

State of Wisconsin



1997 Senate Bill 78

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1997 WISCONSIN ACT 148

AN ACT *to repeal* 973.05 (5) (h); *to renumber* 565.37 (5r) (title); *to renumber and amend* 565.37 (5r) and 973.05 (5) (a); *to amend* 20.566 (1) (h), 59.40 (2) (im), 973.05 (1), 973.05 (4) (b), 973.05 (5) (c), 973.05 (5) (d) and 973.05 (5) (e); and *to create* 565.30 (5r) (a), 565.30 (5t), 778.30, 973.05 (4) (c), 973.05 (4m) and 973.05 (5) (a) 3. of the statutes; **relating to:** assignments of earnings, pension benefits, lottery winnings and other benefits for the payment of assessments, fines, forfeitures, costs, restitution and surcharges, making an appropriation and providing a penalty.

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

SECTION 1. 20.566 (1) (h) of the statutes is amended to read:

20.566 (1) (h) *Debt collection.* From moneys received from the collection of debts owed to state agencies under ss. 71.93 and 565.30 (5), from the collection of unpaid fines, forfeitures, costs, assessments, surcharges and restitution payments under s. 565.30 (5r) (b) and from moneys received from the collection of debts owed to municipalities and counties under s. 71.935, the amounts in the schedule to pay the administrative expenses of the department of revenue for the collection of those debts, fines, forfeitures, costs, assessments, surcharges and restitution payments.

SECTION 2. 59.40 (2) (im) of the statutes is amended to read:

59.40 (2) (im) Keep a record of all payments ordered by the court under s. 973.05 (4) or 778.30 (1) to be paid to the clerk of circuit court ~~or ordered by a court in another county or jurisdiction but enforced or received by the clerk's court.~~

SECTION 3. 565.30 (5r) (a) of the statutes is created to read:

565.30 (5r) (a) Annually, the administrator shall provide each clerk of circuit court in the state with a list of the winners of a lottery prize that is payable in installments. The list shall include each winner since the date of the previous list.

SECTION 3g. 565.30 (5t) of the statutes is created to read:

565.30 (5t) PRIORITY OF WITHHOLDING. The administrator shall withhold payments under this section from a winner of a lottery prize in the following order:

(a) For any federal or state taxes required to be withheld under sub. (4).

(b) For any delinquent state taxes, child support or debt owed the state required to be withheld under sub. (5).

(c) For any child support, spousal support, maintenance or family support required to be withheld under sub. (5m).

(d) For any assignment of lottery prizes required to be withheld under sub. (5r).

SECTION 4. 565.37 (5r) (title) of the statutes is renumbered 565.30 (5r) (title).

* Section 991.11, WISCONSIN STATUTES 1995-96: 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].

SECTION 5. 565.37 (5r) of the statutes is renumbered 565.30 (5r) (b) and amended to read:

565.30 (5r) (b) If the administrator receives a notice under s. 973.05 (5) (a) or 778.30 (2) (a) of the assignment of lottery prizes under s. 973.05 (4) (b), ~~he or she shall periodically determine if the person subject to the assignment is a winner of a lottery prize that is payable in instalments. If the administrator (c) or 778.30 (1) (c) and determines that a the person subject to an the assignment of lottery prizes under s. 973.05 (4) (b) is a winner of a lottery prize that is payable in instalments, the administrator shall withhold the amount of the judgment that is the basis of the assignment from the next instalment payment. The administrator shall submit the withheld amount to the court that issued the assignment. At the time of the submittal, the administrator shall charge the administrative expenses related to that withholding and submittal to the winner of the lottery prize and withhold those expenses from the balance of the instalment payment.~~ The administrator shall notify the winner of the reason that the amount is withheld from the ~~lottery prize instalment payment.~~ If the initial instalment payment is insufficient to pay the judgment ~~and administrative expenses,~~ the administrator shall withhold and submit to the court an amount from any additional instalment payments until the judgment is ~~and administrative expenses are paid in full or until the court notifies the administrator that the judgment is paid and the assignment is no longer in effect. The administrative expenses received by the department shall be credited to the appropriation under s. 20.566 (1) (h).~~

SECTION 5m. 778.30 of the statutes is created to read:

778.30 Collection of forfeitures and related charges by assignment. (1) In addition to the procedures under s. 23.795 or 345.47 or under this chapter for the collection of forfeitures, costs, assessments, surcharges or restitution payments if a defendant fails to pay the forfeiture, costs, assessment, surcharge or restitution payment within the period specified by the circuit court, the court may do any of the following:

(a) Issue a judgment for the unpaid amount and direct the clerk of circuit court to file and docket a transcript of the judgment, without fee. If the court issues a judgment for the unpaid amount, the clerk of circuit court shall send to the defendant at his or her last-known address written notification that a civil judgment has been issued for the unpaid forfeiture, costs, assessment, surcharge or restitution payment. The judgment has the same force and effect as judgments docketed under s. 806.10.

(b) Issue an order assigning not more than 25% of the defendant's commissions, earnings, salaries, wages, pension benefits, benefits under ch. 102 and other money due or to be due in the future to the clerk of circuit court for payment of the unpaid forfeiture, costs, assessment, surcharge or restitution payment. In this paragraph, "employer" includes the state and its political subdivisions.

(c) Issue an order assigning lottery prizes won by a defendant whose name is on the list supplied to the clerk of circuit court under s. 565.30 (5r) (a), for payment of the unpaid forfeiture, costs, assessment, surcharge or restitution payment.

(d) A child support withholding assignment or order listed under s. 767.265 (4) has priority over any assignment under this section.

(2) (a) 1. Upon entry of the assignment under sub. (1) (b), unless the court finds that income withholding is likely to cause the defendant irreparable harm, the clerk of circuit court shall provide notice of the assignment by regular mail to the last-known address of the person from whom the defendant receives or will receive money. If the clerk of circuit court does not receive the money from the person notified, the the clerk of circuit court shall provide notice of the assignment to any other person from whom the defendant receives or will receive money. Notice of an assignment under sub. (1) (b) shall inform the intended recipient that, if a prior assignment under sub. (1) (b) has been received relating to the same defendant, the recipient is required to notify the clerk of circuit court that sent the subsequent notice of assignment that another assignment has already been received. A notice of assignment shall include a form permitting the recipient to designate on the form that another assignment has already been received.

2. If, after receiving the annual list under s. 565.30 (5r) (a), the clerk of circuit court determines that a person identified in the list may be subject to an assignment under sub. (1) (c), the clerk shall inform the court of that determination. If the court issues an order under sub. (1) (c), the clerk of circuit court shall send the notice of that order to the administrator of the lottery division of the department of revenue, including a statement of the amount owed under the judgment and the name and address of the person owing the judgment. The court shall notify the administrator of the lottery division of the department of revenue when the judgment that is the basis of the assignment has been paid in full.

3. Notice under this paragraph may be a notice of the court, a copy of the executed assignment or a copy of that part of the court order which directs payment.

(b) For each payment made under the assignment under sub. (1) (b), the person from whom the defendant under the order receives money shall receive an amount equal to the person's necessary disbursements, not to exceed \$3, which shall be deducted from the money to be paid to the defendant.

(c) A person who receives notice of the assignment under sub. (1) (b) shall withhold the amount specified in the notice from any money that person pays to the defendant later than one week after receipt of the notice of assignment. Within 5 days after the day on which the person pays money to the defendant, the person shall send the amount withheld to the clerk of circuit court that pro-

vided the notice. If the person has already received a notice of an assignment under sub. (1) (b) related to the same defendant, the person shall retain the later assignment and withhold the amount specified in that assignment after the last of any prior assignments is paid in full. Within 10 days of receipt of the later notice, the person shall notify the clerk of circuit court that sent the notice that the person has received a prior notice of an assignment under sub. (1) (b). Section 241.09 does not apply to assignments under this section.

(d) If after receipt of notice of assignment under par. (a) 1. the person from whom the defendant receives money fails to withhold the money or send the money to the clerk of circuit court as provided in this subsection, the person may be proceeded against under the principal action under ch. 785 for contempt of court or may be proceeded against under this chapter and be required to forfeit not less than \$50 nor more than an amount, if the amount exceeds \$50, that is equal to 1% of the amount not withheld or sent.

(e) If an employer who receives notice of an assignment under sub. (1) (b) fails to notify the clerk of circuit court within 10 days after an employe is terminated or after the employe temporarily or permanently leaves the employer's employment, the employer may be proceeded against under the principal action under ch. 785 for contempt of court.

(3) Compliance by the person from whom the defendant receives money with the order under sub. (1) (b) operates as a discharge of the person's liability to the defendant as to that portion of the defendant's commissions, earnings, salaries, wages, benefits or other money so affected.

(4) No employer may use an assignment under sub. (1) (b) as a basis for the denial of employment to a defendant, the discharge of an employe or any disciplinary action against an employe. An employer who denies employment or discharges or disciplines an employe in violation of this subsection may be fined not more than \$500 and may be required to make full restitution to the aggrieved person, including reinstatement and back pay. Restitution shall be in accordance with s. 973.20. An aggrieved person may apply to the district attorney or to the department of workforce development for enforcement of this subsection.

(5) (a) In this subsection, "payroll period" has the meaning given in s. 71.63 (5).

(b) If after an assignment of earnings is in effect the defendant's employer changes its payroll period, or the defendant changes employers and the new employer's payroll period is different from the former employer's payroll period, the clerk of circuit court may, unless otherwise ordered by a judge, amend the withholding assignment or order so that all of the following apply:

1. The withholding frequency corresponds to the new payroll period.

2. The amounts to be withheld reflect the adjustment to the withholding frequency.

(c) The clerk of circuit court shall provide notice of the amended withholding assignment or order under this subsection by regular mail to the defendant's employer and to the defendant.

SECTION 6. 973.05 (1) of the statutes is amended to read:

973.05 (1) When a defendant is sentenced to pay a fine, the court may grant permission for the payment of the fine, of the penalty assessment imposed by s. 165.87, the jail assessment imposed by s. 302.46 (1), the crime victim and witness assistance surcharge under s. 973.045, any applicable deoxyribonucleic acid analysis surcharge under s. 973.046, any applicable drug abuse program improvement surcharge imposed by s. 961.41 (5), any applicable domestic abuse assessment imposed by s. 971.37 (1m) (c) 1. or 973.055, any applicable driver improvement surcharge imposed by s. 346.655, any applicable weapons assessment imposed by s. 167.31, any applicable uninsured employer assessment imposed by s. 102.85 (4), any applicable environmental assessment imposed by s. 299.93, any applicable wild animal protection assessment imposed by s. 29.9965, any applicable natural resources assessment imposed by s. 29.997 and any applicable natural resources restitution payment imposed by s. 29.998 to be made within a period not to exceed ~~120~~ 60 days. If no such permission is embodied in the sentence, the fine, the penalty assessment, the jail assessment, the crime victim and witness assistance surcharge, any applicable deoxyribonucleic acid analysis surcharge, any applicable drug abuse program improvement surcharge, any applicable domestic abuse assessment, any applicable driver improvement surcharge, any applicable weapons assessment, any applicable uninsured employer assessment, any applicable environmental assessment, any applicable wild animal protection assessment, any applicable natural resources assessment and any applicable natural resources restitution payment shall be payable immediately.

SECTION 7. 973.05 (4) (b) of the statutes is amended to read:

973.05 (4) (b) Issue an order assigning ~~lottery prizes that are payable in instalments~~ and not more than 25% of the defendant's commissions, earnings, salaries, wages, pension benefits, benefits under ch. 102 and other money due or to be due in the future to the clerk of circuit court for payment of the unpaid fine, assessment, surcharge or restitution payment. In this paragraph, "employer" includes the state and its political subdivisions.

SECTION 8. 973.05 (4) (c) of the statutes is created to read:

973.05 (4) (c) Issue an order assigning lottery prizes won by a defendant whose name is on the list supplied to the clerk of circuit court under s. 565.30 (5r) (a), for payment of the unpaid fine, assessment, surcharge or restitution payment.

SECTION 9. 973.05 (4m) of the statutes is created to read:

973.05 (4m) As provided in s. 767.265 (4), a child support withholding assignment under state law has priority over any assignment or order under sub. (4).

SECTION 10. 973.05 (5) (a) of the statutes is renumbered 973.05 (5) (a) 1. and amended to read:

973.05 (5) (a) 1. Upon entry of the assignment under sub. (4) (b), unless the court finds that income withholding is likely to cause the defendant irreparable harm, the court shall provide notice of the assignment by regular mail to the last-known address of the person from whom the defendant receives or will receive money. If the clerk of circuit court does not receive the money from the person notified, the court shall provide notice of the assignment to any other person from whom the defendant receives or will receive money. Notice under this paragraph may be a notice of the court, a copy of the executed assignment or a copy of that part of the court order directing payment. If the court issues an order under sub. (4) (b) assigning lottery prizes, of an assignment under sub. (4) (b) shall inform the intended recipient that, if a prior assignment under sub. (4) (b) has been received relating to the same defendant, the recipient is required to notify the clerk of circuit court that sent the subsequent notice of assignment that another assignment has already been received. A notice of assignment shall include a form permitting the recipient to designate on the form that another assignment has already been received.

2. If, after receiving the annual list under s. 565.30 (5r) (a), the clerk of circuit court determines that a person identified in the list may be subject to an assignment under sub. (4) (c), the clerk shall inform the court of that determination. If the court issues an order under sub. (4) (c), the clerk of circuit court shall send the notice of that order to the administrator of the lottery division of the gaming commission department of revenue, including a statement of the amount owed under the judgment and the name and address of the person owing the judgment. The court shall notify the administrator of the lottery division of the gaming commission department of revenue when the judgment that is the basis of the assignment has been paid in full.

SECTION 11. 973.05 (5) (a) 3. of the statutes is created to read:

973.05 (5) (a) 3. Notice under this paragraph may be a notice of the court, a copy of the executed assignment or a copy of that part of the court order which directs payment.

SECTION 12. 973.05 (5) (c) of the statutes is amended to read:

973.05 (5) (c) A person who receives notice of the assignment under ~~par. (a)~~ sub. (4) (b) shall withhold the amount specified in the notice from any money that person pays to the defendant later than one week after receipt of the notice of assignment. Within 5 days after the day on which the person pays money to the defendant, the person shall send the amount withheld to the clerk of circuit court of the jurisdiction providing notice. If the person has already received a notice of an assignment under sub. (4) (b), the person shall retain the later assignment and withhold the amount specified in that assignment after the last of any prior assignments is paid in full. Within 10 days of receipt of the later notice, the person shall notify the clerk of circuit court that sent the notice that the person has received a prior notice of an assignment under sub. (4) (b). Section 241.09 does not apply to assignments under this section.

SECTION 13. 973.05 (5) (d) of the statutes is amended to read:

973.05 (5) (d) If after receipt of notice of assignment under par. (a) 1. the person from whom the defendant receives money fails to withhold the money or send the money to the clerk of circuit court as provided in this subsection, the person may be proceeded against under the principal action under ch. 785 for contempt of court or may be proceeded against under ch. 778 and be required to forfeit not less than \$50 nor more than an amount, if the amount exceeds \$50, that is equal to 1% of the amount not withheld or sent.

SECTION 14. 973.05 (5) (e) of the statutes is amended to read:

973.05 (5) (e) If an employer who receives notice of an assignment under ~~par. (a)~~ sub. (4) (b) fails to notify the clerk of circuit court within 10 days after an employee is terminated or otherwise temporarily or permanently leaves the employer's employment, the employer may be proceeded against under the principal action under ch. 785 for contempt of court.

SECTION 15. 973.05 (5) (h) of the statutes is repealed.

SECTION 16. Initial applicability.

(1) This act first applies to fines and forfeitures imposed on the effective date of this subsection.

SECTION 17. Effective date.

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