



1997 SENATE BILL 78

February 19, 1997 - Introduced by Senators C. POTTER, MOEN and WEEDEN, cosponsored by Representatives OTTE, NOTESTEIN, BAUMGART, DOBYNS, PORTER, LAZICH, GRONEMUS and HAHN. Referred to Committee on Judiciary, Campaign Finance Reform and Consumer Affairs.

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

Analysis by the Legislative Reference Bureau

Under current law, as enacted in 1995 Wisconsin Act 438, the circuit court may issue an order assigning 25% of the defendant's salary, pension benefits and other money due him or her, and all of his or her lottery winnings that are payable in instalments, to pay any unpaid fine, assessment, surcharge or restitution payment. This bill requires the administrator of the lottery division in the department of revenue (DOR) to annually provide each clerk of circuit court with a list of each winner of a lottery prize that is payable in instalments. The bill requires the clerk of circuit court to notify the court of any winner that may be subject to an assignment of lottery winnings to pay any unpaid fine, assessment, surcharge or restitution payment. If the court orders the assignment of the lottery winnings, the bill requires the clerk of circuit court to notify the administrator of the lottery division in DOR of

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that assignment. The bill requires the administrator of the lottery division in DOR to withhold from the lottery instalment payment the amount of the assignment and an amount equal to the DOR's administrative expenses related to the withholding, and send the amount of the judgment to the court that issued the assignment.

The bill requires the clerk of circuit court to notify a person who owes the defendant salary, wages, pension benefits or other similar benefits of an assignment of that money for the payment of unpaid fines, assessments, surcharges and restitution payments. The notice of the assignment must specify that the person who receives the assignment must inform the court if he or she has received an earlier assignment and shall inform the person that he or she should retain the assignment until the judgment under the assignment is paid in full. The bill provides that an assignment to withhold child support has priority over an assignment made for the payment of a fine, assessment, surcharge or restitution payment.

Under current law, when a defendant who has been convicted of a crime is sentenced to pay a fine, assessment, surcharge or restitution payment, the court may permit the defendant to make those payments within 120 days after sentencing. This bill reduces that time period to 60 days.

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), from the collection of
4 unpaid fines, assessments, surcharges and restitution payments under s. 565.30 (5r)
5 (b) and from moneys received from the collection of debts owed to municipalities and
6 counties under s. 71.935, the amounts in the schedule to pay the administrative
7 expenses of the department of revenue for the collection of those debts, fines,
8 assessments, surcharges and restitution payments.

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

10 59.40 (2) (im) Keep a record of all payments ordered by the court under s.
11 973.05 (4) to be paid to the clerk of circuit court ~~or ordered by a court in another~~
12 ~~county or jurisdiction but enforced or received by the clerk's court.~~

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

2 565.30 **(5r)** (a) Annually, the administrator shall provide each clerk of circuit
3 court in the state with a list of the winners of a lottery prize that is payable in
4 instalments. The list shall include each winner since the date of the previous list.

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

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

8 565.30 **(5r)** (b) If the administrator receives a notice under s. 973.05 (5) (a) of
9 the assignment of lottery prizes under s. 973.05 (4) (b), ~~he or she shall periodically~~
10 ~~determine if the person subject to the assignment is a winner of a lottery prize that~~
11 ~~is payable in instalments. If the administrator (c) and~~ determines that a the person
12 subject to an the assignment of lottery prizes under s. 973.05 (4) (b) is a winner of a
13 lottery prize that is payable in instalments, the administrator shall withhold the
14 amount of the judgment that is the basis of the assignment from the next instalment
15 payment. The administrator shall submit the withheld amount to the department
16 for remittance to the court that issued the assignment. At the time of remittance,
17 the department shall charge its administrative expenses to the winner of the lottery
18 prize and withhold those expenses from the balance of the instalment payment. The
19 administrator shall notify the winner of the reason that the amount is withheld from
20 the ~~lottery prize~~ instalment payment. If the initial instalment payment is
21 insufficient to pay the judgment and administrative expenses, the administrator
22 shall withhold and submit to the court an amount from any additional instalment
23 payments until the judgment is and administrative expenses are paid in full or until
24 ~~the court notifies the administrator that the judgment is paid and the assignment~~

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1 is no longer in effect. The administrative expenses received by the department shall
2 be credited to the appropriation under s. 20.566 (1) (h).

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

4 973.05 (1) When a defendant is sentenced to pay a fine, the court may grant
5 permission for the payment of the fine, of the penalty assessment imposed by s.
6 165.87, the jail assessment imposed by s. 302.46 (1), the crime victim and witness
7 assistance surcharge under s. 973.045, any applicable deoxyribonucleic acid analysis
8 surcharge under s. 973.046, any applicable drug abuse program improvement
9 surcharge imposed by s. 961.41 (5), any applicable domestic abuse assessment
10 imposed by s. 971.37 (1m) (c) 1. or 973.055, any applicable driver improvement
11 surcharge imposed by s. 346.655, any applicable weapons assessment imposed by s.
12 167.31, any applicable uninsured employer assessment imposed by s. 102.85 (4), any
13 applicable environmental assessment imposed by s. 299.93, any applicable wild
14 animal protection assessment imposed by s. 29.9965, any applicable natural
15 resources assessment imposed by s. 29.997 and any applicable natural resources
16 restitution payment imposed by s. 29.998 to be made within a period not to exceed
17 ~~120~~ 60 days. If no such permission is embodied in the sentence, the fine, the penalty
18 assessment, the jail assessment, the crime victim and witness assistance surcharge,
19 any applicable deoxyribonucleic acid analysis surcharge, any applicable drug abuse
20 program improvement surcharge, any applicable domestic abuse assessment, any
21 applicable driver improvement surcharge, any applicable weapons assessment, any
22 applicable uninsured employer assessment, any applicable environmental
23 assessment, any applicable wild animal protection assessment, any applicable
24 natural resources assessment and any applicable natural resources restitution
25 payment shall be payable immediately.

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

2 973.05 (4) (b) Issue an order assigning lottery prizes that are payable in
3 instalments and not more than 25% of the defendant's commissions, earnings,
4 salaries, wages, pension benefits, benefits under ch. 102 and other money due or to
5 be due in the future to the clerk of circuit court for payment of the unpaid fine,
6 assessment, surcharge or restitution payment. In this paragraph, "employer"
7 includes the state and its political subdivisions.

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

9 973.05 (4) (c) Issue an order assigning lottery prizes won by a defendant whose
10 name is on the list supplied to the clerk of circuit court under s. 565.30 (5r) (a), for
11 payment of the unpaid fine, assessment, surcharge or restitution payment.

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

13 973.05 (4m) As provided in s. 767.265 (4), a child support withholding
14 assignment under state law has priority over any assignment or order under sub. (4).

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

17 973.05 (5) (a) 1. Upon entry of the assignment under sub. (4) (b), unless the
18 court finds that income withholding is likely to cause the defendant irreparable
19 harm, the court shall provide notice of the assignment by regular mail to the
20 last-known address of the person from whom the defendant receives or will receive
21 money. If the clerk of circuit court does not receive the money from the person
22 notified, the court shall provide notice of the assignment to any other person from
23 whom the defendant receives or will receive money. Notice under this paragraph
24 may be a notice of the court, a copy of the executed assignment or a copy of that part
25 of the court order directing payment. ~~If the court issues an order under sub. (4) (b)~~

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1 assigning lottery prizes, of an assignment under sub. (4) (b) shall inform the intended
2 recipient that, if a prior assignment under sub. (4) (b) has been received relating to
3 the same defendant, the recipient is required to notify the clerk of circuit court that
4 sent the subsequent notice of assignment that another assignment has already been
5 received. A notice of assignment shall include a form permitting the recipient to
6 designate on the form that another assignment has already been received.

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

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

18 973.05 (5) (a) 3. Notice under this paragraph may be a notice of the court, a copy
19 of the executed assignment or a copy of that part of the court order which directs
20 payment.

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

22 973.05 (5) (c) A person who receives notice of the assignment under ~~par. (a)~~ sub.
23 (4) (b) shall withhold the amount specified in the notice from any money that person
24 pays to the defendant later than one week after receipt of the notice of assignment.
25 Within 5 days after the day on which the person pays money to the defendant, the

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1 person shall send the amount withheld to the clerk of circuit court of the jurisdiction
2 providing notice. If the person has already received a notice of an assignment under
3 sub. (4) (b), the person shall retain the later assignment and withhold the amount
4 specified in that assignment after the last of any prior assignments is paid in full.
5 Within 10 days of receipt of the later notice, the person shall notify the clerk of circuit
6 court that sent the notice that the person has received a prior notice of an assignment
7 under sub. (4) (b). Section 241.09 does not apply to assignments under this section.

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

9 973.05 (5) (d) If after receipt of notice of assignment under par. (a) 1, the person
10 from whom the defendant receives money fails to withhold the money or send the
11 money to the clerk of circuit court as provided in this subsection, the person may be
12 proceeded against under the principal action under ch. 785 for contempt of court or
13 may be proceeded against under ch. 778 and be required to forfeit not less than \$50
14 nor more than an amount, if the amount exceeds \$50, that is equal to 1% of the
15 amount not withheld or sent.

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

17 973.05 (5) (e) If an employer who receives notice of an assignment under ~~par.~~
18 ~~(a)~~ sub. (4) (b) fails to notify the clerk of circuit court within 10 days after an employe
19 is terminated or otherwise temporarily or permanently leaves the employer's
20 employment, the employer may be proceeded against under the principal action
21 under ch. 785 for contempt of court.

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

23 **SECTION 16. Initial applicability.**

24 (1) This act first applies to sentences imposed on the effective date of this
25 subsection.

