

## 2001 ASSEMBLY BILL 563

October 11, 2001 - Introduced by Representative GUNDRUM, cosponsored by Senator GEORGE. Referred to Committee on Government Operations.

1     **AN ACT** *to repeal* 863.37 (2) (b) and 863.39 (3) (b); *to renumber and amend*  
2         863.37 (2) (a); *to amend* 177.02 (1), 177.06 (3) (b), 177.07 (1) and (3) (b) 3.,  
3         177.10 (5), 177.12 (1), 177.17 (4) (a) 1., 177.22 (1), 177.22 (4), 177.23 (1), 177.34  
4         (1) to (3), 852.01 (3) and 863.39 (3) (a); *to repeal and recreate* 177.10 (1)  
5         (intro.), 177.10 (1) (a) and (b) and 177.10 (2) and (3); and *to create* 863.39 (3)  
6         (bm) of the statutes; **relating to:** abandoned property reporting requirements;  
7         reporting and delivery of abandoned stock, intangible business interests, and  
8         other intangible property to the state treasurer; the sale of abandoned property;  
9         and creating a procedure for claiming certain escheated funds.

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### *Analysis by the Legislative Reference Bureau*

#### ***Uniform Unclaimed Property Act***

Under Wisconsin's version of the Uniform Unclaimed Property Act (UUPA), certain types of property are presumed to be abandoned if the owner of the property fails to take steps to evidence ownership within a specified time period (dormancy period). For example, a stock or other intangible ownership interest in a business association is generally presumed to be abandoned if the business association pays out at least five dividends or other sums as a result of the ownership interest during

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a five-year period and the dividends or sums are unclaimed by the owner. Current law, however, does not contain a presumption of abandonment applicable to stocks or ownership interests that do not pay dividends or other sums.

With certain limited exceptions, the holder of property that is presumed to be abandoned must report and deliver the property to the state treasurer (treasurer) before November 1 of each year. The report must cover the previous calendar year. Before July 1 of each year, the treasurer must publish a list containing the names of persons appearing to be owners of abandoned property. With certain limited exceptions, the treasurer must sell the property within three years after the date on which the treasurer receives the property. If the property is a security other than a stock (for example, a stock option or an interest in a limited partnership), the treasurer must hold the security for at least one year before selling it, unless it is in the best interest of the state to do otherwise. With certain limited exceptions, the treasurer currently deposits the clear proceeds of the sale of delivered property in the school fund.

Persons claiming an interest in any abandoned or unclaimed property delivered to the treasurer may file a claim with the treasurer to obtain the property. If a claim is allowed, the treasurer generally must deliver the property to the claimant or pay the claimant the amount the treasurer actually received or the net proceeds of the sale of the property, plus certain amounts for dividends or interest accruing to the property.

This bill shortens to three years the dormancy period that applies to a stock or other intangible ownership interest in a business association and changes certain other criteria for determining whether these items of property are presumed to be abandoned. Under this bill, a stock or other ownership interest is presumed abandoned if the owner, for more than three years, fails to claim a dividend, distribution, or other sum payable as a result of the interest and if the business association does not know the location of the owner at the end of this three-year period. The bill also creates a presumption of abandonment applicable to stock and other ownership interests that do not pay dividends or other sums. Thus, under the bill, these ownership interests are presumed abandoned if the owner, for more than three years, fails to communicate with the business association regarding the ownership interest and if the business association does not know the location of the owner at the end of this three-year period. The return of official shareholder notifications or communications by the U.S. postal service as undeliverable is evidence under the bill that the business association does not know the location of the owner.

This bill also creates a new presumption of abandonment applicable to a stock or other ownership interest that is enrolled in a plan that provides for the automatic reinvestment of dividends, distributions, or other sums payable as a result of the ownership interest. Under this bill, these ownership interests are presumed abandoned if more than three years have elapsed since the location of the owner became unknown to the association, as evidenced by the return of official shareholder notifications or communications by the U.S. postal service as undeliverable. Currently, these ownership interests are presumed abandoned only

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if the same owner has certain other ownership interests in the same business association that are also presumed abandoned under the five-year dormancy period.

In addition, this bill changes the default dormancy period for intangible property from five years to three years, changes the dormancy period generally applicable to life insurance proceeds from five years to three years, and changes the requirement that a public sale of abandoned property be held every three years so that the sale must be held every five years (or more frequently, in the discretion of the treasurer). This bill also changes the abandoned property reporting requirements so that the required annual report covers the fiscal year (July 1 to June 30) rather than the calendar year (January 1 to December 31). This bill also grants the treasurer discretion to require a person who fails to timely pay or deliver abandoned property to forfeit interest at the annual rate of 18%. Current law requires the person to pay this interest.

***Escheated property***

Under current law, if there are no heirs of a decedent in an intestate estate (an estate in which the decedent did not leave a will), or if a legacy or distributive share in an estate cannot be paid to the distributee or is not claimed by the distributee within 120 days after entry of the final judgment, the property escheats to the state and is paid or delivered to the treasurer. The treasurer must publish notice at least annually in the official state newspaper with such information as the name of the decedent, the time and place of death, the amount paid to the treasurer, and how a person may make a claim against the escheated property. Within ten years after the notice is published, a person may make a claim against the escheated property by filing a petition with the probate court that settled the estate and by sending copies of the petition to DOR and the attorney general. If the person establishes his or her claim in a court hearing, the court certifies the claim to DOA, which audits the claim; issues an order for any death tax due; and issues an order distributing the estate. The treasurer pays the claim.

The bill changes this procedure somewhat. A person filing a petition with the probate court must send a copy of the petition to the treasurer, instead of to DOR; the court is no longer required to certify a claim to DOA, which is no longer required to audit claims; and the court is no longer required to issue an order for any death tax due.

The bill also provides a new, optional procedure for making a claim against escheated property. The new procedure is similar to a procedure under current law for claiming abandoned property by filing a claim with the treasurer, except that under the new procedure the value of the claimed escheated property may not exceed \$5,000. Rather than filing a petition with the probate court, a person claiming escheated property of \$5,000 or less may, within ten years after publication by the treasurer of notice regarding the estate and the escheated property, file a claim with the treasurer, who must consider the claim within 90 days after filing. If the treasurer allows the claim, the treasurer must provide written notice to and obtain the written consent of the attorney general and file written notice of the allowed claim, as well as the written consent of the attorney general, with the probate court that settled the estate. After the necessary filings, the probate court must issue an

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order requiring the treasurer to pay the claim. If the treasurer does not act on a claim within 90 days after the claim is filed, or if the treasurer disallows a claim, the person filing the claim may file an action in the probate court that settled the estate to establish the claim.

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.** 177.02 (1) of the statutes is amended to read:

2           177.02 (1) Except as otherwise provided in this chapter, all intangible property,  
3 including any income or increment derived from it, less any lawful charges, that is  
4 held, issued or owing in the ordinary course of a holder's business and that has  
5 remained unclaimed by the owner for more than 5 3 years after it became payable  
6 or distributable is presumed abandoned.

7           **SECTION 2.** 177.06 (3) (b) of the statutes, as affected by 2001 Wisconsin Act 16,  
8 is amended to read:

9           177.06 (3) (b) Assess a service charge after ~~December 31~~ June 30 of the calendar  
10 year covered in in which the report concerning that property is required to be filed  
11 under s. 177.17 concerning that property.

12           **SECTION 3.** 177.07 (1) and (3) (b) 3. of the statutes are amended to read:

13           177.07 (1) Funds held or owing under any life or endowment insurance policy  
14 or annuity contract that has matured or terminated are presumed abandoned if  
15 unclaimed for more than 5 3 years after the funds became due and payable as  
16 established from the records of the insurance company holding or owing the funds,  
17 ~~but property described in sub. (3) (b) is presumed abandoned if unclaimed for more~~  
18 ~~than 2 years.~~

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1           **(3)** (b) 3. Neither the insured nor any other person appearing to have an  
2 interest in the policy within the preceding ~~2~~ 3 years, according to the records of the  
3 company, has assigned, readjusted or paid premiums on the policy, subjected the  
4 policy to a loan, corresponded in writing with the company concerning the policy or  
5 otherwise indicated an interest as evidenced by a memorandum or other record on  
6 file prepared by an employee of the company.

7           **SECTION 4.** 177.10 (1) (intro.) of the statutes, as affected by 2001 Wisconsin Act  
8 16, is repealed and recreated to read:

9           177.10 **(1)** (intro.) Except as provided under sub. (5), a stock, shareholding, or  
10 other intangible ownership interest in a business association that is evidenced by  
11 records available to the association is presumed abandoned if all of the following  
12 apply:

13           **SECTION 5.** 177.10 (1) (a) and (b) of the statutes are repealed and recreated to  
14 read:

15           177.10 **(1)** (a) The interest in the association is owned by a person who for more  
16 than 3 years has failed to do any of the following:

17           1. Claim a dividend, distribution, or other sum payable as a result of the  
18 interest.

19           2. Communicate with the association regarding the interest or a dividend,  
20 distribution, or other sum payable as a result of the interest as evidenced by a  
21 memorandum or other record on file with the association prepared by an employee  
22 of the association.

23           (b) The association does not know the location of the owner at the end of the  
24 3-year period under par. (a). The return of official shareholder notifications or

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1 communications by the U.S. postal service as undeliverable is evidence that the  
2 association does not know the location of the owner.

3 **SECTION 6.** 177.10 (2) and (3) of the statutes, as affected by 2001 Wisconsin Act  
4 16, are repealed and recreated to read:

5 177.10 **(2)** This section applies to all of the following:

6 (a) The underlying stock, shareholdings, or other intangible ownership  
7 interests of an owner.

8 (b) Any stock, shareholdings, or other intangible ownership interest of an  
9 owner when the business association is in possession of the certificate or other  
10 evidence of ownership.

11 (c) The stock, shareholdings, or other intangible ownership interests of  
12 dividend-paying business associations and business associations that do not pay  
13 dividends, whether or not the interest is represented by a certificate.

14 **(3)** The business association is the holder of any property presumed abandoned  
15 under this section.

16 **SECTION 7.** 177.10 (5) of the statutes, as affected by 2001 Wisconsin Act 16, is  
17 amended to read:

18 177.10 **(5)** This chapter section does not apply to any stock or other intangible  
19 ownership interest enrolled in a plan that provides for the automatic reinvestment  
20 of dividends, distributions, or other sums payable as a result of the interest unless  
21 ~~the records available to the administrator of the plan show, with respect to any~~  
22 ~~intangible ownership interest not enrolled in the reinvestment plan, that the owner~~  
23 ~~has not within 5 years communicated in any manner specified under sub. (1) more~~  
24 ~~than 3 years have elapsed since the location of the owner became unknown to the~~  
25 ~~association, as evidenced by the return of official shareholder notifications or~~

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1 communications by the U.S. postal service as undeliverable, as provided under this  
2 subsection. The 3-year period from the return of official shareholder notifications  
3 or communications begins at the earlier of the return of the 2nd of those notifications  
4 or communications or the date on which the holder discontinues mailings to the  
5 owner.

6 **SECTION 8.** 177.12 (1) of the statutes is amended to read:

7 177.12 (1) Intangible property and any income or increment derived from it  
8 held in a fiduciary capacity for the benefit of another person is presumed abandoned  
9 unless the owner, within 5 3 years after it has become payable or distributable, has  
10 increased or decreased the principal, accepted payment of principal or income,  
11 communicated concerning the property or otherwise indicated an interest as  
12 evidenced by a memorandum or other record on file prepared by the fiduciary.

13 **SECTION 9.** 177.17 (4) (a) 1. of the statutes, as affected by 2001 Wisconsin Act  
14 16, is amended to read:

15 177.17 (4) (a) 1. Before November 1 of each year, each holder shall file a report  
16 covering the ~~previous calendar year~~ 12 months preceding July 1 of that year. On  
17 written request by any person required to file a report, the administrator may extend  
18 the deadline established in this paragraph.

19 **SECTION 10.** 177.22 (1) of the statutes, as affected by 2001 Wisconsin Act 16,  
20 is amended to read:

21 177.22 (1) Except as provided in subs. (2) and (4), the administrator, ~~within 3~~  
22 ~~years after the receipt of abandoned property,~~ shall sell it abandoned property  
23 delivered to the administrator under s. 177.06 (4) and 177.17 (4) (a) 2. to the highest  
24 bidder at public sale in the city, village or town in this state which, in the judgment  
25 of the administrator, affords the most favorable market for the property. The sale

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1 shall be held whenever the administrator deems appropriate, but at least once every  
2 5 years. The administrator may decline the highest bid and reoffer the property for  
3 sale if, in his or her judgment, the bid is insufficient. If the administrator determines  
4 that the probable cost of sale exceeds the value of the property, it need not be offered  
5 for sale. Any sale held under this section shall be preceded by the publication of one  
6 notice, at least 3 weeks in advance of sale, in a newspaper of general circulation in  
7 the county in which the property is to be sold.

8 **SECTION 11.** 177.22 (4) of the statutes, as affected by 2001 Wisconsin Act 16,  
9 is amended to read:

10 177.22 (4) Unless the administrator determines that it is in the best interest  
11 of this state to do otherwise, he or she shall hold all securities for at least one year  
12 before selling them. No person has any claim under this chapter against ~~this state,~~  
13 the holder, any transfer agent, registrar or other person acting for or on behalf of a  
14 holder for any appreciation in the value of the ~~property~~ securities occurring after  
15 ~~delivery by~~ the date on which the holder delivers the securities to the administrator.  
16 Except as provided under s. 177.21, no person has any claim under this chapter  
17 against this state for any appreciation in the value of the securities occurring after  
18 the date on which the holder delivers the securities to the administrator.

19 **SECTION 12.** 177.23 (1) of the statutes, as affected by 2001 Wisconsin Act 16,  
20 is amended to read:

21 177.23 (1) Except as provided in sub. (2), the administrator shall deposit in the  
22 school fund all funds received under this chapter, including the clear proceeds from  
23 the sale of abandoned property under s. 177.22. Before making the deposit, the  
24 administrator shall record the name and last-known address of each person  
25 appearing from the holders' reports to be entitled to the property and the name and



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1 last-known address of each insured person or annuitant and beneficiary and, with  
2 respect to each policy or contract listed in the report of an insurance company, its  
3 number, the name of the company and the amount due. The information recorded  
4 by the administrator under this subsection is not available for inspection or copying  
5 under s. 19.35 (1) until ~~24~~ 12 months after payment or delivery of the property is due  
6 under s. 177.17 (4) (a) 2.

7 **SECTION 13.** 177.34 (1) to (3) of the statutes are amended to read:

8 177.34 (1) A person who fails to pay or deliver property within the time  
9 prescribed by this chapter ~~shall pay the administrator~~ may be required by the  
10 administrator to forfeit an amount of interest, calculated at the annual rate of 18%,  
11 on the property or value thereof from the date the property should have been paid  
12 or delivered.

13 (2) A person who wilfully fails to file a report or perform any other duty  
14 required under this chapter ~~is subject to a forfeiture of~~ may be required by the  
15 administrator to forfeit not less than \$100 for each day the report is withheld or the  
16 duty is not performed, but not more than \$5,000.

17 (3) A person who wilfully fails to pay or deliver property to the administrator  
18 as required under this chapter ~~is subject to a forfeiture~~ may be required by the  
19 administrator to forfeit an amount equal to 25% of the value of the property that  
20 should have been paid or delivered.

21 **SECTION 14.** 852.01 (3) of the statutes is amended to read:

22 852.01 (3) ESCHEAT. If there are no heirs of the decedent under subs. (1) and  
23 (2), the net estate escheats to the state to be added to the capital of the school fund.  
24 Claims on amounts escheated to the state may be made under s. 863.39 (3) within  
25 10 years after the date of publication under s. 177.18 (2m). If a claimant resides

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1 outside the United States or its territories, the court may require the personal  
2 appearance of the claimant before the court.

3 **SECTION 15.** 863.37 (2) (a) of the statutes is renumbered 863.37 (2) and  
4 amended to read:

5 863.37 (2) Whenever payment of a legacy or a distributive share cannot be  
6 made to the person entitled to payment or it appears that the person may not receive  
7 or have the opportunity to obtain payment, the court may, on petition of a person  
8 interested or on its own motion, order that the funds be paid or delivered to the state  
9 treasurer for deposit as provided under s. 177.23. Claims on the funds may be made  
10 under s. 863.39 (3) within 10 years after the date of publication under s. 177.18 (2m).  
11 When a claimant to the funds resides outside the United States or its territories the  
12 court may require the personal appearance of the claimant before the court.

13 **SECTION 16.** 863.37 (2) (b) of the statutes is repealed.

14 **SECTION 17.** 863.39 (3) (a) of the statutes is amended to read:

15 863.39 (3) (a) Within 10 years after the date of publication under s. 177.18 (2m),  
16 any person claiming any amount deposited under sub. (1) or under s. 852.01 (3) or  
17 863.37 (2) may file in the probate court in which the estate was settled a petition  
18 alleging the basis of his or her claim. The court shall order a hearing upon the  
19 petition, and 20 days' notice of the hearing and a copy of the petition shall be given  
20 by the claimant to the ~~department of revenue~~ state treasurer and to the attorney  
21 general, who may appear for the state at the hearing. If the claim is established it  
22 shall be allowed without interest, but including any increment which may have  
23 occurred on securities held, ~~and the court shall so certify to the department of~~  
24 ~~administration, which shall audit the claim.~~ The state treasurer shall pay the claim  
25 out of the appropriation under s. 20.585 (1) (j). ~~Before issuing the order distributing~~

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1 ~~the estate, the court shall issue an order determining the death tax due, if any.~~ If real  
2 property has been adjudged to escheat to the state under s. 852.01 (3) the probate  
3 court ~~which~~ that made the adjudication may adjudge at any time before title has been  
4 transferred from the state that the title shall be transferred to the proper owners  
5 under this subsection.

6 **SECTION 18.** 863.39 (3) (b) of the statutes is repealed.

7 **SECTION 19.** 863.39 (3) (bm) of the statutes is created to read:

8 863.39 **(3)** (bm) 1. Notwithstanding par. (a), any person claiming an amount  
9 deposited under sub. (1) or under s. 852.01 (3) or 863.37 (2) that does not exceed  
10 \$5,000 may, within 10 years after the date of publication under s. 177.18 (2m), file  
11 with the state treasurer a claim on a form prescribed by the state treasurer and  
12 verified by the claimant.

13 2. The state treasurer shall consider each claim within 90 days after it is filed  
14 and may refer any claim to the attorney general for an opinion. For each claim  
15 referred, the attorney general shall advise the state treasurer either to allow it or to  
16 deny it in whole or in part. The state treasurer shall give written notice to the  
17 claimant if the claim is denied in whole or in part. The notice shall be given by  
18 mailing it to the last address, if any, stated in the claim as the address of the claimant  
19 to which notices are to be sent. If no address for notices is stated in the claim, the  
20 notice shall be mailed to the last address, if any, stated in the claim as the address  
21 of the claimant. No notice of denial need be given if the claim fails to state either the  
22 last address to which notices are to be sent or the address of the claimant.

23 3. If the state treasurer determines that the claim should be allowed, the state  
24 treasurer shall provide written notice to, and obtain the written consent of, the  
25 attorney general. The state treasurer shall file with the probate court in which the

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1 estate was settled written notice of the allowed claim, as well as the written consent  
2 of the attorney general. The probate court shall issue an order requiring the state  
3 treasurer to pay the claim. The state treasurer shall pay the claim, without interest  
4 but including any increment that may have occurred on securities held, out of the  
5 appropriation account under s. 20.585 (1) (j).

6 4. A person aggrieved by a decision of the state treasurer under this paragraph,  
7 or whose claim has not been acted upon by the state treasurer within 90 days after  
8 its filing under subd. 1., may bring an action to establish the claim in the probate  
9 court in which the estate was settled. The action shall be brought within 90 days  
10 after the decision of the state treasurer or within 180 days after the filing of the claim  
11 if the state treasurer has failed to act on it. If the person establishes the claim in the  
12 action, the court shall award the person costs and reasonable attorney fees against  
13 the state treasurer.

**SECTION 20. Nonstatutory provisions.**

14 (1) REPORT OF ABANDONED PROPERTY. Notwithstanding section 177.17 (4) (a) 1.  
15 of the statutes, as affected by this act, if this subsection takes effect after October 31,  
16 2001, the report due under section 177.17 (4) (a) 1. of the statutes, as affected by this  
17 act, by November 1, 2002, shall cover the period from January 1, 2000 to June 30,  
18 2002. If this subsection takes effect on or before October 31, 2001, the report due  
19 under section 177.17 (4) (a) 1. of the statutes, as affected by this act, by November  
20 1, 2001, shall cover the period from January 1, 2000 to June 30, 2001.

22 (END)