

2007 SENATE BILL 412

January 24, 2008 – Introduced by Senators TAYLOR and MILLER, cosponsored by Representatives GRIGSBY, FIELDS, KESSLER, MASON, PARISI, SINICKI, TOLES, TURNER and BALLWEG. Referred to Committee on Judiciary, Corrections, and Housing.

1 **AN ACT** *to amend* 345.47 (1) (intro.), 345.47 (1) (b), 345.47 (1) (c), 345.47 (1) (d),
2 800.09 (1) (a), 800.09 (1) (c), 800.095 (2) (a), 800.095 (4) (a), 800.095 (4) (b)
3 (intro.), 800.095 (4) (b) 4. and 800.095 (4) (c); and **to create** 345.47 (4) and
4 800.09 (3) of the statutes; **relating to:** payment of judgments in traffic courts
5 and municipal courts by installments and the suspension of operating
6 privileges.

Analysis by the Legislative Reference Bureau

Under current law, if a person is found guilty of violating a traffic regulation, the court may enter judgment against the defendant for the forfeiture and for any applicable costs, fees, and surcharges. In addition, the court may suspend or revoke the person's operating privilege for a period not exceeding one year. This bill requires the court, when entering judgment, to tell the defendant, or to notify the defendant if he or she is not present in court, that he or she should notify the court if he or she is unable to pay the judgment because of poverty. The bill requires the court to determine if the defendant is unable to pay the judgment because of poverty, and if so, to give the defendant the opportunity to pay the judgment in installments, based on the defendant's income, before suspending the defendant's operating privilege for failure to pay the judgement.

Under current law, if a defendant is found guilty in municipal court of an ordinance violation, the court orders the defendant to pay a forfeiture, restitution,

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and applicable surcharges and informs the defendant of the date on which the judgment must be paid and of the penalties of failure to pay the judgment, including imprisonment and operating privilege suspension. The bill requires the municipal court to also notify the defendant at the time the judgment is rendered that, if the defendant cannot pay the judgment because of poverty, he or she should notify the court. If a judgment is not paid, current law allows the municipal court to defer payments, provide for installment payments of the judgment, allow the defendant to perform community service in lieu of paying the judgment, suspend the defendant's operating privilege, or imprison the defendant for up to 90 days. This bill prohibits the judge from ordering the defendant imprisoned or the suspension of the defendant's operating privilege if the defendant has notified the municipal court of his or her poverty unless the defendant fails to comply with the court order to pay the judgment in installments or to perform community service work.

Currently, a person found guilty of violating a traffic regulation or ordinance who fails to pay the ordered judgment may be imprisoned for up to 90 days or may have his or her operating privilege suspended for 30 days or until the judgment is paid, but not to exceed two years. Under this bill, if a court has suspended a person's operating privilege for failure to pay a judgement, the court may terminate the ordered operating privilege suspension and substitute an installment plan for the payment of the judgment. The bill requires the court to terminate the ordered operating privilege suspension and substitute an installment plan for the payment of the judgment if the defendant is unable to pay the judgment because of poverty and the defendant has not previously failed to comply with a court-ordered installment plan.

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.** 345.47 (1) (intro.) of the statutes is amended to read:
2 345.47 **(1)** (intro.) If the defendant is found guilty, the court may enter
3 judgment against the defendant for a monetary amount not to exceed the maximum
4 forfeiture provided for the violation, plus costs, fees, and surcharges imposed under
5 ch. 814, and, in addition, may suspend or revoke his or her operating privilege under
6 s. 343.30. Upon entering judgment, the court shall notify the defendant personally,
7 if the defendant is present, and in writing that the defendant should notify the court
8 if he or she is unable to pay the judgment because of poverty, as that term is used in

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1 s. 814.29 (1) (d). If the judgment is not paid or if the defendant fails to make any
2 ordered installment payment, the court shall order:

3 **SECTION 2.** 345.47 (1) (b) of the statutes is amended to read:

4 345.47 (1) (b) In lieu of imprisonment and in addition to any other suspension
5 or revocation, that the defendant's operating privilege be suspended. The operating
6 privilege shall be suspended for 30 days or until the person pays the forfeiture, plus
7 costs, fees, and surcharges imposed under ch. 814, but not to exceed 2 years. If the
8 court, using the criteria in s. 814.29 (1) (d), determines that the defendant is unable
9 to pay the judgment because of poverty, the court may not suspend the defendant's
10 operating privilege without first providing the defendant with an opportunity to pay
11 the judgment in installments, taking into account the defendant's income.

12 Suspension under this paragraph shall not affect the power of the court to suspend
13 or revoke under s. 343.30 or the power of the secretary to suspend or revoke the
14 operating privilege. This paragraph does not apply if the judgment was entered
15 solely for violation of an ordinance unrelated to the violator's operation of a motor
16 vehicle.

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

18 345.47 (1) (c) If a court or judge suspends an operating privilege under this
19 section, the court or judge shall immediately take possession of the suspended license
20 and shall forward it to the department together with the notice of suspension, which
21 shall clearly state that the suspension was for failure to pay a forfeiture, plus costs,
22 fees, and surcharges imposed under ch. 814 or for failure to comply with an
23 installment payment plan ordered by the court. The notice of suspension and the
24 suspended license, if it is available, shall be forwarded to the department within 48
25 hours after the order of suspension. If the forfeiture, plus costs, fees, and surcharges

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1 imposed under ch. 814, are paid during a period of suspension, or if the court orders
2 an installment payment plan under sub. (4), the court or judge shall immediately
3 notify the department. Upon receipt of the notice and payment of the reinstatement
4 fee under s. 343.21 (1) (j), the department shall return the surrendered license.

5 **SECTION 4.** 345.47 (1) (d) of the statutes is amended to read:

6 345.47 (1) (d) In addition to or in lieu of imprisonment or suspension under par.
7 (a) or (b), the court may notify the department, in the form and manner prescribed
8 by the department, that a judgment has been entered against the defendant and
9 remains unpaid, or that the defendant has failed to comply with an installment
10 payment plan ordered under this section. The notice shall include the name and
11 last-known address of the person against whom the judgment was entered, the date
12 judgment was entered, the amount of the judgment, the license number of the vehicle
13 involved, certification by the court that a warrant has been served on the person
14 against whom the judgment was entered or, in the case of a judgment entered under
15 s. 345.28, that the person has been notified of the entry of judgment and the judgment
16 remains or installments remain unpaid and the place where the judgment or
17 installments may be paid. If the person subsequently pays the judgment or complies
18 with the installment payment plan, the court shall immediately notify the
19 department of the payment in the form and manner prescribed by the department.

20 **SECTION 5.** 345.47 (4) of the statutes is created to read:

21 345.47 (4) (a) If the operating privilege of a defendant is suspended under this
22 section, the court may terminate that suspension and substitute an installment
23 payment plan for paying the amount of the judgment that takes into account the
24 defendant's income.

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1 (b) If the operating privilege of a defendant is suspended under this section, the
2 court shall terminate that suspension and substitute an installment payment plan
3 for the payment of the amount of the judgment that takes into account the
4 defendant's income if all of the following conditions apply:

5 1. The defendant is unable to pay the judgment in full because of poverty, as
6 that term is used in s. 814.29 (1) (d).

7 2. The defendant has not previously failed to comply with an installment
8 payment plan ordered under this section that takes into account the defendant's
9 income.

10 (c) If the defendant fails to comply with an installment payment plan ordered
11 under this subsection, the court shall reinstate the suspension of the defendant's
12 operating privilege.

13 **SECTION 6.** 800.09 (1) (a) of the statutes is amended to read:

14 800.09 (1) (a) The court may defer payment of any judgment or provide for
15 installment payments. At the time that the judgment is rendered, the court shall
16 inform the defendant, orally and in writing, of the date by which restitution and the
17 payment of the forfeiture, plus costs, fees, and surcharges imposed under ch. 814,
18 must be made, and of the possible consequences of failure to do so in timely fashion,
19 including imprisonment, as provided in s. 800.095, or suspension of the defendant's
20 motor vehicle operating privilege, as provided in par. (c), if applicable. In addition,
21 the court shall inform the defendant, orally and in writing, that the defendant should
22 notify the court if he or she is unable to pay the judgment because of poverty, as that
23 term is used in s. 814.29 (1) (d). If the defendant is not present, the court shall ensure
24 that the information is sent to the defendant by mail. In 1st class cities, all of the

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1 written information required by this paragraph shall be printed in English and
2 Spanish and provided to each defendant.

3 **SECTION 7.** 800.09 (1) (c) of the statutes is amended to read:

4 800.09 (1) (c) The court may suspend the defendant's operating privilege, as
5 defined in s. 340.01 (40), until restitution is made and the forfeiture, assessments
6 and costs are paid, if the defendant has not done so within 60 days after the date the
7 restitution or payments or both are to be made under par. (a) ~~and has not notified the~~
8 ~~court that he or she is unable to comply with the judgment, as provided under s.~~
9 ~~800.095 (4) par. (a), except that the suspension period may not exceed 2 years. If the~~
10 ~~court, using the criteria in s. 814.29 (1) (d), determines that the defendant is unable~~
11 ~~to pay the judgment because of his or her poverty, as that term is used in s. 814.29~~
12 ~~(1) (d), the court may not order the suspension of the defendant's operating privilege,~~
13 ~~except as provided in s. 800.095.~~ The court shall take possession of the suspended
14 license and shall forward the license, along with a notice of the suspension clearly
15 stating that the suspension is for failure to comply with a judgment of the court, to
16 the department of transportation. This paragraph does not apply if the forfeiture is
17 assessed for violation of an ordinance that is unrelated to the violator's operation of
18 a motor vehicle.

19 **SECTION 8.** 800.09 (3) of the statutes is created to read:

20 800.09 (3) JUDGMENT REGARDING OPERATING PRIVILEGE. (a) If the operating
21 privilege of a defendant is suspended under this section or s. 800.095, the court may
22 terminate that suspension and substitute an installment payment plan for paying
23 the amount of the judgment that takes into account the defendant's income.

24 (b) If the operating privilege of a defendant is suspended under this section or
25 s. 800.095, the court shall terminate that suspension and substitute an installment

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1 payment plan for the payment of the amount of the judgment that takes into account
2 the defendant's income if all of the following conditions apply:

3 1. The defendant is unable to pay the judgment in full because of poverty, as
4 that term is used in s. 814.29 (1) (d).

5 2. The defendant has not previously failed to comply with an installment
6 payment plan ordered under this section that takes into account the defendant's
7 income.

8 (c) If the defendant fails to comply with an installment payment plan ordered
9 under this subsection, the court shall reinstate the suspension of the defendant's
10 operating privilege.

11 **SECTION 9.** 800.095 (2) (a) of the statutes is amended to read:

12 800.095 (2) (a) The warrant shall be in the form specified under s. 800.02 (5).

13 The summons shall be in substantially the following form:

14 STATE OF WISCONSIN

15 City/Village/Town

16 State of Wisconsin

17 vs.

18 Defendant(s)

19 THE STATE OF WISCONSIN TO THE DEFENDANT

20 A judgment, a copy of which is attached, has been entered against you for
21 (restitution and) the payment of a civil forfeiture. You were ordered by the court on
22, (year) to (make the following payments:) (perform the following community
23 service work order:) (make the following restitution:).

24 You have failed to comply with that order.

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1 YOU ARE THEREFORE ORDERED to appear before the Honorable in ...
2 Courtroom, at the Courthouse, in the City/Town/Village of at a.m./p.m. TO
3 SHOW THAT YOU ARE UNABLE TO (PAY THE FORFEITURE OR MAKE
4 RESTITUTION FOR GOOD CAUSE OR BECAUSE OF YOUR INDIGENCE
5 POVERTY) (TO COMPLY WITH THE COMMUNITY SERVICE WORK ORDER
6 FOR GOOD CAUSE). If (good cause or your ~~indigence~~ poverty has prevented you
7 from paying the forfeiture or making restitution) (good cause has prevented you from
8 complying with the community service work order), the court will modify the order.

9 IF YOU FAIL TO APPEAR AT THE TIME AND PLACE DESIGNATED
10 ABOVE, AN ORDER FOR COMMITMENT SHALL BE ISSUED AND YOU WILL
11 BE IMPRISONED IN THE JAIL/HOUSE OF CORRECTIONS. IN ADDITION, AN
12 ORDER MAY BE ISSUED TO SUSPEND YOUR MOTOR VEHICLE OPERATING
13 PRIVILEGE.

14 Dated:, (year)

15 Signature:.....

16 (Municipal Court Judge)

17 **SECTION 10.** 800.095 (4) (a) of the statutes is amended to read:

18 800.095 (4) (a) If the defendant appears before the court pursuant to a warrant
19 or summons issued under sub. (1) or the defendant otherwise notifies the court that
20 he or she is unable to comply with the judgment or community service work order,
21 the court shall conduct a hearing. If the defendant failed to pay the forfeiture, make
22 restitution, comply with an ordered installment payment plan, or comply with the
23 work order, the court shall determine if the defendant is unable to comply with the
24 judgment for good cause or because of the defendant's ~~indigence~~ poverty, as that term
25 is used in s. 814.29 (1) (d), or is unable to comply with the work order for good cause.

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1 **SECTION 11.** 800.095 (4) (b) (intro.) of the statutes is amended to read:

2 800.095 (4) (b) (intro.) If the defendant fails to appear before the court for a
3 hearing conducted under par. (a) or if the court determines at a hearing under par.
4 (a) that the failure of the defendant to comply with the judgment is not for good cause
5 or because of the defendant's ~~indigence~~ poverty, as that term is used in s. 814.29 (1)
6 (d), or that the failure of the defendant to comply with the work order is not for good
7 cause, the court shall order one of the following:

8 **SECTION 12.** 800.095 (4) (b) 4. of the statutes is amended to read:

9 800.095 (4) (b) 4. That Except as provided under s. 800.09 (3), that the
10 defendant's operating privilege, as defined in s. 340.01 (40), be suspended until the
11 judgment is complied with, except that the suspension period may not exceed 2 years.
12 This subdivision does not apply if the forfeiture is assessed for violation of an
13 ordinance that is unrelated to the violator's operation of a motor vehicle.

14 **SECTION 13.** 800.095 (4) (c) of the statutes is amended to read:

15 800.095 (4) (c) If the court determines that the failure of the defendant to
16 comply with the judgment is for good cause or because of the defendant's ~~indigence~~
17 poverty, as that term is used in s. 814.29 (1) (d), or that the failure of the defendant
18 to comply with the work order is for good cause, the court may enter an order under
19 par. (b) 2. or 3.

20 **SECTION 14. Initial applicability.**

21 (1) This act first applies to violations committed on the effective date of this
22 subsection.

23

(END)