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; Stats. 1979 s. 778.01.

Cross−reference: For forfeitures imposed by city or village ordinance, see s. 66.0114.

For a forfeiture action to accrue against a nonresident owner of a building that is in violation of the state building code, the violator should receive notice of the violations. Notice need not be actual, but must be reasonably calculated to inform the building owner with respect to the violation. State v. James, 47 Wis. 2d 600, 177 N.W.2d 864 (1970).

The definition of forfeiture in this section applies only to ch. 288 [now ch. 778]. State v. Mando Enterprises, Inc. 56 Wis. 2d 801, 203 N.W.2d 64 (1973).

This section does not preclude prosecution under a statute punishable only by forfeiture in the same action with criminal charges. State v. Johnston, 184 Wis. 2d 794, 518 N.W.2d 759 (1994).

A judgment for payment of a forfeiture can be docketed, accumulates interest, and may be enforced through collection remedies available in other civil proceedings. OAG 2−95.

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); Stats. 1979 s. 778.015.

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 is 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 that imposes it, specifying the statute, plus costs, fees, and surcharges imposed under ch. 814. If the 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 the forfeiture, plus costs, fees, and surcharges imposed under ch. 814. If the defendant is a nonresident of the state, an attachment may issue.

History: 1977 c. 29; 1979 c. 32 s. 56; Stats. 1979 s. 778.02; 1987 a. 27; 1989 a. 107; 1991 a. 39; 1993 a. 16; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2003 a. 139.

778.027 Prosecution decisions based on contributions to certain organizations or agencies and government attorney conduct. A prosecutor or an attorney representing the state or a political subdivision of the state may not, in exchange for a person's payment of money, other than restitution, to any organization or agency, dismiss or amend a citation or complaint alleging a violation that provides for a forfeiture or elect not to initiate an action or special proceeding based on such a violation.

History: 1999 a. 58, 186; 2007 a. 84.

A prosecutor may engage in negotiations relating to a defendant's reimbursement of blood withdrawal expenses, but a prosecutor may not, as a result of a defendant's payment or offer of payment of blood withdrawal expenses, dismiss or amend the charge, citation, or complaint or forego the initiation of a criminal prosecution, action, or special proceeding based on the violation. OAG 11−09.

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 of the property and for payment of the costs, fees, and surcharges imposed under ch. 814.

History: 1977 c. 29; 1979 c. 32 s. 56; Stats. 1979 s. 778.03; 1987 a. 27; 1989 a. 107; 1991 a. 39; 1993 a. 16; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2003 a. 139.

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; Stats. 1979 s. 778.04.

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, plus costs, fees, and surcharges imposed under ch. 814; 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; Stats. 1979 s. 778.06; 1987 a. 27; 1989 a. 107; 1991 a. 39; 1993 a. 16; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2003 a. 139.

When a city neither disputed its violation of an order nor denied that 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 a forfeiture less than the statutory minimum. State v. City of Monona, 63 Wis. 2d 67, 216 N.W.2d 230 (1974).

778.09 Judgment, costs, commitment of defendant. Where judgment is recovered pursuant to this chapter it shall include costs and direct that if the judgment is not paid the defendant, if an individual, shall be imprisoned in the county jail for a specified time, not exceeding 6 months, or until otherwise discharged pursuant to law. The commitment shall issue, as in ordinary criminal actions, and the defendant shall not be entitled to the liberties of the jail.

History: 1979 c. 32 s. 56; Stats. 1979 s. 778.09; 1997 a. 254.

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, under this chapter, in the name of the county, town, city, village, or corporation. It is 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 that imposes it, plus costs, fees, and surcharges imposed under ch. 814. If 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, plus costs, fees, and surcharges imposed under ch. 814. All moneys collected on the judgment shall be paid to the treasurer of the county, town, city, village, or corporation, except that all jail surcharges imposed under ch. 814 shall be paid to the county treasurer.

History: 1977 c. 29; 1979 c. 32 s. 56; Stats. 1979 s. 778.10; 1987 a. 27; 1989 a. 107; 1991 a. 39; 1993 a. 16; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2003 a. 139.

A judgment for payment of a forfeiture can be docketed, accumulates interest, and may be enforced through collection remedies available in other civil proceedings. OAG 2−95.

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; Stats. 1979 s. 778.103; 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; Stats. 1979 s. 778.104.

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. Costs, fees, and surcharges imposed under ch. 814 shall be paid as required by that chapter.

History: 1977 c. 29; 1979 c. 32 s. 56; Stats. 1979 s. 778.105; 1987 a. 27; 1989 a. 107; 1991 a. 39; 1993 a. 16; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2003 a. 139.

778.11 Duty of town officers. The chairperson 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 chairperson.

History: 1977 c. 305; 1979 c. 32 s. 56; Stats. 1979 s. 778.11; 1989 a. 56 s. 258.

778.12 Duty of district attorney. The town chairperson 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 chairperson, when requested by him or her so to do.

History: 1977 c. 305; 1979 c. 32 s. 56; Stats. 1979 s. 778.12; 1989 a. 56 s. 258.

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, plus costs, fees, and surcharges imposed under ch. 814, shall be paid by the officer who collects the forfeiture, costs, fees, and surcharges to the treasurer of the county within which the forfeiture was incurred within 20 days after its receipt. In case of any failure in the payment, the county treasurer may collect the payment of the officer by action, in the name of the office and upon the official bond of the officer, with interest at the rate of 12 percent per year from the time when it should have been paid.

History: 1977 c. 29; 1979 c. 32 s. 56; 1979 c. 110 s. 60 (13); Stats. 1979 s. 778.13; 1983 a. 192; 1987 a. 27; 1989 a. 107; 1991 a. 39; 1993 a. 16; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2003 a. 139.

778.135 Campaign finance, lobbying, and ethics forfeitures; how recovered. Notwithstanding s. 778.13, whenever any action or proposed action by the elections commission under s. 5.05 (1) (c) or the ethics commission under s. 19.49 (1) (b) 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 commission and deposited with the secretary of administration.

History: 1977 c. 427; 1979 c. 32 ss. 56, 92 (8); Stats. 1979 s. 778.135; 1999 a. 182; 2003 a. 33; 2007 a. 1; 2015 a. 118.

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 the municipal judge upon judgments rendered in actions under this chapter, and every municipal judge shall, on demand of a town, village or city treasurer, produce to the treasurer the court record 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 of the moneys against the municipal judge and the sureties upon the municipal judge's official bond.

History: 1977 c. 305; 1979 c. 32 s. 56; Stats. 1979 s. 778.14; 1995 a. 224.

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; Stats. 1979 s. 778.15.

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; Stats. 1979 s. 778.16.

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 the 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 secretary of administration.

History: 1979 c. 32 s. 56; 1979 c. 176; Stats. 1979 s. 778.17; 2003 a. 33.

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 lesser 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 costs, fees, and surcharges imposed under ch. 814, or for an amount equal to the amount in which any such judg-

ment 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; Stats. 1979 s. 778.18; 1987 a. 27; 1989 a. 107; 1991 a. 39; 1993 a. 16; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2003 a. 139.

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; Stats. 1979 s. 778.19.

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); Stats. 1979 s. 778.20.

778.25 Citation procedure for certain limited violations. (1) (a) The citation procedures established by this section may be used only in an action to recover a forfeiture:

1. Under s. 125.07 (4) (a) or (b), 125.085 (3) (b), 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 chs. 48 and 938.

1m. Under s. 961.573 (2), 961.574 (2), or 961.575 (2) brought against a minor in the court assigned to exercise jurisdiction under chs. 48 and 938 or under a local ordinance enacted under s. 59.54 (25m) or 66.0107 (1) (bp) brought against an adult in circuit court or against a minor in the court assigned to exercise jurisdiction under chs. 48 and 938.

2. Under s. 947.013 (1m) or a local ordinance strictly conforming to s. 947.013 (1m) brought against an adult in circuit court.

3. Under s. 167.32 or under a local ordinance strictly conforming to s. 167.32 brought against an adult in circuit court.

4. Under s. 254.92 or under a local ordinance strictly conforming to s. 254.92 brought against an adult in circuit court or against a minor in the court assigned to exercise jurisdiction under chs. 48 and 938.

5. Under administrative rules promulgated by the board of regents under s. 36.11 (1) (c) brought against an adult in circuit court or against a minor in the court assigned to exercise jurisdiction under chs. 48 and 938.

6. Under an administrative rule promulgated by the department of administration under s. 16.846 brought against an adult in circuit court or against a minor in the court assigned to exercise jurisdiction under chs. 48 and 938.

7. Under s. 101.122 (7) (d).

8. Under s. 173.41 (15) (b).

(b) The citation form provided by this section may serve as the initial pleading for the action and, except as provided in par. (c), is adequate process to give a court jurisdiction over the person if the citation is filed with the court.

(c) If served as provided under s. 801.11, the citation form issued under par. (a) 7. is adequate process to give a court jurisdiction over the person.

(2) A citation under this section shall be signed by the issuing agent or officer or 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 agent or officer.

(c) The violation alleged, the time and place of occurrence, a statement that the defendant committed the violation, the statute, rule 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.

(f) Provisions for deposit 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, plus costs, fees, and surcharges imposed under ch. 814, 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.

(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 consider the nonappearance to be a plea of no contest and enter judgment accordingly or 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 that the issuing agent or 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 office or headquarters of the agent or 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, fees, and surcharges imposed under ch. 814.

(5) 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, plus costs, fees, and surcharges imposed under ch. 814, 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.

(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) 1. If the defendant has not made a deposit, the court may consider the nonappearance to be a plea of no contest and enter judgment accordingly or the court may issue a summons or an arrest warrant, except if the defendant is a minor the court shall proceed under s. 938.28. Chapter 938 governs taking and holding a minor in custody.

2. If the court considers the nonappearance to be a plea of no contest and enters judgment accordingly, the court shall promptly mail a copy or notice of the judgment to the defendant. The judgment shall allow the defendant not less than 20 working days from the date the judgment copy or notice is mailed to pay the forfeiture, plus costs, fees, and surcharges imposed under ch. 814.

(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, plus costs, fees, and surcharges imposed under ch. 814, 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 that if the defendant is a minor the court shall proceed under s. 938.28. Chapter 938 governs taking and holding a minor in custody.

(c) If the court accepts a 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.

(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 court 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 court shall reply by notice 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 after the date on which the court sent the notice. 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, plus costs, fees, and surcharges imposed under ch. 814, under this section shall pay the same to the appropriate municipal or county treasurer within 20 days after their receipt by the officer, except that all jail surcharges imposed under ch. 814 shall be paid to the county treasurer. 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 percent per year from the time when it should have been paid.

History: 1979 c. 331, 359; 1981 c. 79 s. 18; 1981 c. 317; 1983 a. 74 ss. 30, 32; 1983 a. 336; 1985 a. 254; 1987 a. 27, 336, 399; 1989 a. 31, 121, 179; 1991 a. 134, 194; 1995 a. 77, 174, 352, 448; 1997 a. 27, 288, 290; 1999 a. 9; 2001 a. 75; 2003 a. 139, 193; 2005 a. 116, 306; 2009 a. 90.

Civil discovery procedures are available to persons subject to an action to recover a forfeiture commenced under this section because the legislature has not prescribed a different procedure for such forfeitures. State v. Bausch, 2014 WI App 12, 352 Wis. 2d 500, 842 N.W.2d 654, 13−0752.

778.26 Citation procedure; violation of land trespass laws. **(1)** The citation procedures established by this section may be used only in an action to recover a forfeiture under s. 943.13. 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 circuit 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.

(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 violated and a designation of the violation in language which can be readily understood by a person making a reasonable effort to do so.

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

(e) The maximum forfeiture, plus costs, fees, and surcharges imposed under ch. 814, for which the defendant is liable.

(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 specified in the citation, the failure to appear will be considered tender of a plea of no contest and submission to a forfeiture, plus costs, fees, and surcharges imposed under ch. 814, not to exceed the amount of the deposit. The notice shall also state that the court, instead of accepting the deposit and plea, may decide to summon the defendant or may issue an arrest warrant for the defendant upon failure to respond to a summons.

(h) Notice that, if the defendant makes a deposit and signs the stipulation, the stipulation will be treated as a plea of no contest and submission to a forfeiture, plus costs, fees, and surcharges imposed under ch. 814, not to exceed the amount of the deposit. The notice shall also state that the court, instead of accepting the deposit and stipulation, may decide to summon the defendant or issue an arrest warrant for the defendant upon failure to respond to a summons, 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 specified in the citation, the court may issue a summons or an arrest warrant.

(3) A defendant issued a citation under this section may deposit the amount of money that the issuing officer directs by mailing or delivering the deposit and a copy of the citation prior to the court appearance date to the clerk of the circuit court in the county where the violation occurred or to the sheriff's office or police headquarters of the officer who issued the citation. 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 the costs, fees, and surcharges imposed under ch. 814.

(4) A defendant 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 the costs, fees, and surcharges imposed under ch. 814, not to exceed 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 the circuit court regarding the disposition of the deposit, and notifying the defendant that if he or she fails to appear in court at the time specified in the citation he or she shall be considered to have tendered a plea of no contest and submitted to a forfeiture, plus costs, fees, and surcharges imposed under ch. 814, not to exceed the amount of the deposit and that the court may accept the plea. The original of the receipt shall be delivered to the defendant in person or by mail. If the defendant pays by check, the canceled 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 the circuit 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, plus costs, fees, and

surcharges imposed under ch. 814, not to exceed the amount of the deposit. Delivery of the receipt shall be made in the same manner as provided in sub. (5).

(7) If a defendant issued a citation under this section fails to appear in court at the time specified 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.

(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, plus costs, fees, and surcharges imposed under ch. 814, not to exceed 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. If the defendant fails to appear in response to the summons, the court shall issue an arrest warrant. If the court accepts the plea of no contest, the defendant may, within 90 days after the date set for appearance, move 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 defendant is relieved from the plea of no contest, the court 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, plus costs, fees, and surcharges imposed under ch. 814, not to exceed 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 an arrest warrant. 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.

(8) 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 a time and place for trial. The time shall be during normal business hours if so requested. The date of the trial shall be at least 10 days from the date the letter was mailed by the judge. Nothing in this subsection forbids the setting of the trial at any time convenient to all parties concerned.

(9) An officer who collects a forfeiture, and costs, fees, and surcharges imposed under ch. 814, under this section shall pay the money to the county treasurer within 20 days after its receipt. If the officer fails to make timely payment, the 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 percent per year from the time when it should have been paid.

History: 1983 a. 418; 1987 a. 27; 1997 a. 27; 2003 a. 139.

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, municipal court judgments, or restitution payments if a defendant fails to pay the forfeiture, costs, assessment, surcharge, municipal court judgment, 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 percent 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, or restitution fees or surcharges. 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. 767.75 (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 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 provided 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 percent 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 employee is terminated or after the employee 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 employee or any disciplinary action against an employee. An employer who denies employment or discharges or disciplines an employee 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.

History: 1997 a. 148; 2003 a. 139; 2005 a. 253; 2005 a. 443 s. 265; 2009 a. 402.