



## 1995 SENATE BILL 538

February 9, 1996 - Introduced by Senator C. POTTER, cosponsored by Representatives OTTE and BAUMGART. Referred to Committee on Judiciary.

1     **AN ACT** *to amend* 973.05 (1) and 973.05 (1m); and *to create* 59.39 (11), 565.37  
2           (5r) and 973.05 (4) and (5) of the statutes; **relating to:** the collection of fines  
3           through civil actions and providing a penalty.

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### *Analysis by the Legislative Reference Bureau*

Under current law, the administrator of the lottery division of the gaming commission is required to withhold from certain lottery prizes amounts owed in delinquent state taxes or child support and the amount of child support, spousal support, maintenance or family support that is certified as owing by the winner of the lottery. The prize money withheld is sent to the appropriate state agency. This bill authorizes a circuit court that sentences a person to pay a fine, assessment, surcharge or restitution to issue an assignment for the amount of the judgment. Under the bill, the assignment applies to earnings, pensions and other benefits that the person may receive, including lottery prizes. The court, under the bill, notifies persons who may owe money to the defendant, such as employers, of the assignment, and those persons are required to withhold the amount assigned from the defendant's wages and benefits. The amount withheld may not exceed 25%, except for lottery prizes. In the case of lottery prizes, the bill requires the court to notify the administrator of the lottery division of the gaming commission of the assignment. The administrator is required under the bill to periodically determine if a person subject to an assignment is a winner of a lottery prize that is payable in instalments. If the person is such a winner, the bill requires the administrator to withhold the amount of the judgment that is the basis of the assignment from the winnings, send that amount to the court and notify the winner of the amount sent to the court.

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

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

1           **SECTION 1.** 59.39 (11) of the statutes is created to read:

2           59.39 (11) Keep a record of all payments ordered by the court under s. 973.05  
3 (4) to be paid to the clerk of circuit court or ordered by a court in another county or  
4 jurisdiction but enforced or received by the clerk's court.

5           **SECTION 2.** 565.37 (5r) of the statutes is created to read:

6           565.37 (5r) WITHHOLDING OF ASSESSMENTS, FINES, RESTITUTION AND SURCHARGES.  
7 If the administrator receives a notice of the assignment of lottery prizes under s.  
8 973.05 (4) (b), he or she shall periodically determine if the person subject to the  
9 assignment is a winner of a lottery prize that is payable in instalments. If the  
10 administrator determines that a person subject to an assignment of lottery prizes  
11 under s. 973.05 (4) (b) is a winner of a lottery prize that is payable in instalments,  
12 the administrator shall withhold the amount of the judgment that is the basis of the  
13 assignment from the next instalment payment. The administrator shall submit the  
14 withheld amount to the court that issued the assignment. The administrator shall  
15 notify the winner of the reason that the amount is withheld from the lottery prize.  
16 If the initial instalment payment is insufficient to pay the judgment, the  
17 administrator shall withhold and submit to the court an amount from any additional  
18 instalment payments until the judgment is paid in full or until the court notifies the  
19 administrator that the judgment is paid and the assignment is no longer in effect.

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

1           973.05 (1) When a defendant is sentenced to pay a fine, the court may grant  
2 permission for the payment of the fine, of the penalty assessment imposed by s.  
3 165.87, the jail assessment imposed by s. 302.46 (1), the crime victim and witness  
4 assistance surcharge under s. 973.045, any applicable deoxyribonucleic acid analysis  
5 surcharge under s. 973.046, any applicable drug abuse program improvement  
6 surcharge imposed by s. 161.41 (5), any applicable domestic abuse assessment  
7 imposed by s. 971.37 (1m) (c) 1. or 973.055, any applicable driver improvement  
8 surcharge imposed by s. 346.655, any applicable weapons assessment imposed by s.  
9 167.31, any applicable uninsured employer assessment imposed by s. 102.85 (4), any  
10 applicable environmental assessment imposed by s. 144.992, any applicable wild  
11 animal protection assessment imposed by s. 29.9965, any applicable natural  
12 resources assessment imposed by s. 29.997 and any applicable natural resources  
13 restitution payment imposed by s. 29.998 to be made within a period not to exceed  
14 ~~60~~ 120 days. If no such permission is embodied in the sentence, the fine, the penalty  
15 assessment, the jail assessment, the crime victim and witness assistance surcharge,  
16 any applicable deoxyribonucleic acid analysis surcharge, any applicable drug abuse  
17 program improvement surcharge, any applicable domestic abuse assessment, any  
18 applicable driver improvement surcharge, any applicable weapons assessment, any  
19 applicable uninsured employer assessment, any applicable environmental  
20 assessment, any applicable wild animal protection assessment, any applicable  
21 natural resources assessment and any applicable natural resources restitution  
22 payment shall be payable immediately.

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

1           973.05 **(1m)** If the court orders payment of restitution and a fine and related  
2 payments under s. 973.20, the court may authorize a payment period in excess of 60  
3 days the limit imposed under sub. (1).

4           **SECTION 5.** 973.05 (4) and (5) of the statutes are created to read:

5           973.05 **(4)** If a defendant fails to pay the fine, assessment, surcharge or  
6 restitution payment within the period specified under sub. (1) or (1m), the court may  
7 do any of the following:

8           (a) Issue a judgment for the unpaid amount and direct the clerk to file and  
9 docket a transcript of the judgment, without fee. If the court issues a judgment for  
10 the unpaid amount, the court shall send to the defendant at his or her last-known  
11 address written notification that a civil judgment has been issued for the unpaid fine,  
12 assessment, surcharge or restitution payment. The judgment has the same force and  
13 effect as judgments docketed under s. 806.10.

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

20           **(5)** (a) Upon entry of the assignment under sub. (4) (b), unless the court finds  
21 that income withholding is likely to cause the defendant irreparable harm, the court  
22 shall provide notice of the assignment by regular mail to the last-known address of  
23 the person from whom the defendant receives or will receive money. If the clerk does  
24 not receive the money from the person notified, the court shall provide notice of the  
25 assignment to any other person from whom the defendant receives or will receive

1 money. Notice under this paragraph may be a notice of the court, a copy of the  
2 executed assignment or a copy of that part of the court order directing payment. If  
3 the court issues an order under sub. (4) (b) assigning lottery prizes, the court shall  
4 send the notice of that order to the administrator of the lottery division of the gaming  
5 commission, including a statement of the amount owed under the judgment and the  
6 name and address of the person owing the judgment. The court shall notify the  
7 administrator of the lottery division of the gaming commission when the judgment  
8 that is the basis of the assignment has been paid in full.

9 (b) For each payment made under the assignment under sub. (4) (b), the person  
10 from whom the defendant under the order receives money shall receive an amount  
11 equal to the person's necessary disbursements, not to exceed \$3, which shall be  
12 deducted from the money to be paid to the defendant.

13 (c) A person who receives notice of the assignment under par. (a) shall withhold  
14 the amount specified in the notice from any money that person pays to the defendant  
15 later than one week after receipt of the notice of assignment. Within 5 days after the  
16 day on which the person pays money to the defendant, the person shall send the  
17 amount withheld to the clerk of the jurisdiction providing notice. Section 241.09 does  
18 not apply to assignments under this section.

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

1 (e) If an employer who receives notice of an assignment under par. (a) fails to  
2 notify the clerk within 10 days after an employe is terminated or otherwise  
3 temporarily or permanently leaves the employer's employment, the employer may  
4 be proceeded against under the principal action under ch. 785 for contempt of court.

5 (f) Compliance by the person from whom the defendant receives money with  
6 the order operates as a discharge of the person's liability to the defendant as to that  
7 portion of the defendant's commission, earnings, salaries, wages, benefits or other  
8 money so affected.

9 (g) No employer may use an assignment under sub. (4) (b) as a basis for the  
10 denial of employment to a defendant, the discharge of an employe or any disciplinary  
11 action against an employe. An employer who denies employment or discharges or  
12 disciplines an employe in violation of this paragraph may be fined not more than  
13 \$500 and may be required to make full restitution to the aggrieved person, including  
14 reinstatement and back pay. Restitution shall be in accordance with s. 973.20. An  
15 aggrieved person may apply to the district attorney or to the department of industry,  
16 labor and human relations for enforcement of this paragraph.

17 (h) A person who receives more than one notice of assignment under par. (a)  
18 may send all money withheld to the clerk in a combined payment, accompanied by  
19 any information that the clerk requires.

20 (i) 1. In this paragraph, "payroll period" has the meaning given in s. 71.63 (5).

21 2. If after an assignment is in effect the defendant's employer changes its  
22 payroll period, or the defendant changes employers and the new employer's payroll  
23 period is different from the former employer's payroll period, the clerk may, unless  
24 otherwise ordered by a judge, amend the withholding assignment or order so that all  
25 of the following apply:

