

CHAPTER 778

COLLECTION OF FORFEITURES

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778.01 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.

History: 1979 c. 32 s. 56.

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

For a forfeiture action to accrue against a nonresident owner of a building by reason of violations of the state building code, the nonresident violator should receive notice of the violations, which notice need not be actual, but must be reasonably calculated to inform him with respect thereto. *State v. James*, 47 W (2d) 600, 177 NW (2d) 864.

The definition of forfeiture applies only to ch. 288. *State v. Mando Enterprises, Inc.* 56 W (2d) 801, 203 NW (2d) 64.

778.015 Applicability in circuit court. This chapter applies to actions in circuit court. The procedure in ss. 778.14, 778.15 and 778.18 and ch. 800 applies to actions in municipal court.

History: 1977 c. 305; 1977 c. 449 s. 497; 1979 c. 32 ss. 56, 92 (8), (17).

778.02 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 for the penalty assessment imposed by s. 165.87. If 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 and the penalty assessment. If the defendant is a

nonresident of the state an attachment may issue.

History: 1977 c. 29; 1979 c. 32 s. 56.

778.03 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 the property has been forfeited, specifying the statute, with a demand of judgment for the delivery of the property, or the value thereof and for payment of the penalty assessment imposed by s. 165.87.

History: 1977 c. 29; 1979 c. 32 s. 56.

778.04 Plaintiffs; costs. In case a portion of any forfeiture belongs or is payable to any person, the person may join with the state as plaintiff; and in such case, if judgment is 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.

History: 1979 c. 32 s. 56; 1979 c. 176.

See note to 196.625, citing *State v. Wisconsin Telephone Co.* 91 W (2d) 702, 284 NW (2d) 41 (1979).

778.06 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 for the penalty assessment imposed by s. 165.87; and judgment may be rendered for such sum as the court or jury shall assess or determine to be proportionate to the offense.

History: 1977 c. 29; 1979 c. 32 s. 56.

Where the city neither disputed its violation of the order nor denied the state was entitled to a forfeiture to the extent of its violation of the order, it was error for the trial court to utilize this section to justify the imposition of forfeiture less than the statutory minimum. *State v. City of Monona*, 63 W (2d) 67, 216 NW (2d) 230.

778.09 Judgment, costs, commitment of defendant. (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.

History: 1979 c. 32 s. 56.

778.10 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 the 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 of the penalty assessment imposed by s. 165.87. And when the 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 the forfeiture and of the penalty assessment imposed by s. 165.87. All moneys collected on the judgment shall be paid to the treasurer of the county, town, city, village or corporation.

History: 1977 c. 29; 1979 c. 32 s. 56.

778.103 Traffic regulation forfeitures; how recovered. Where there is a conflict with this chapter, the procedure in ch. 345 shall be followed in actions to recover forfeitures for the violation of traffic regulations as defined in s. 345.20, and the procedures in ss. 345.28 and 345.34 to 345.47 shall be followed in actions to recover forfeitures for nonmoving traffic violations as defined in s. 345.28 (1).

History: 1971 c. 278; 1979 c. 32 s. 56; 1981 c. 165.

778.104 Department of natural resources forfeitures; how recovered. If there is a conflict with this chapter, the procedure in ss. 23.50 to 23.85 shall be followed in actions to recover forfeitures for the violation of those natural resources laws enumerated in s. 23.50.

History: 1975 c. 365; 1979 c. 32 s. 56.

778.105 Disposition of forfeitures. Revenues from forfeitures imposed by any court or any branch thereof for the violation of any municipal or county ordinance shall be paid to

the municipality or county. Penalty assessment payments shall be made as provided in s. 165.87.

History: 1977 c. 29; 1979 c. 32 s. 56.

778.11 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 or she knows or has reason to believe has been incurred in the town, if the forfeiture is recoverable before a municipal court, and every other town officer knowing or having reason to believe that any forfeiture has been incurred shall forthwith notify the town chairman.

History: 1977 c. 305; 1979 c. 32 s. 56.

778.12 Duty of district attorney. The town chairman shall forthwith notify the district attorney of the county of every forfeiture which he or she knows, has reason to believe or which he or she has been so informed has been incurred in the town, which cannot be recovered before a municipal court, who shall forthwith cause an action to be commenced for the recovery thereof as well as for the recovery of every forfeiture which he or she otherwise knows or has reason to believe has been incurred; and the district attorney shall attend to and conduct any action so commenced by the chairman, when requested by him or her so to do.

History: 1977 c. 305; 1979 c. 32 s. 56.

778.13 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 municipal justices and town and city treasurers) to the treasurer of the county within which the forfeiture was incurred within 20 days after its receipt; and in case of any failure in such payment the county treasurer may collect the payment of such officer by action, in the name of the office and upon the official bond of the officer, with interest at the rate of 12% per year from the time when it should have been paid. Penalty assessment payments shall be made as provided in s. 165.87.

History: 1977 c. 29; 1979 c. 32 s. 56; 1979 c. 110 s. 60 (13).

778.135 Elections board forfeitures; how recovered. Notwithstanding s. 778.13, whenever any action or proposed action by the elections board under s. 5.05 (1) (c) is settled as a result of agreement between the parties without approval of the court, the moneys accruing to the state on account of such settlement shall be paid to the board and deposited with the state treasurer.

History: 1977 c. 427; 1979 c. 32 ss. 56, 92 (8).

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778.136 Lobbying forfeitures; how recovered. Notwithstanding s. 778.13, whenever any moneys are received by the secretary of state in settlement of a civil action for violation of the lobbying law under s. 13.685 (5), the moneys shall accrue to the state and be deposited with the state treasurer.

History: 1981 c. 20.

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

History: 1977 c. 305; 1979 c. 32 s. 56.

778.15 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 the county all moneys so collected by him or her accruing to the state, taking a receipt therefor; and at the same time shall file with the county clerk of the county a statement, upon oath, containing the names of the municipal judges of the 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.

History: 1977 c. 305; 1979 c. 32 s. 56.

778.16 Neglect of duty. The treasurer of any town, village or city who neglects or refuses to perform any of the duties required by this chapter shall, upon conviction, be punished by imprisonment in the county jail not less than 3 nor more than 6 months or by fine not less than \$50 nor more than \$300, or both. The county treasurer shall forthwith bring an action upon the bond of such treasurer, against the treasurer and sureties, for the recovery of any moneys which he or she has neglected or refused to pay over as required by this chapter.

History: 1979 c. 32 s. 56; 1979 c. 176, 355.

778.17 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 a verified statement of all moneys received by the county treasurer 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.

History: 1979 c. 32 s. 56; 1979 c. 176.

778.18 Penalty upon municipal judge. If any municipal judge, of his or her own will, dismisses any action brought before the judge under this chapter, unless by order of the district attorney or attorney general or the person joined as plaintiff with the state, or renders a less judgment therein than is prescribed by law, or releases or discharges any such judgment or part thereof without payment or collection, the judge and the judge's sureties shall be liable, in an action upon the judge's bond, for the full amount of the forfeitures imposed by law or of the forfeiture imposed by the judge and for the penalty assessment imposed by s. 165.87, or for an amount equal to the amount in which any such judgment or any part thereof is released or discharged. If any municipal judge gives time or delay to any person against whom any such judgment is rendered by the judge, or takes any bond or security for its future payment, the judge and the judge's sureties shall also be liable for the payment of the judgment upon the judge's bond.

History: 1977 c. 29; 1979 c. 32 s. 56.

778.19 Recovery of property forfeited to state. If property is forfeited to this state or to any officer for its use, an action for the recovery of the property may be brought in circuit court.

History: 1977 c. 449; 1979 c. 32 s. 56.

778.195 Clerk's fees. Fees in forfeiture actions under this chapter are prescribed in s. 814.63.

History: 1981 c. 317.

778.20 Who liable for costs. In all actions brought under s. 778.10 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 s. 778.04, 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.

History: 1979 c. 32 ss. 56, 92 (8).

778.25 Citation procedure; violation of laws regulating sale of liquor to persons under 18.

(1) The citation procedures established by this section may be used only in an action to recover a forfeiture under s. 125.07 (1), (3), (4) or (5) or 125.09 (2) or under a local ordinance strictly conforming to one of those statutes brought against an adult in circuit court or against a minor in the court assigned to exercise jurisdiction under ch. 48. The citation form provided by this section may serve as the initial pleading for the action and is adequate process to give a court jurisdiction over the person if the citation is filed with the court.

(2) A citation under this section shall be signed by an officer who has authority to make arrests for the violation and shall contain substantially the following information:

(a) The name, address and date of birth of the defendant and the name and address of the defendant's parents or guardian, if a minor.

(b) The name and department of the issuing officer.

(c) The violation alleged, the time and place of occurrence, a statement that the defendant committed the violation, the statute or ordinance violated and a designation of the violation in language which can be readily understood.

(d) A date, time and place for the court appearance, and a notice to appear.

(e) The maximum forfeiture and penalty assessment for which the defendant might be found liable and other penalties which may be imposed including suspension under s. 343.30 (6).

(f) Provisions for deposit and stipulation in lieu of a court appearance.

(g) Notice that if the defendant makes a deposit and fails to appear in court at the time fixed in the citation, the failure to appear will be considered tender of a plea of no contest and submission to a forfeiture and a penalty assessment plus costs, including the fees prescribed in s. 814.63 (1) and (2), not to exceed the amount of the deposit. The notice shall also state that the court may decide to summon the defendant or, if the defendant is an adult, issue an arrest warrant for the defendant rather than accept the deposit and plea.

(h) Notice that if the defendant makes a deposit and signs the stipulation, the stipulation is treated as a plea of no contest and submission to a forfeiture and a penalty assessment plus costs, including the fees prescribed in s. 814.63 (1) and (2), not to exceed the amount of the

deposit. The notice shall also state that the court may decide to summon the defendant or, if the defendant is an adult, issue an arrest warrant for the defendant rather than accept the deposit and stipulation, and that the defendant may, at any time prior to or at the time of the court appearance date, move the court for relief from the effect of the stipulation.

(i) Notice that the defendant may by mail prior to the court appearance enter a plea of not guilty and request another date for a court appearance.

(j) Notice that if the defendant does not make a deposit and fails to appear in court at the time fixed in the citation, the court may issue a summons or an arrest warrant.

(k) Any other pertinent information.

(3) If a person is issued a citation under this section the person may deposit the amount of money the issuing officer directs by mailing or delivering the deposit and a copy of the citation to the clerk of court of the county where the violation occurred or the sheriff's office or police headquarters of the officer who issued the citation prior to the court appearance date. The basic amount of the deposit shall be determined under a deposit schedule established by the judicial conference. The judicial conference shall annually review and revise the schedule. In addition to the basic amount determined by the schedule the deposit shall include costs, including the fees prescribed in s. 814.63 (1) and (2) and penalty assessment.

(4) A person may make a stipulation of no contest by submitting a deposit and a stipulation in the manner provided by sub. (3) prior to the court appearance date. The signed stipulation is a plea of no contest and submission to a forfeiture plus costs and a penalty assessment not exceeding the amount of the deposit.

(5) Except as provided by sub. (6) a person receiving a deposit shall prepare a receipt in triplicate showing the purpose for which the deposit is made, stating that the defendant may inquire at the office of the clerk of court regarding the disposition of the deposit, and notifying the defendant that if he or she fails to appear in court at the time fixed in the citation he or she will be deemed to have tendered a plea of no contest and submitted to a forfeiture and a penalty assessment plus costs, including the fees prescribed in s. 814.63 (1) and (2), not to exceed the amount of the deposit which the court may accept. The original of the receipt shall be delivered to the defendant in person or by mail. If the defendant pays by check, the check is the receipt.

(6) The person receiving a deposit and stipulation of no contest shall prepare a receipt in

triplicate showing the purpose for which the deposit is made, stating that the defendant may inquire at the office of the clerk of court regarding the disposition of the deposit, and notifying the defendant that if the stipulation of no contest is accepted by the court the defendant will be considered to have submitted to a forfeiture and a penalty assessment plus costs, including the fees prescribed in s. 814.63 (1) and (2), not to exceed the amount of the deposit. Delivery of the receipt shall be made in the same manner as in sub. (5).

(7) If a citation is issued to a minor the issuing agency shall, within 7 days, mail or deliver a copy of the citation to the child's parent or guardian.

(8) If a defendant issued a citation under this section fails to appear in court at the time fixed in the citation or by subsequent postponement, the following procedure applies:

(a) If the defendant has not made a deposit, the court may issue a summons or an arrest warrant, except if the defendant is a minor the court shall proceed under s. 48.28. Chapter 48 governs taking and holding a minor in custody.

(b) If the defendant has made a deposit, the citation may serve as the initial pleading and the defendant shall be considered to have tendered a plea of no contest and submitted to a forfeiture and a penalty assessment plus costs, including the fees prescribed in s. 814.63 (1) and (2), not exceeding the amount of the deposit. The court may either accept the plea of no contest and enter judgment accordingly, or reject the plea and issue a summons or arrest warrant, except if the defendant is a minor the court shall proceed under s. 48.28. Chapter 48 governs taking and holding a minor in custody. If the court accepts the plea of no contest, the defendant may move within 90 days after the date set for appearance to withdraw the plea of no contest, open the judgment and enter a plea of not guilty if the defendant shows to the satisfaction of the court that failure to appear was due to mistake, inadvertence, surprise or excusable neglect. If a party is relieved from the plea of no contest, the court or judge may order a written complaint or petition to be filed. If on reopening the defendant is found not guilty, the court shall delete the record of conviction and shall order the defendant's deposit returned.

(c) If the defendant has made a deposit and stipulation of no contest, the citation serves as the initial pleading and the defendant shall be considered to have tendered a plea of no contest and submitted to a forfeiture and a penalty assessment plus costs, including the fees prescribed in s. 814.63 (1) and (2), not exceeding the amount of the deposit. The court may either accept the plea of no contest and enter judgment accordingly, or reject the plea and issue a summons or arrest warrant, except if the defendant is a minor the court shall proceed under s. 48.28. Chapter 48 governs taking and holding a minor in custody. After signing a stipulation of no contest, the defendant may, at any time prior to or at the time of the court appearance date, move the court for relief from the effect of the stipulation. The court may act on the motion, with or without notice, for cause shown by affidavit and upon just terms, and relieve the defendant from the stipulation and the effects of the stipulation.

(9) If a citation or summons is issued to a defendant under this section and he or she is unable to appear in court on the day specified, the defendant may enter a plea of not guilty by mailing a letter stating that inability to the judge at the address indicated on the citation. The letter must show the defendant's return address. The letter may include a request for trial during normal daytime business hours. Upon receipt of the letter, the judge shall reply by letter to the defendant's address setting forth a time and place for trial, and the time shall be during normal business hours if so requested. The date of the trial shall be at least 10 days from the mailing by the judge. Nothing in this subsection forbids the setting of the trial at any time convenient to all parties concerned.

(10) An officer collecting moneys for a forfeiture, penalty assessment and costs under this section shall pay the same to the appropriate municipal or county treasurer within 20 days after its receipt by the officer. If the officer fails to make timely payment, the municipal or county treasurer may collect the payment from the officer by an action in the treasurer's name of office and upon the official bond of the officer, with interest at the rate of 12% per year from the time when it should have been paid.

History: 1979 c. 331, 359; 1981 c. 79 s. 18; 1981 c. 317.