



**NEW LAW RELATING TO PROPERTY EXEMPT FROM EXECUTION  
(1989 WISCONSIN ACT 278)**

**INFORMATION MEMORANDUM 90-8**

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INTRODUCTION

This Information Memorandum describes 1989 Wisconsin Act 278, relating to property exempt from execution. The Act takes effect on May 4, 1990. Act 278 is based on 1989 Senate Bill 259, which was introduced by Senator Adelman and others; cosponsored by Representative Barrett and others. The Bill was subsequently amended by the Legislature before being signed into law by Governor Thompson.

Copies of Act 278 may be obtained from the Documents Room, One East Main Street, Lower Level, Madison, WI 53702; telephone (608) 266-2400.

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## PART I

### BACKGROUND

#### A. SOURCE OF ACT 278

1989 Wisconsin Act 278 (hereafter "Act 278" or "the Act") is, in general, the work product of the Committee on Revision of the Wisconsin Exemption Laws of the Bankruptcy, Insolvency and Creditors' Rights Section of the State Bar of Wisconsin. That Committee was chaired by Attorney R. Arthur Ludwig of Milwaukee.

#### B. INTRODUCTION TO EXEMPTIONS LAW

Under Act 278 and prior law, certain property of a judgment debtor (i.e., a person who has a judgment against him or her in a civil action) is not subject to "seizure or sale on execution or on any provisional or final process issued from any court or any proceedings in aid thereof" [s. 815.18, 1987 Stats.]. Execution is a method by which a judgment creditor (i.e., a person who has obtained a judgment in a civil action) may enforce a judgment requiring the payment of money or the delivery of property. Execution is an appropriate post-judgment remedy when money or property, which can be used to satisfy the creditor's judgment, is in the hands of the judgment debtor.

Exemptions from execution under current law are found in:

1. Section 425.106, Stats., relating to exempt real and personal property under the Wisconsin Consumer Act.
2. Section 815.18, Stats., as affected by 1989 Wisconsin Act 278, relating to personal property exempt from execution subsequent to a judgment in a civil action.
3. Section 815.20, Stats., relating to real property exempt from execution subsequent to a judgment in a civil action (i.e., the "homestead" exemption).

There is also a "subsistence allowance" exemption applicable to a judgment debtor who is having his or her wages or other earnings garnished under ch. 812, Stats. Garnishment is another procedure by which a judgment creditor may collect his or her judgment against the debtor. A copy of s. 812.18, Stats., setting forth the "subsistence allowance" exemption in garnishment actions, is attached as Attachment 1 to this Memorandum.

The reasons for providing exemptions from execution are set forth in the following excerpt:

In the interest of human dignity and the interests of not having too many persons on welfare rolls and creating a large number of vagrants and street people, the provisions of various laws permit a debtor a certain minimum of money or property of which he or she cannot be deprived by any legal action except perhaps by the seller or others who get a lien on the assets. [Cowans Bankruptcy Law and Practice, pp. 16-17 (1986).]

#### C. EXEMPTIONS UNDER CH. 815

The specific exemptions under ch. 815, Stats., as affected by Act 278, will be discussed in Part II of the Information Memorandum.

#### D. EXEMPTIONS UNDER THE WISCONSIN CONSUMER ACT

Current law also contains a specific set of exemptions which are applicable to judgments obtained in a consumer credit transaction under the Wisconsin Consumer Act. Section 425.106, Stats., provides that, except to the extent that the merchant has a valid security interest which is permitted by chs. 421 to 427, Stats., or has a lien under ch. 779, Stats., in such property, or where the transaction is for medical or legal services and there has been no finance charge actually imposed, the following property of the customer is exempt from levy, execution, sale and other similar process in satisfaction of a judgment for an obligation arising from a consumer credit transaction:

1. Earnings. Unpaid earnings equivalent to the greater of:

- a. Seventy-five percent of the customer's earnings remaining after all deductions required by law to be withheld; or
- b. Fifteen dollars per dependent per week, other than the customer, as claimed by the customer for federal income tax withholding purposes, plus 40 times the federal minimum hourly wage at the time the earnings are payable. In the case of earnings not payable by the week, the Commissioner of Banking must prescribe by rule a multiple of the federal minimum hourly wage equivalent to the per week amount.

2. Household Goods. Clothing of the customer or his or her dependents and the following:

- a. Dining table and chairs, refrigerator, heating stove, cooking stove, radio, beds and bedding, couch and chairs, cooking utensils and kitchenware; and
- b. "Household goods" consisting of furniture, appliances, one television, linens, china, crockery and personal effects including

wedding rings, except works of art, electronic entertainment equipment, antiques and jewelry, "to the extent a nonpossessory security interest in these household goods is prohibited under 12 C.F.R. 227.13 (d), 12 C.F.R. 535.2 (a) (4) or 16 C.F.R. 444.2 (a) (4) [the Code of Federal Regulations]."

3. Homestead. Real property used as the principal residence of the customer of his or her dependents, to the extent that the fair market value of such property, less all amounts secured by mortgages and liens outstanding against it, is \$15,000 or less.

4. Restitution Payments. Earnings or other assets of the customer which are required to be paid by the customer as restitution under s. 973.20, Stats.

With respect to process against marital property in satisfaction of a judgment for an obligation described under s. 766.55 (2) (b), Stats., arising from a consumer credit transaction, each spouse is entitled to and may claim the exemptions under items 1 to 4. Each spouse 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.

Current law provides that nothing in s. 425.106, Stats., may be construed to displace other provisions of law which afford additional or greater protection to the customer (i.e., the exemptions in ch. 815 may also be claimed by the judgment debtor).

#### E. EXEMPTIONS AND FEDERAL BANKRUPTCY LAW

The exemptions under Act 278 (as were the exemptions under the prior law) are significant not only for purposes of execution, but may also play a significant role in bankruptcy proceedings under federal law, set forth in 11 U.S.C. s. 522 in the Bankruptcy Code. The Bankruptcy Code permits an individual debtor in a bankruptcy case to choose between state and federal exemption systems. The debtor may choose the federal exemptions prescribed in the Code or the debtor may choose the exemptions to which he or she is entitled under other federal law and the law of his or her state of domicile. The debtor is not permitted to pick and choose between the federal and state exemptions, but must choose either the federal or the state exemption scheme. In addition, states are permitted to enact laws which deny debtors the use of the federal exemptions; currently, more than 1/2 of the states (not including Wisconsin) have enacted such laws.

The Bankruptcy Code specifies the following categories, and maximum dollar amounts, of federal exemptions:

1. The debtor's aggregate interest, not to exceed \$7,500 in value, in real property or personal property that the debtor uses as a residence, or in a burial plot for the debtor or debtor's dependents;

2. One motor vehicle not to exceed \$1,200 in value;
3. Household furnishings and goods, wearing apparel, appliances, books, animals, crops or musical instruments, if the debtor's interest does not exceed \$200 in value in any particular item or \$4,000 in aggregate value.
4. Jewelry not to exceed \$500 in value;
5. Any property under \$400, plus up to \$3,750 of any unused amount of the residence exemption under item 1, above;
6. Professional books or tools of trade not to exceed \$750 in value;
7. Any unmatured life insurance contract, other than a credit life insurance contract;
8. Loan value of a life insurance contract not to exceed \$4,000 in value;
9. Professionally prescribed health aids for debtor or debtor's dependents;
10. Social security, unemployment or welfare benefits;
11. Veterans' benefits;
12. Disability benefits;
13. Alimony or child support;
14. Payment under some stock bonus, pension profit sharing, or annuity plans or contracts;
15. An award under a crime victim's reparation law;
16. A payment for the wrongful death of an individual of whom the debtor was a dependent, to the extent necessary for the support of the debtor and the debtor's dependents;
17. Payment under a life insurance policy that insured the life of an individual of whom the debtor was a dependent to the extent necessary for the support of the debtor and the debtor's dependents;
18. Payment, not to exceed \$7,500, on account of personal bodily injury of the debtor or an individual of whom the debtor is a dependent. Pain and suffering compensation and compensation for "actual pecuniary loss" is not exempt; and
19. Payment in compensation for loss of future earnings of debtor or an individual of whom the debtor is a dependent, to the extent necessary for the support of the debtor and the debtor's dependents.

PART II

DESCRIPTION OF 1989 WISCONSIN ACT 278

A. DEFINITIONS [s. 815.18 (2)]

In addition to definitions set forth in the discussion of the exemptions in Act 278, below, the Act also defines the following terms for purposes of the exemptions statute [s. 815.18, Stats.]:

1. "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.

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

3. "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.

B. STATUTORY CONSTRUCTION [s. 815.18 (1)]

Act 278 contains a statutory construction provision specifying that the exemption statute must 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.

C. EXEMPT PROPERTY [s. 815.18 (3)]

Act 278 specifies that the debtor's interest in or right to receive the following described property is exempt, except as specifically provided in new s. 815.18 and ss. 70.20 (2) [property tax collection], 71.91 (5m) and (6) [income and franchise tax collection], 74.55 (2) [personal property tax collection] and 102.28 (5) [employer's liability under worker's compensation], Stats.

1. Provision for Burial [s. 815.18 (3) (a)]

Act 278 exempts 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.

Prior law exempted cemetery lots owned by individuals and all monuments therein, the coffins and other articles for the burial of any dead person and the tombstone or monument for his or her grave "by whomsoever purchased" [s. 815.18 (20), 1987 Stats.].

## 2. Business and Farm Property [s. 815.18 (3) (b)]

Act 278 replaces archaic provisions relating to business and farm property in prior law with an exemption of the debtor's interest, not to exceed \$7,500 in aggregate value, in equipment, inventory, farm products and professional books used in the business of the debtor or the business of a dependent of the debtor. "Aggregate value" means the sum total of the debtor's equity in the property claimed exempt. "Equity" means the fair market value of the debtor's interest in property, less the valid liens on that property.

For purposes of this provision, "equipment" means goods used or bought for use primarily in a business, including farming and a profession. "Inventory" has the meaning given under s. 409.109 (4), Stats. "Farm products" has the meaning given under s. 409.109 (3), Stats. A copy of s. 409.109 (3) and (4), Stats., is attached as Attachment 2.

Prior law contained very specific, and often archaic, exemptions as follows:

a. The tools, implements and stock in trade used or kept for the purpose of carrying on a trade or business, not exceeding \$200 in value.

b. Printing material and press or presses of any printer or publisher not exceeding \$1,500 in value.

c. All books, maps, plats and other papers for the purpose of making abstracts of title to land.

d. Eight cows, 10 swine, 50 chickens, two horses or two mules, 10 sheep, the wool from the same, either raw material, yarn or cloth; and the necessary food for all livestock mentioned for one year's support, "either provided, growing or both."

e. One wagon, cart or dray, one sleigh, one plow, one binder, one tractor not to exceed in value the sum of \$1,500, one corn binder, one mower, one spring-tooth harrow, one disc harrow, one seeder, one hay planter, one set of heavy harness and "other farming utensils." Also exempt were small tools and implements, not exceeding \$300 in value [s. 815.18 (6), (8), (11) and (13), 1987 Stats.].

3. Child Support, Family Support or Maintenance Payments [s. 815.18 (3) (c)]

Act 278 exempts from execution 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" (defined in the Act as "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").

There was no comparable provision relating to these payments in prior law.

4. Consumer Goods [s. 815.18 (3) (d)]

Act 278 replaces the outdated list of specific consumer goods in prior law with an exemption of the debtor's interest, not to exceed \$5,000 in aggregate value, in 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.

Prior law listed specific items of personal property which could be claimed as exempt and placed dollar limits on certain of those items. Prior exemptions were:

- a. A Bible, pictures and books, the library of the debtor and a pew.
- b. All wearing apparel of the debtor and his or her family; all beds, bedstead and bedding; all stoves and appendages; and all sewing machines.
- c. One television set.
- d. One radio.
- e. Jewelry not to exceed \$400 in value.
- f. All cooking utensils and all other household furniture not exceeding \$200 in value.
- g. One gun, rifle or other firearm not exceeding \$50 in value.
- h. The provisions for the debtor and his or her family necessary for one year "either provided or growing, or both," and fuel necessary for one year.

- i. Keepsakes presented by Congress or the Legislature.
- j. Accoutrements of the Wisconsin National Guard.
- k. The interest by any inventor in any invention secured to him or her by a U.S. patent [s. 815.18 (1) to (5), (7), (9), (10), (12) and (14), 1987 Stats.].

5. Fire and Casualty Insurance [s. 815.18 (3) (e)]

Act 278 broadens the prior law's exemption relating to fire and casualty insurance by exempting, for a period of two 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.

Under prior law, all moneys arising from the insurance of any property was exempted from sale on execution, including the homestead, when such property had been destroyed by fire [s. 815.18 (17), 1987 Stats.].

6. Life Insurance [s. 815.18 (3) (f)]

Act 278 revises prior law to exempt 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.

Prior law exempted life insurance proceeds paid to the beneficiary of a life insurance policy effected by a debtor on his or her own life or the life of another. The insurance had to be "in favor of a person other than the debtor" (i.e., the policy could not name the debtor's estate as beneficiary) [s. 815.18 (19), 1987 Stats.].

7. Motor Vehicles [s. 815.18 (3) (g)]

Act 278 exempts the debtor's interest in motor vehicles (defined in the Act as "self-propelled vehicles") not to exceed \$1,200 in aggregate value plus any unused amount in item 4, above (the exemption for household goods). Thus, the exemption may be increased by up to \$5,000 if the debtor also applies his or her exemption under item 4, to motor vehicles (i.e., a total exemption of \$6,200). Act 278 specifies that the term "motor vehicle" does not include equipment (which is defined in the new law to mean "goods used or bought for use primarily in a business, including farming and a profession").

Prior law exempted one automobile of the debtor not exceeding \$1,000 in value [s. 815.18 (6), 1987 Stats.].

8. Net Income [s. 815.18 (3) (h)]

Act 278 provides for a basic exemption of 75% of the debtor's net income, but not less than 30 times the federal minimum wage for each one-week pay period. "Net income" is defined to mean gross receipts less federal and state tax deductions required by law to be withheld. "Gross receipts" are those paid or payable for personal services or derived from rents, dividends or interest.

As noted in Part I, D, above, there is a separate "earnings" exemption under the Wisconsin Consumer Act. Also, as discussed in Part I, B, above, there is a "subsistence allowance" exemption applicable to earnings under one of the garnishment statutes [s. 812.18, Stats.].

Prior law exempted:

a. Sixty percent of the income of any individual without dependents for each 30-day period prior to service of process in the proceeding to collect a debt, but not less than \$75 nor more than \$100.

b. On the income of any individual with dependents, for each 30-day period prior to service of process in the proceeding to collect a debt, \$120 plus an additional \$20 for each dependent. The amount allowed as exemption for dependents must be limited to such an amount that the total amount exempt may not exceed 75% of the income [s. 815.12 (15), 1987 Stats.].

9. Life Insurance Claims, Personal Injury or Wrongful Death Claims [s. 815.18 (3) (i)]

Prior law did not contain provisions relating to exemptions for life insurance claims or personal or wrongful death claims. Act 278 exempts 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" (see definition in item 3, above).

b. A payment resulting from the wrongful death of an individual of whom the debtor was a dependent, in an amount reasonably necessary of 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.

The new law provides that any property traceable to payments under items a to d, above, is exempt.

10. Retirement Benefits; Fire and Police Pension Fund [s. 815.18 (3) (ef), (j) and (n)]

Prior law exempted:

a. Employee retirement benefits, meaning any retirement, pension, disability, death benefit, stock bonus or profit-sharing plan created by the employer for the exclusive benefit of himself or herself, if self-employed or some or all of his or her employees or their dependents or beneficiaries.

b. Moneys received from any fire or police pension fund or from the U.S. government as a result of military or naval service [s. 815.18 (21), (24) and (31), 1987 Stats.].

Act 278 broadens the general retirement exemptions in prior law to specifically apply to assets held, payments made, 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.

The Act provides that the retirement 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 employees, or their dependents or beneficiaries and that plan or contract requires the employer or employees or both to make contributions for the purpose of distributing to the employer, if self-employed, the employees, 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 for or diverted to purposes other than for the exclusive benefit of those beneficiaries.

Act 278 provides that this "retirement benefits" exemption is total (i.e., for the full amount of the benefits) except that the Act provides that 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-employee" must be limited "to the extent reasonably necessary for the support of the debtor and the debtor's dependents" (see definition in item 3, above).

The Act defines, for purposes of this exemption:

a. "Employer" to include a group of employers creating a combined plan or contract for the benefit of their employees or the beneficiaries of those employees.

b. "Owner-dominated plan" to mean any plan or contract that meets the requirements in new s. 815.18 (3) (j) 2 (a copy of which is attached as Attachment 3) 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-employees. For purposes of this definition, the accrued benefits or account of an owner-employee under a plan or contract must include the accrued benefits or account of the spouse and any ancestor, lineal descendant or spouse of a lineal descendant of the owner-employee under the same plan or contract.

c. "Owner-employee" to mean 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.

Act 278 also specifies that:

a. 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 its 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.

b. The 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.

c. In this exemption, "employer" includes a group of employers creating a combined plan or contract for the benefit of their employees or the beneficiaries of those employees.

With reference to fire and police pension funds and war pension funds, the Act exempts (as prior law did):

a. 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.

b. 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.

See also the changes discussed in Section F, 4, below, relating to public employe retirement system funds.

11. Depository Accounts [s. 815.18 (3) (k)]

Prior law exempted savings accounts at savings and loan associations, banks and credit unions to the value of \$1,000 at the time of the withdrawal. This exemption did not apply to any person holding a homestead which was exempt [s. 815.18 (22), 1987 Stats.].

Act 278 replaces the prior law with an exemption for depository accounts to the aggregate value of \$1,000. "Depository account" is defined to mean 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.

The Act deletes the provision making the exemption inapplicable to any person holding an exempt homestead.

12. Other Exemptions from Execution [s. 815.18 (3) (df), (em) and (m)]

As under prior law, Act 278 exempts:

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

b. 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.

c. Private property from execution against municipalities. All private property must 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.

D. TRACING [s. 815.18 (4)]

Act 278 creates a provision relating to "tracing." Under the Act, property traceable to property that would be exempt under new s. 815.18 in the form of cash proceeds or otherwise is not exempt unless expressly provided for in new s. 815.18.

E. AVAILABILITY OF EXEMPTIONS [s. 815.18 (5)]

Act 278 specifies that: (1) a resident of this state is entitled to the exemptions set forth in new s. 815.18; and (2) a nonresident of this state is entitled to the exemptions set forth in the law of the jurisdiction of his or her residence.

F. CLAIMING EXEMPTIONS [s. 815.18 (6)]

Under Act 278, except as set forth in item 4, below, a debtor must 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 must 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, 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 must 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 these procedures. The Act also specifies that:

1. A contractual waiver of exemption rights by any debtor before judgment on the claim is void.

2. 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.

3. The court must 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.

4. These provisions on claiming exemptions do not apply to any of the following:

- a. Public employe trust funds exempt under s. 40.08 (1), Stats.
- b. Retirement benefits and allowances from retirement systems of first class cities (i.e., City of Milwaukee) exempt under s. 66.81, Stats.
- c. Retirement benefits and allowances from retirement systems of counties having a population of 500,000 or more (Milwaukee County) exempt under Ch. 201, Laws of 1987, SECTION 11.
- d. A homestead exempt under s. 815.20, Stats.

Thus, a debtor does not have to affirmatively claim these benefits as exempt.

#### G. VALUATION OF PROPERTY [s. 815.18 (7)]

Under Act 278, the value of any property subject to exemption must be determined by: (1) agreement of the parties; or (2) a commercially reasonable manner.

#### H. MARITAL PROPERTY RIGHTS [s. 815.18 (8)]

Act 278 specifies that each spouse is entitled to and may claim the exemptions under new s. 815.18. If the property exempt 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 for net income under Section C, 8, above, may not be combined with the other spouse's exemption under that section and applied to the same property.

I. PARTIALLY EXEMPT PROPERTY [s. 815.18 (9)]

Under Act 278, 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 must be set apart for the debtor, or for the debtor's dependents, and the nonexempt portion is then 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 is exempt while held by the debtor or the debtor's dependents as cash or in a depository account.

J. FRAUDULENT TRANSFERS [s. 815.18 (10)]

Under Act 278, a conveyance or transfer of wholly exempt property is not to be considered a fraudulent conveyance or transfer. Property that is not totally exempt in value may be subject to a fraudulent transfer action under ch. 242, Stats., to set aside that transfer to the extent that the property's value is not exempt. 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 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.

K. CONSUMER CREDIT TRANSACTION EXEMPTIONS [s. 815.18 (11)]

Under Act 278, the debtor may claim either the exemptions listed in s. 425.106, Stats., or the exemptions under new s. 815.18 for an obligation arising from a consumer credit transaction (see Part I, D, above, for a discussion of exemptions under the Wisconsin Consumer Act):

L. LIMITATIONS ON EXEMPTIONS [s. 815.18 (12)]

Act 278 provides that 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 of a holder of a security interest, land contract, condominium or homeowners association assessment or maintenance lien, or both, or a mortgage or statutory or consensual lien.

M. APPLICABILITY TO OTHER PROPERTY [s. 815.18 (13)]

Under Act 278, certain provisions described above apply to exempt property specified in the following statutory provisions, except as otherwise provided by law:

1. Assistance benefits (e.g., Aid to Families with Dependent Children) exempt under s. 49.41, Stats.
2. Crime victim awards exempt under s. 949.07, Stats.
3. Fraternal benefits exempt under s. 614.96, Stats.
4. A homestead exempt under s. 178.21 (3) (c), Stats.
5. Partnership property exempt under s. 178.21 (3) (c), Stats.
6. Public employe trust fund benefits exempt under s. 40.08 (1), Stats.
7. Salary used to purchase savings bonds exempt under s. 20.921 (1) (e), Stats.
8. Retirement benefits and allowances from retirement systems of first class cities exempt under s. 66.81, Stats.
9. Tenant's lease and stock interest of a housing corporation exempt under s. 182.004 (6), Stats.
10. Unemployment compensation benefits exempt under s. 108.13, Stats.
11. Veterans' benefits exempt under s. 45.35 (8) (b), Stats.

The provisions in s. 815.18 which apply to the exempt property under these other statutes, cited above, are:

1. Section 815.18 (2), setting forth the definitions applicable to s. 815.18.
2. Section 815.18 (4), relating to tracing property.
3. Section 815.18 (5), relating to the availability of exemptions to residents and nonresidents.
4. Section 815.18 (6), relating to claiming exemptions.
5. Section 815.18 (7), relating to valuation of property.
6. Section 815.18 (9), relating to partially-exempt property.

7. Section 815.18 (10), relating to fraudulent transfers.
8. Section 815.18 (12), relating to limitations on exemptions.

N. REVIEW OF DOLLAR AMOUNTS BY LEGISLATIVE COUNCIL [s. 815.18 (14)]

Act 278 specifies that, by January 15, 1994, and by January 15 every four years thereafter, the Legislative Council must review the dollar amounts in this section and determine if those dollar amounts should be changed. The Legislative Council must 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 must include proposed statutory language to accomplish that recommendation.

O. HOMESTEAD EXEMPTION [ss. 815.20 and 990.01 (14)]

Under current law, the exemption from execution for a homestead is found in s. 815.20, Stats., which is unaffected by Act 278 (a copy of s. 815.20, Stats., is attached as Attachment 4). However, that section cross-references the definition of "exempt homestead" in s. 990.01 (14), Stats., which is affected by the Act. Section 990.01, Stats., sets forth the general construction of certain words and phrases in the statutes when they are not specifically defined in a statute. Act 278 revises the definition of "exempt homestead" as follows (new language underlined; deleted language stricken):

"Exempt homestead" means ~~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.

P. ASSISTANCE GRANTS EXEMPT FROM LEVY [s. 49.41]

Under current law all grants of Aid to Families with Dependent Children, payments made for social services, and benefits under s. 49.177, Stats. (state supplemental payments), or Federal Title XVI, are exempt from every tax, and from execution, garnishment, attachment and every other process and are inalienable [s. 49.41, Stats., as affected by 1989 Act 278].

Act 278 adds benefits under ss. 49.032 (general relief) and 49.046 (relief of needy Indian persons), Stats., to this exemption from levy.

Q. INITIAL APPLICABILITY

Act 278 first applies to exemptions claimed on the effective date of the Act.

DLS:ksm:jaj;wu

Section 812.18, Stats.

812.18 LIABILITY OF GARNISHEE; SUBSISTENCE ALLOWANCE. (1) (a) From the time of the service of the summons and complaint upon the garnishee, the garnishee shall be liable to the plaintiff for the property and earnings then in his or her possession or under his or her control belonging to the defendant or in which he or she is interested to the extent of his or her right or interest therein and for all his or her debts due or to become due to the defendant, except such as are exempt from execution, all sums required by a court to be paid by the defendant as restitution under s. 973.20 or the amount of the subsistence allowance due the defendant under sub. (2) if earnings are the subject matter of the garnishment action, but not in excess of the amount of the plaintiff's claims as disclosed by the garnishee complaint and disbursements, not to exceed \$40.

(b) When earnings are the subject of the garnishment action, the amount owed the principal defendant on the payday for the pay period in which the garnishment summons was served on the garnishee is subject to the garnishment.

(2) (a) When earnings are the subject of a garnishment action, the garnishee shall pay over to the principal defendant on the date when the earnings would normally be payable the greater of the following:

1. A subsistence allowance of 75% of the defendant's disposable earnings, then due and owing; or

2. An amount equal to 30 times the federal minimum hourly wage for each full week of the pay period; or

3. In the case of earnings for a period other than a week, the defendant shall receive a subsistence allowance computed so that it is equivalent to that in subd. 2 using a multiple of the federal minimum hourly wage prescribed by rule of the department of industry, labor and human relations.

(b) The restrictions of par. (a) do not apply in the case of:

1. An order of any court for the support of any person.

2. An order of any court of bankruptcy under chapter XIII of the bankruptcy act.

3. Any debt due for any state or federal tax.

4. An order of a court under s. 128.21.

(c) No court in this state may make, execute or enforce any order or process in violation of this section.

(2m) (a) In this section, "dependent" means any individual including a spouse who requires and is actually receiving substantial support and maintenance from the defendant.

(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.

(c) The restrictions of par. (b) do not apply in the case of:

1. An order of any court for the support of any person.
2. An order of any court of bankruptcy under chapter XIII of the bankruptcy act.
3. Any debt due for any state or federal tax.
4. An order of a court under s. 128.21.

(3) If the garnishee holds subject to the garnishment or pays pursuant to s. 812.13, moneys owed the principal defendant equal to the amount of the plaintiff's claim as set forth in the garnishee complaint and disbursements, then any excess moneys owed the defendant, and any garnished property in the garnishee's possession or control, shall no longer be subject to the garnishment. If the moneys owed by the garnishee to the defendant and so held are less than the amount claimed and disbursements, all property subject to the garnishment shall be held pending the further order of the court, subject to any rights of disposition that the garnishee may have, and all proceeds therefrom to which defendant would be entitled shall likewise be retained. The defendant may, on notice, petition the court for an order to release, from the garnishment, all property or its proceeds not reasonably required to assure payment of the plaintiff's claim and disbursements.

Section 409.109 (3) and (4), Stats.

(3) "Farm products" if they are crops or livestock or supplies used or produced in farming operations or if they are products of crops or livestock in their unmanufactured states (such as ginned cotton, wool-clip, maple syrup, milk and eggs), and if they are in the possession of a debtor engaged in raising, fattening, grazing or other farming operations. If goods are farm products they are neither equipment nor inventory;

(4) "Inventory" if they are held by a person who holds them for sale or lease or to be furnished under contracts of service or if he has so furnished them, or if they are raw materials, work in process or materials used or consumed in a business. Inventory of a person is not to be classified as his equipment.



Section 815.18 (3) (j) 2

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 employees, or their dependents or beneficiaries and that plan or contract requires the employer or employees or both to make contributions for the purpose of distributing to the employer, if self-employed, the employees, 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.

Section 815.20, Stats.

815.20 HOMESTEAD EXEMPTION DEFINITION. (1) An exempt homestead as defined in s. 990.01 (14) selected by a resident owner and occupied by him or her shall be exempt from execution, from the lien of every judgment and from liability for the debts of the owner to the amount of \$40,000, except mortgages, laborers', mechanics' and purchase money liens and taxes and except as otherwise provided. The exemption shall not be impaired by temporary removal with the intention to reoccupy the premises as a homestead nor by the sale of the homestead, but shall extend to the proceeds derived from the sale to an amount not exceeding \$40,000, while held, with the intention to procure another homestead with the proceeds, for 2 years. The exemption extends to land owned by husband and wife jointly or in common or as marital property, and when they reside in the same household may be claimed by either or may be divided in any proportion between them, but the exemption may not exceed \$40,000 for the household. If the husband and wife fail to agree on the division of exemption, the exemption shall be divided between them by the court in which the first judgment was taken. The exemption extends to the interest therein of tenants in common, having a homestead thereon with the consent of the cotenants, and to any estate less than a fee.

(2) Any owner of an exempt homestead against whom a judgment has been rendered and docketed, and any heir, devisee or grantee of such owner, or any mortgagee of such homestead, may proceed under s. 806.04 for declaratory relief if such homestead is less than \$40,000 in value and the owner of such judgment shall fail, for 10 days after demand, to execute a recordable release of such homestead from his judgment lien.