



1995 ASSEMBLY BILL 342

April 28, 1995 - Introduced by Representatives KRUSICK, AINSWORTH, BALDUS, CARPENTER, GROBSCHMIDT, HAHN, F. LASEE, MUSSER, NOTESTEIN, PORTER, URBAN, WALKER, WARD and WILDER, cosponsored by Senators SCHULTZ, BURKE, DARLING, C. POTTER and RUDE. Referred to Committee on Ways and Means.

1 **AN ACT** *to renumber* 71.93 (2); *to amend* 20.566 (1) (h), 71.78 (4) (g), 71.78 (9),
2 71.88 (1) (a), 71.93 (title), 71.93 (1) (b), 71.93 (3), 71.93 (4), 71.93 (5), 71.93 (6),
3 71.93 (7), 71.93 (8) and 800.09 (1) (intro.); and *to create* 71.93 (1) (a) 4., 71.93
4 (1) (cm), 71.93 (2) (b), 345.47 (1) (e), 345.47 (1d), 800.09 (1) (d) and 800.09 (1m)
5 of the statutes; **relating to:** allowing the department of revenue to offset
6 unpaid judgments for traffic and municipal ordinance violations against state
7 income tax refunds and making appropriations.

Analysis by the Legislative Reference Bureau

Under this bill, if a defendant fails to pay a judgment in a forfeiture action for a traffic violation or for a municipal ordinance violation, a court may, in addition to or in lieu of other remedies available to it, order the unpaid judgment certified for setoff. If a court orders certification, the county, city, village or town that is entitled to the forfeiture portion of the judgment shall certify the unpaid judgment to the department of revenue (DOR) for setoff. The county, city, village or town is required to submit an administration fee of \$10 for each judgment certified. The administration expenses that DOR may charge against a political subdivision are reduced by this \$10 fee.

Upon receipt of a certification, DOR shall set off (reduce) any state income tax refund or credit owed to the defendant by the amount certified and forward the money withheld to the county, city, village or town certifying the judgment.

Under current law, DOR is authorized to set off tax refunds and credits to recover unpaid state taxes, debts owed to state agencies and delinquent child support and maintenance payments.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

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

2 20.566 (1) (h) *Debt collection.* From moneys received from the collection of
3 debts ~~owed to state agencies~~ under ss. 71.93 and 565.30 (5), the amounts in the
4 schedule to pay the administrative expenses of the department of revenue for the
5 collection of those debts.

6 **SECTION 2.** 71.78 (4) (g) of the statutes is amended to read:

7 71.78 (4) (g) *Employes of this state, to the extent that the department of*
8 *revenue deems the examination necessary for the employes to perform their duties*
9 *under contracts or agreements between the department and any other department,*
10 *division, bureau, board or commission of this state relating to the administration of*
11 *tax laws, collection of debts under s. 71.93 or child and spousal support enforcement*
12 *under s. 46.25.*

13 **SECTION 3.** 71.78 (9) of the statutes is amended to read:

14 71.78 (9) (title) *DISCLOSURE OF DEBTOR ADDRESS TO STATE AGENCY.* The
15 department of revenue may supply the address of a debtor to ~~an~~ a state agency or a
16 political subdivision certifying a debt of that debtor for setoff under s. 71.93.

17 **SECTION 4.** 71.88 (1) (a) of the statutes is amended to read:

18 71.88 (1) (a) *Contested assessments and claims for refund.* Except for refunds
19 ~~set off~~ certified for setoff under s. 71.93 in respect to which appeal is to the state
20 agency to which the debt is owed and except for refunds ~~set off~~ certified for setoff
21 under s. 46.255, 345.47 (1d) or 800.09 (1m) in respect to which a hearing is may be

1 held before the circuit a court, any person feeling aggrieved by a notice of additional
2 assessment, refund, or notice of denial of refund may, within 60 days after receipt of
3 the notice, petition the department of revenue for redetermination. A petition or an
4 appeal by one spouse is a petition or an appeal by both spouses. The department shall
5 make a redetermination on the petition within 6 months after it is filed.

6 **SECTION 5.** 71.93 (title) of the statutes is amended to read:

7 **71.93 (title) Setoffs for other state agencies.**

8 **SECTION 6.** 71.93 (1) (a) 4. of the statutes is created to read:

9 71.93 (1) (a) 4. An unpaid judgment certified by a political subdivision under
10 s. 345.47 (1d) or 800.09 (1m).

11 **SECTION 7.** 71.93 (1) (b) of the statutes is amended to read:

12 71.93 (1) (b) "Debtor" means any a person owing a debt to a state agency and
13 any person who owes a delinquent child support or spousal support obligation to an
14 agency of another state.

15 **SECTION 8.** 71.93 (1) (cm) of the statutes is created to read:

16 71.93 (1) (cm) "Political subdivision" means a county, city, village or town.

17 **SECTION 9.** 71.93 (2) of the statutes is renumbered 71.93 (2) (a).

18 **SECTION 10.** 71.93 (2) (b) of the statutes is created to read:

19 71.93 (2) (b) A political subdivision may certify a debt under s. 345.47 (1d) or
20 800.09 (1m).

21 **SECTION 11.** 71.93 (3) of the statutes is amended to read:

22 71.93 (3) ADMINISTRATION. In administering this section the department shall
23 first check with the state agency or political subdivision certifying the debt to
24 determine whether the debt has been collected by other means. If the debt remains
25 uncollected the department of revenue shall setoff set off any debt or other amount

1 owed to the department, regardless of the origin of the debt or of the amount, its
2 nature or its date. If after the setoff there remains a refund in excess of \$10, the
3 department shall set off the remaining refund against certified debts of other state
4 agencies or political subdivisions. If more than one certified debt exists for any
5 debtor, the refund shall be first set off against the earliest debt certified, except that
6 no child support or spousal support obligation submitted by an agency of another
7 state may be set off until all debts owed to and certified by state agencies or political
8 subdivisions of this state have been set off. When all debts have been satisfied, any
9 remaining refund shall be refunded to the debtor by the department.

10 **SECTION 12.** 71.93 (4) of the statutes is amended to read:

11 71.93 (4) SETTLEMENT. Within 30 days after the close of each calendar quarter,
12 the department shall settle with each state agency or political subdivision that has
13 certified a debt. Each settlement shall note the opening balance of debts certified,
14 any additions or deletions, amounts set off and the ending balance at the close of the
15 settlement period.

16 **SECTION 13.** 71.93 (5) of the statutes is amended to read:

17 71.93 (5) (title) ~~STATE AGENCY CERTIFIER~~ CHARGED FOR COSTS. At the time of each
18 settlement, each state agency shall be charged for administration expenses, and the
19 amounts charged shall be credited to the department's appropriation under s. 20.566
20 (1) (h). At the time of each settlement, each political subdivision shall be charged for
21 administration expenses, minus the \$10 fee submitted by the political subdivision
22 with the certified debt. The \$10 fee plus the additional administration expenses
23 charged shall be credited to the appropriation under s. 20.566 (1) (h). Annually on
24 or before November 1, the department shall review its costs incurred during the

1 previous fiscal year in administering ~~state agency~~ setoffs and shall adjust its
2 subsequent charges to ~~each state agency~~ to reflect that experience.

3 **SECTION 14.** 71.93 (6) of the statutes is amended to read:

4 71.93 (6) WRITTEN AGREEMENT AND AUTHORITY OF DEPARTMENT. Any state agency
5 or political subdivision wishing to certify debts to the department shall enter into a
6 written agreement with the department prior to any certification ~~of debt~~. Any
7 certification of debts ~~by a state agency~~ or changes to certified debts shall be in a
8 manner and form prescribed by the department. The secretary of revenue shall be
9 the final authority in the resolution of any interagency ~~disputes in regard to~~ dispute
10 regarding certification of debts a debt or any dispute between the department and
11 a political subdivision regarding certification of a debt. If a refund is adjusted after
12 a setoff, the department may readjust any erroneous settlement with a ~~certifying~~
13 state agency certifier.

14 **SECTION 15.** 71.93 (7) of the statutes is amended to read:

15 71.93 (7) EXCHANGE OF INFORMATION. Information relative to changes to any
16 debt certified shall be exchanged promptly by ~~each a state agency and or a political~~
17 subdivision and the department. The exchange of information related to changes in
18 debt, the department setoff of refunds against debts ~~certified by agencies~~ and any
19 reports of the setoff to ~~certifying state agencies~~ certifiers is not a violation of ss. 71.78,
20 72.06, 77.61 (5), 78.80 (3) and 139.38 (6).

21 **SECTION 16.** 71.93 (8) of the statutes is amended to read:

22 71.93 (8) (title) SETOFF AGREEMENTS. Upon request by a state agency or political
23 subdivision, the department of revenue may enter into an agreement with
24 individuals who owe debts ~~to the state agency~~. With the consent of the debtor, the

1 department of revenue may arrange with the debtor's employer for the withholding
2 from the debtor's pay of a specified amount to be applied against the debt.

3 **SECTION 17.** 345.47 (1) (e) of the statutes is created to read:

4 345.47 (1) (e) In addition to or in lieu of imprisonment under par. (a) or
5 suspension under par. (b), the court may order the unpaid judgment certified for
6 setoff under sub. (1d).

7 **SECTION 18.** 345.47 (1d) of the statutes is created to read:

8 345.47 (1d) (a) In this subsection, "political subdivision" has the meaning given
9 in s. 71.93 (1) (cm).

10 (b) If a court orders an unpaid judgment certified for setoff under sub. (1) (e),
11 the political subdivision entitled to the forfeiture portion of the judgment shall certify
12 the unpaid judgment to the department of revenue. At the time of certification, the
13 political subdivision shall submit a \$10 fee and furnish the defendant's full name,
14 address and social security number to the department of revenue.

15 (c) Receipt of a certification and \$10 fee by the department of revenue shall
16 constitute a lien, equal to the amount certified, on any state tax refunds or credits
17 owed to the defendant. The lien shall be foreclosed by the department of revenue as
18 a setoff under s. 71.93. When the department of revenue determines that the
19 defendant is otherwise entitled to a state tax refund or credit, it shall notify the
20 defendant that the state intends to reduce any state tax refund or credit due the
21 defendant by the amount certified and that the department intends to forward that
22 amount to the political subdivision certifying the judgment. The notice shall provide
23 that within 20 days after the date the notice is mailed, the defendant may request
24 a hearing before the court rendering the judgment. Within 10 days after receiving
25 a request for hearing under this paragraph, the court shall set the matter for hearing

1 upon notice to the defendant and to the political subdivision certifying the judgment.
2 The sole issue at that hearing shall be whether the defendant owes the amount
3 certified.

4 (d) Except as provided by court order after a hearing under par. (c), all of the
5 following shall occur:

6 1. Within 60 days after the date the department of revenue mails the notice
7 under par. (c), and subject to the priorities under s. 71.93 (3), the department of
8 revenue shall send any state tax refund or credit withheld to the political subdivision
9 certifying the judgment.

10 2. Within 20 days after the date a political subdivision receives a withheld tax
11 refund or credit, the officer receiving the withheld tax refund or credit shall
12 distribute the amount withheld to the appropriate municipal or county treasurer.
13 If the amount withheld is less than the full amount certified, the officer shall
14 distribute the amount withheld on a proportional basis.

15 3. The department of revenue shall continue withholding until the amount
16 certified is recovered in full.

17 (e) A political subdivision shall immediately notify the department of revenue
18 of any collection of a judgment that has been certified. The department of revenue
19 shall adjust the certified amount to reflect the amount collected.

20 **SECTION 19.** 800.09 (1) (intro.) of the statutes is amended to read:

21 800.09 (1) JUDGMENT. (intro.) If a municipal court finds a defendant guilty it
22 may render judgment by ordering restitution under s. 800.093 and payment of a
23 forfeiture, the penalty assessment imposed by s. 165.87, the jail assessment imposed
24 by s. 302.46 (1) and any applicable domestic abuse assessment imposed by s. 973.055
25 (1) plus costs of prosecution, including the fee prescribed in s. 814.65 (1). The court

1 shall apply any payment received on a judgment that includes restitution to first
2 satisfy any payment of restitution ordered, then to pay the forfeiture, assessments
3 and costs. If the judgment is not paid, the court may proceed under par. (a), (b) ~~or~~,
4 (c) or (d) or any combination of those paragraphs, as follows:

5 **SECTION 20.** 800.09 (1) (d) of the statutes is created to read:

6 800.09 (1) (d) The court may order the unpaid judgment certified for setoff
7 under sub. (1m).

8 **SECTION 21.** 800.09 (1m) of the statutes is created to read:

9 800.09 (1m) CERTIFICATION OF UNPAID JUDGMENTS. (a) In this subsection,
10 “political subdivision” has the meaning given in s. 71.93 (1) (cm).

11 (b) If a court orders an unpaid judgment certified for setoff under sub. (1) (d),
12 the political subdivision entitled to the forfeiture portion of the judgment shall certify
13 the unpaid judgment to the department of revenue. At the time of certification, the
14 political subdivision shall submit a fee of \$10 and furnish the defendant’s full name,
15 address and social security number to the department of revenue.

16 (c) Receipt of a certification and \$10 fee by the department of revenue shall
17 constitute a lien, equal to the amount certified, on any state tax refunds or credits
18 owed to the defendant. The lien shall be foreclosed by the department of revenue as
19 a setoff under s. 71.93. When the department of revenue determines that the
20 defendant is otherwise entitled to a state tax refund or credit, it shall notify the
21 defendant that the state intends to reduce any state tax refund or credit due the
22 defendant by the amount certified and that the department intends to forward that
23 amount to the political subdivision certifying the judgment. The notice shall provide
24 that within 20 days after the date the notice is mailed, the defendant may request
25 a hearing before the court rendering the judgment. Within 10 days after receiving

1 a request for hearing under this paragraph, the court shall set the matter for hearing
2 upon notice to the defendant and to the political subdivision certifying the judgment.
3 The sole issue at that hearing shall be whether the defendant owes the amount
4 certified.

5 (d) Except as provided by court order after a hearing under par. (c), all of the
6 following shall occur:

7 1. Within 60 days after the date the department of revenue mails the notice
8 under par. (c), and subject to the priorities under s. 71.93 (3), the department of
9 revenue shall send any state tax refund or credit withheld to the political subdivision
10 certifying the judgment.

11 2. Within 20 days after the date a political subdivision receives a withheld tax
12 refund or credit, the officer receiving the withheld tax refund or credit shall
13 distribute the amount withheld to the appropriate municipal or county treasurer.
14 If the amount withheld is less than the full amount certified, the officer shall
15 distribute the amount withheld on a proportional basis.

16 3. The department of revenue shall continue withholding until the amount
17 certified is recovered in full.

18 (e) A political subdivision shall immediately notify the department of revenue
19 of any collection of a judgment that has been certified. The department of revenue
20 shall adjust the certified amount to reflect the amount collected.

21 **SECTION 22. Appropriation changes; revenue.**

22 (1) OFFSET PROGRAM ADMINISTRATION. In the schedule under section 20.005 (3)
23 of the statutes for the appropriation to the department of revenue under section
24 20.566 (1) (h) of the statutes, as affected by the acts of 1995, the dollar amount is
25 increased by \$64,900 for fiscal year 1995-96 and the dollar amount is increased by

1 \$1,119,000 for fiscal year 1996-97 to increase the authorized FTE positions for the
2 department by 4.0 PR positions to administer an offset program for unpaid traffic
3 and municipal ordinance violations.

4 (2) OFFSET PROGRAM DEVELOPMENT COSTS. In the schedule under section 20.005
5 (3) of the statutes for the appropriation to the department of revenue under section
6 20.566 (1) (h) of the statutes, as affected by the acts of 1995, the dollar amount is
7 increased by \$3,700 for fiscal year 1995-96 to fund development costs of
8 administering an offset program for unpaid traffic and municipal ordinance
9 violations.

10 **SECTION 23. Initial applicability.**

11 (1) This act first applies to actions commenced on the effective date of this
12 subsection.

13 **SECTION 24. Effective date.**

14 (1) This act takes effect on January 1, 1996.

15 (END)