

CHAPTER 288.

COLLECTION OF FORFEITURES.

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Cross Reference: For forfeitures imposed by city or village ordinance, see 66.12.

288.01 Action for forfeitures. Where a forfeiture imposed by statute shall be incurred it may be recovered in a civil action unless the act or omission is punishable by fine and imprisonment or by fine or imprisonment. The word forfeiture, as used in this chapter, includes any penalty, in money or goods.

288.02 Action in name of state; complaint; attachment. Every such forfeiture action shall be in the name of the state of Wisconsin, and it shall be sufficient to allege in the complaint that the defendant is indebted to the plaintiff in the amount of the forfeiture claimed, according to the provisions of the statute which imposes it, specifying the statute. And when such statute imposes a forfeiture for several offenses or delinquencies the complaint shall specify the particular offense or delinquency for which the action is brought, with a demand for judgment for the amount of such forfeiture. In case the defendant is a nonresident of the state an attachment may issue.

288.03 Complaint to recover forfeited goods. In an action to recover property forfeited by any statute it shall be sufficient to allege in the complaint that such property has been forfeited, specifying the statute, with a demand of judgment for the delivery of the property or the value thereof.

288.04 Plaintiffs; costs. In case a portion of any forfeiture shall belong or shall be payable to any person, he may join with the state as plaintiff; and in such case, if judgment be rendered for the defendant, it shall be against such person solely. Such person may be compelled to give security for costs as in ordinary civil actions.

288.05 Jurisdiction of justice; appeal. No such action, other than those in which the person mentioned in section 288.04 shall join as plaintiff, shall be brought before any justice of the peace except by direction of the attorney general, district attorney of the county, mayor or alderman of a city, president or trustee of a village, or supervisor of a town in which the forfeiture is incurred, or other officer specially directed by statute; and no appeals shall be taken, in the actions mentioned in this section, to the circuit or supreme court, from a judgment against the state unless directed by the attorney general or district attorney.

288.06 Action for what sum. When a forfeiture is imposed, not exceeding a specific sum or when it is not less than one sum or more than another, the action may be brought for the highest sum specified; and judgment may be rendered for such sum as the court or jury shall assess or determine to be proportionate to the offense.

288.08 Judgment, how enforced. Where any property has been seized and detained pursuant to chapter 129, in case of the recovery of judgment for the forfeiture, and non-payment thereof, the court may issue its warrant directed to the sheriff or other proper officer of the county commanding him to cause such judgment, with the costs, to be forthwith collected by sale of the property so seized, and that if sufficient property be not found whereof to collect the same to commit the defendant to the jail of the proper county, there to be imprisoned not exceeding six months or until otherwise discharged pursuant to law.

288.09 Forfeiture cases; judgment transcriptions and docketing. (1) Where judgment is recovered pursuant to this chapter it shall include costs and direct that if the same be not paid the defendant (if an individual) shall be imprisoned in the county jail for a

specified time, not exceeding six months, or until otherwise discharged pursuant to law. The commitment shall issue, as in ordinary criminal actions, and such defendant shall not be entitled to the liberties of the jail.

(2) A certified transcript of a justice court judgment may be issued as provided in section 302.34 and filed and docketed by the clerk of the circuit court as provided in section 270.75.

288.10 Municipal forfeitures, how recovered. All forfeitures imposed by any ordinance or regulation of any county, town, city or village, or of any other domestic corporation may be sued for and recovered, pursuant to this chapter, in the name of such county, town, city, village or corporation. It shall be sufficient to allege in the complaint that the defendant is indebted to the plaintiff in the amount of the forfeiture claimed, specifying the ordinance or regulation which imposes it. And when such ordinance or regulation imposes a penalty or forfeiture for several offenses or delinquencies the complaint shall specify the particular offenses or delinquency for which the action is brought, with a demand for judgment for the amount of such forfeiture. All moneys collected on such judgment shall be paid to the treasurer of such county, town, city, village or corporation.

Municipal ordinances cannot create crimes or misdemeanors, and an action to recover a forfeiture for violation of an ordinance is thus a civil action. A conviction for violation of an ordinance of the city of Milwaukee, providing for a fine of not less than \$100 nor more than \$500, established the city's right to a judgment for money within the stated limits, so that the city was aggrieved by, and hence entitled to appeal to the municipal court from, a judgment of the district court which ignored such right by merely assessing costs against the defendant. The imposition of the maximum penalty of \$500 permitted by a city ordinance was not error or abuse of discretion on the asserted ground that the defendant was a first offender, the ordinance containing no provision even suggesting that any favor should be extended to first offenders. *Milwaukee v. Stanki*, 262 W 607, 55 NW (2d) 916.

288.11 Duty of town officers. The chairman of the town shall cause an action to be commenced under this chapter for the recovery of any forfeiture which he shall know or have reason to believe has been incurred in his town, if the same is recoverable before a justice of the peace, and every other town officer knowing or having reason to believe that any forfeiture has been incurred shall forthwith notify such chairman thereof.

288.12 Duty of district attorney. Such chairman shall forthwith notify the district attorney of his county of every forfeiture which he knows, has reason to believe or which he has been so informed has been incurred in his town, which cannot be recovered before a justice of the peace, who shall forthwith cause an action to be commenced for the recovery thereof as well as for the recovery of every forfeiture which he shall otherwise know or have reason to believe has been incurred; and such district attorney shall attend to and conduct any action so commenced by such chairman, when requested by him so to do.

288.13 Forfeitures collected, to whom paid. All moneys collected in favor of the state for forfeiture, except the portion to be paid to any person who sues with the state therefor, shall be paid by the officer who collects the same (except justices of the peace and town and city treasurers) to the treasurer of the county within which such forfeiture was incurred within 20 days after its receipt by him; and in case of any failure in such payment such county treasurer may collect the same of such officer by action, in his name of office and upon the official bond of such officer, with interest at the rate of 12 per cent per annum from the time when it should have been paid.

History: 1953 c. 31.

See note to 354.42, citing 41 Atty. Gen. 166.

288.14 Treasurers to collect. Every town, village and city treasurer shall demand of and recover from each justice of the peace of his town, village or city, respectively, all moneys received by such justice upon judgments rendered by him in actions under this chapter, and every such justice shall, on demand of either such treasurers, produce to him his docket for examination and all process and papers concerning or in such actions. In case of refusal or neglect by such justice to pay over promptly such moneys upon such demand such treasurer shall cause an action to be instituted for the recovery thereof against such justice and his sureties upon his official bond.

288.15 Payment to county treasurer. On or before the first Monday of February in each year every such town, village and city treasurer shall pay to the treasurer of his county all moneys so collected by him accruing to the state, taking a receipt therefor; and at the same time shall file with the county clerk of his county a statement, upon oath, containing the names of the justices of the peace of his town, village and city, respectively, the amount of moneys so collected from each, the date of collection, the name of the defendant in each case, the cause of action and date of the summons and judgment.

288.16 Neglect of duty. If any treasurer of any town, village or city shall neglect or refuse to perform any of the duties required of him by this chapter he shall, upon con-

viction, be punished by imprisonment in the county jail not less than three nor more than six months or by fine not less than fifty nor more than three hundred dollars, or by both in the discretion of the court; and the county treasurer shall forthwith bring an action upon the bond of such treasurer, against him and his sureties, for the recovery of any moneys which he has neglected or refused to pay over as required by this chapter.

288.17 Statement to county board; payment to state. Every county treasurer shall, on the first day of the annual meeting of the county board, submit to it his verified statement of all moneys received by him during the year next preceding from town, village and city treasurers under this chapter, containing the names of such treasurers, the amount received from each and date of receipt. The county clerk shall deduct all expenses incurred by the county in recovering such forfeitures from the aggregate amount so received, and shall immediately certify to the county treasurer the amount of clear proceeds of such forfeitures, so ascertained, who shall pay the same to the state treasurer.

288.18 Penalty upon justice of peace. If any justice of the peace shall, of his own will, dismiss any action brought before him under this chapter, or release or discharge any property seized or detained under section 110.16 (3), unless by order of the district attorney or attorney general or the person joined as plaintiff with the state, or render a less judgment therein than is prescribed by law, or release or discharge any such judgment or part thereof without payment or collection, he and his sureties shall be liable, in an action upon his bond, for the full amount of the forfeitures imposed by law or of the forfeiture imposed by him, as the case may be, or for an amount equal to the amount in which he shall release or discharge any such judgment or any part thereof; and if he shall give time or delay to any person against whom any such judgment is rendered by him, or take any bond or security for its future payment, he and his sureties shall also be liable for the payment of such judgment upon his bond.

288.19 Recovery of property forfeited to state. Whenever property shall be forfeited to this state or to any officer for its use an action for the recovery of such property may be brought in the circuit court.

288.20 Who liable for costs. In all actions brought under the provisions of section 288.10 the town, city, village or corporation in whose name such action is brought shall be liable for the costs of prosecution; and, if judgment be for defendant, for all the costs of the action, and judgment shall be entered accordingly. In all other actions brought under the provisions of this chapter, except as provided in section 288.04, the county in which the forfeiture was incurred shall be liable for the costs of the prosecution, and, if judgment be for defendant, for all the costs of the action.