 (8); and *to create* 943.24 (6), 943.245 (9) and 971.41 of the statutes; **relating to:** deferred prosecution agreements for persons charged with issuing a worthless check or other order for payment.

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

SECTION 1. 218.04 (1) (a) of the statutes is amended to read:

218.04 (1) (a) "Collection agency" means any person engaging in the business of collecting or receiving for payment for others of any account, bill or other indebtedness. It shall not include attorneys at law authorized to practice in this state and resident herein, banks, express companies, state savings banks, state savings and loan associations, insurers and their agents, trust companies, ~~or district attorneys acting under s. 971.41, persons contracting with district attorneys under s. 971.41 (5),~~ professional men's associations collecting accounts for its members on a nonprofit basis, where such members are required by law to have a license, diploma, or permit to practice or follow their profession, real estate brokers, and real estate salespersons.

SECTION 2. 943.24 (6) of the statutes is created to read:

943.24 (6) (a) If the department of justice, a district attorney, or a state or local law enforcement agency requests any of the following information under par. (b) from a financial institution, as defined in s. 705.01 (3), regarding a specific person, the financial institution shall

provide the information within 10 days after receiving the request:

1. Documents relating to the opening and closing of the person's account.
2. Notices regarding any of the following that were issued within the 6 months immediately before the request and that relate to the person:
 - a. Checks written by the person when there were insufficient funds in his or her account.
 - b. Overdrafts.
 - c. The dishonor of any check drawn on the person's account.
3. Account statements sent to the person by the financial institution for the following:
 - a. The period during which any specific check covered by a notice under subd. 2. was issued.
 - b. The period immediately before and immediately after the period specified in subd. 3. a.
4. The last known address and telephone number for the person's home and business.
 - (b) The department of justice, a district attorney, or a state or local law enforcement agency may request information under par. (a) only if the request is in writing and if it states that the requester is investigating whether the person specified violated this section or is prosecuting the person specified under this section.

* Section 991.11, WISCONSIN STATUTES 2003-04 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

(c) A financial institution may not impose a fee for providing information under this subsection.

SECTION 3. 943.245 (1m) (intro.) of the statutes is amended to read:

943.245 (1m) (intro.) Any Except as provided in sub. (9), any person who incurs pecuniary loss, including any holder in due course of a check or order, may bring a civil action against any adult or emancipated minor who:

SECTION 4. 943.245 (3m) of the statutes is amended to read:

943.245 (3m) Any recovery under this section shall be reduced by the amount recovered as restitution for the same act under ss. 800.093 and 973.20 and by any amount collected in connection with the act and paid to the plaintiff under a deferred prosecution agreement under s. 971.41.

SECTION 5. 943.245 (8) of the statutes is amended to read:

943.245 (8) Nothing in this section other than sub. (9) 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. 943.245 (9) of the statutes is created to read:

943.245 (9) A person may not bring an action under this section after requesting that a criminal prosecution be deferred under s. 971.41 if the person against whom the action would be brought has complied with the terms of the deferred prosecution agreement.

SECTION 7. 971.41 of the statutes is created to read:

971.41 Deferred prosecution program; worthless checks. (1) **DEFINITION.** In this section, "offender" means a person charged with, or for whom probable cause exists to charge the person with, a violation of s. 943.24.

(2) **ESTABLISHMENT OF PROGRAM; ELIGIBILITY CRITERIA.** A district attorney may create within his or her office a worthless check deferred prosecution program for offenders who agree to participate in it as an alternative to prosecution. The district attorney may establish criteria for determining an offender's eligibility for the program. Among the factors that the program may use in determining eligibility are the following:

(a) The face value of any check or order that was involved in the offense.

(b) If applicable, the reason why the check or order was dishonored by a financial institution.

(c) Other evidence presented to the district attorney regarding the facts and circumstances of the offense.

(d) The offender's criminal history.

(e) Prior referrals of the offender to the program.

(f) Whether other charges under s. 943.24 are pending against the offender.

(3) **CONDITIONS OF PROGRAM.** A deferred prosecution agreement to which this section applies may require an offender to do any of the following:

(a) Pay money owed for the worthless check or other order issued in violation of s. 943.24 to the district attorney for remittance to the payee of the worthless check or order.

(b) Make other payments for restitution for the offense, including payments to reimburse any person for fees assessed by a financial institution in connection with the person attempting to present the worthless check or other order.

(c) Pay administrative fees assessed under sub. (7).

(b) Pay for and successfully complete a class or counseling regarding financial management.

(4) **OFFENSES COVERED.** The deferred prosecution agreement shall specify the offenses for which prosecution is being deferred and shall describe the checks involved in the transactions. The district attorney shall agree not to prosecute those offenses while the agreement remains in effect or afterward if the offender successfully completes the deferred prosecution program.

(5) **PRIVATE CONTRACTOR OPERATION OF PROGRAM.** (a) A district attorney who establishes a deferred prosecution program under this section may contract with a private entity to operate or administer all or part of the program under the supervision, direction, and control the district attorney.

(b) A private entity acting under this subsection shall maintain insurance, financial accounting controls, and fund disbursement procedures as required by the district attorney. The district attorney shall audit the accounts of the private entity, but only after providing written notice.

(c) If an offender who is the subject of a deferred prosecution agreement under this section is represented by an attorney, a private entity acting under this subsection may communicate directly with the offender if any of the following apply:

1. The attorney has not informed the private entity of his or her representation in writing.

2. The attorney has authorized the communication.

3. The private entity has requested authorization for the communication from the attorney, but the attorney has failed to respond to that request within a reasonable period of time.

(d) A district attorney may cancel a contract entered into with a private entity under this subsection if any of the following occur:

1. The private entity or a principal of the private entity is convicted of any of the following:

a. A felony under any state or federal law.

b. A misdemeanor under any state or federal law if proof of the defendant's dishonesty is an essential element of the offense or if the offense relates to debt collection.

2. The private entity uses or threatens to use force or violence against an offender, a member of his or her family, or his or her property.

3. The private entity threatens the seizure, attachment, or sale of an offender's property without disclosing that prior court proceedings are required.

4. The private entity, with knowledge that the statement is false, makes or threatens to make a statement to a 3rd party that adversely affects an offender's reputation for creditworthiness.

5. The private entity initiates or threatens to initiate communication with an offender's employer. This subdivision does not apply if the communication is authorized under a court order or federal law or if all of the following apply:

a. An offender's payment is 30 or more days past due.

b. The private entity has provided written notice to the offender at his or her last known address, at least 5 days beforehand, of its intent to communicate with the employer.

6. The private entity harasses an offender, including by doing any of the following:

a. Communicating with the offender or a member of his or her family at any unusual time or place or at a time or place that the private entity knows or has reason to know is inconvenient to the offender or the family member. In the absence of evidence to the contrary, the private entity shall be presumed to know that communicating with an offender or a member of his or her family at his or her residence before 8:00 a.m. or after 9:00 p.m. is inconvenient to the offender or the family member.

b. Publishing or threatening to publish the offender's name on a list of offenders who allegedly refuse to pay restitution. This subd. 6. b. does not apply if the district attorney authorizes the publication of the offender's name in such a manner.

c. Advertising or threatening to advertise the sale of financial information regarding the offender in order to coerce the offender to pay restitution.

d. Disclosing or threatening to disclose information concerning the alleged violation of s. 943.24 without disclosing or agreeing to disclose the fact that the offender disputes the allegations. This subd. 6. d. applies only if the private entity knows that the offender reasonably disputes the allegations.

e. Disclosing or threatening to disclose information relating to an offender's case to any person other than the victim, the district attorney, or persons to whom the district attorney has properly authorized disclosure.

f. Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the number called.

g. Using profane, obscene, or abusive language in communicating with an offender, a member of his or her family, or others.

h. Engaging in any conduct which the district attorney finds was intended to cause and did cause mental or

physical illness to the offender or a member of his or her family.

i. Attempting or threatening to enforce a claimed right or remedy with knowledge or reason to know that the claimed right or remedy does not exist.

j. Except as authorized by the district attorney, engaging in any form of communication that simulates legal or judicial process or that conveys the impression that the communication is being made, is authorized, or is approved by a governmental agency or official or by an attorney when it is not.

k. Using any badge, uniform, or other thing to indicate that the person is a government employee or official, except as authorized by law or by the district attorney.

L. Conducting business under a particular name or implying that the business has a particular name if the use of the name has not been authorized by the district attorney.

m. Misrepresenting the amount of restitution alleged to be owed by an offender.

n. Except as authorized by the district attorney, representing that an existing restitution amount may be increased by the addition of attorney fees, investigation fees, or any other fees or charges when those fees or charges may not legally be added.

o. Except as authorized by the district attorney, representing that the private entity is an attorney or an agent for an attorney if the entity is not.

p. Recovering or attempting to recover any interest or other charge or fee in excess of the actual restitution or claim unless the interest or other charge or fee is expressly authorized under the contract with the district attorney.

q. Communicating or threatening to communicate directly with an offender who is represented by an attorney. This subd. 6. q. does not apply to communications permitted under par. (c).

r. Engaging in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public.

s. Communicating with an offender or a member of his or her family at a time of day or night, with such frequency, or in such a manner as to constitute harassment of the offender or his or her family member.

(6) CONFIDENTIALITY. Records relating to programs established under this section are not subject to inspection or copying under s. 19.35. A district attorney may disclose information relating to persons participating in the program only to a private entity operating or administering such a program, to another district attorney, to a court, or to a law enforcement agency. A private entity operating or administering such a program may disclose information relating to such persons only as permitted under sub. (5) (d) 6. or to the district attorney or, with the

district attorney's consent, to another district attorney or to a law enforcement agency.

(7) FEES. Notwithstanding s. 978.06 (1), a district attorney or a private entity acting under sub. (5) may charge a defendant who is a party to a deferred prosecution agreement under this section a fee to cover his, her, or its costs under the agreement. The district attorney

may require that the fee be paid directly to the district attorney's office or to the private entity. The district attorney, or the district attorney and the private entity, may establish guidelines on when fees may be waived for an offender due to hardship and may authorize extended payment plans of not more than 6 months in length.
