

2011 DRAFTING REQUEST

Bill

Received: 11/17/2010

Received By: tkuczens

Wanted: As time permits

Companion to LRB:

For: Glenn Grothman (608) 266-7513

By/Representing: himself

May Contact:

Drafter: tkuczens

Subject: Courts - civil procedure

Addl. Drafters:

Extra Copies:

Submit via email: YES

Requester's email: Sen.Grothman@legis.wisconsin.gov

Carbon copy (CC:) to: tracy.kuczenski@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

change action to establish claim under Unclaimed Property Act

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/P1	tkuczens 11/24/2010	kfollett 11/30/2010	rschluet 11/30/2010	_____	mbarman 11/30/2010		
	tkuczens 10/28/2011	kfollett 10/31/2011		_____			
/1	tkuczens 11/08/2011	mduchek 11/08/2011	jfrantze 10/31/2011	_____	sbasford 10/31/2011 mbarman 11/08/2011	ggodwin 11/15/2011	

FE Sent For:

None

<END>

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By TKK

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/1	tkuczens 11/08/2011	mduchek 11/08/2011	jfrantze 10/31/2011	_____	sbasford 10/31/2011		
				_____	mbarman 11/08/2011		

e-mail only

FE Sent For:

<END>

2011 DRAFTING REQUEST

Bill

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Received By: tkuczens

Wanted: As time permits

Companion to LRB:

For: Legislative Council - LRC 266-9791

By/Representing: Laura Rose

May Contact:

Drafter: tkuczens

Subject: Courts - civil procedure

Addl. Drafters:

Extra Copies:

Submit via email: YES

Requester's email: laura.rose@legis.wisconsin.gov

Carbon copy (CC:) to: tracy.kuczenski@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

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Instructions:

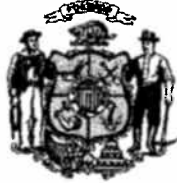
See attached

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/?	tkuczens	1 P/K/f 11/30		_____	_____		

FE Sent For:

<END>



Dawn Marie Sass
State Treasurer of Wisconsin

Mailing Address:
P.O. Box 7871
Madison, WI 53707-7871

Phone: 608/266-1714
Fax: 608/266-2647
E-Mail:
OSTofficeofthestatetreasurer@wi.gov

TO: Laura Rose- Deputy Director, Joint Legislative Council

FROM: Dawn Marie Sass- Wisconsin State Treasurer

RE: Law Revision Committee Proposals

DATE: October 20, 2010

Thank you for the opportunity to submit a proposal outlining minor changes to Wisconsin Statutes our agency believes would improve the administration of the programs the Office of the State Treasurer (OST) oversees.

OST would like to submit the following two changes to the Unclaimed Property Act- Chapter 177 of the Wisconsin Statutes:

Section 177.26 WI Stats. – Action to Establish Claim

Current Language:

A person aggrieved by a decision of the administrator or whose claim has not been acted upon within 90 days after its filing may bring an action to establish the claim in the circuit court, naming the administrator as a defendant. The action shall be brought within 90 days after the decision of the administrator or within 180 days after the filing of the claim if the administrator has failed to act on it. If the person establishes the claim in an action against the administrator, the court shall award the person costs and reasonable attorney fees.

Proposed Language:

may petition for j.r. of the decision under s. 227.52 in the manner provided in s. 227.52 may seek judicial review exclusively as provided in s. 227.52, except that...

A person aggrieved by a decision of the administrator or whose claim has not been acted upon within 90 days after its filing may seek judicial review under s. 227.52, Stats. ~~The provision of Chapter 227 shall apply to the proceedings,~~ except that the petitioner shall have 90 days from the issuance of the decision of the administrator, or 180 days after the filing of the claim if the administrator has failed to act, to institute the proceedings for review.

Justification:

The current provision does not deal adequately with review of decisions involving complex claims and the presence of multiple competing claimants. Chapter 227 comprehensively provides for such review, including (1) provision to ensure that all claimants are served with a notice of an action for review and given an opportunity to participate; (2) allows other "interested parties" to participate in the proceedings; (3) sets out the method of service; (4) requires the Administrator to provide a compiled record to the court; and (5) provides for attorney's fees only when the Administrator's position was not substantially justified, not simply if a court disagrees with the Administrator's decision.

Fiscal Impact

This change has no budgetary or financial impact.





PI
kgf
RMRun

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

in 11/24/10

Gen

1

AN ACT ...; relating to: procedures for establishing a claim (suggested as remedial legislation by the office of the state treasurer).

2

Analysis by the Legislative Reference Bureau

it
Under current law, a person may claim an interest in abandoned, intangible property by filing a claim with the state treasurer. Intangible property is presumed to be abandoned if it is held, issued, or owing in the ordinary course of a holder's business and it has remained unclaimed by the owner for more than 5 years after it became payable or distributable. Current law requires the state treasurer to consider each claim within 90 days after the claim is filed. The state treasurer may also refer a claim to the attorney general for an opinion on whether to either allow the claim or deny the claim in whole or part. in five

X
A person aggrieved by a decision of the state treasurer or whose claim has not been acted upon within 90 days (claimant) may, under current law, bring an action to establish the claim in circuit court. If, in circuit court, the claimant establishes the claim against the state treasurer, the court must award costs and reasonable attorney fees to the claimant.

X
This bill permits a claimant to petition for judicial review of the decision or inaction of the state treasurer under Chapter 227 of the Wisconsin Statutes; Chapter 227 establishes uniform procedures for the review of administrative actions and decisions. The bill also eliminates the mandatory award of costs and reasonable attorneys fees to a claimant who prevails against the state treasurer in circuit court.

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

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

X LAW REVISION COMMITTEE PREFATORY NOTE: ^{Office of the} This bill is a remedial legislation proposal, requested by the State Treasurer and introduced by the Law Revision Committee under s. 13.83 (1) (c) 4. and 5., stats. After careful consideration of the various provisions of the bill, the Law Revision Committee has determined that this bill makes minor substantive changes in the statutes, and that these changes are desirable as a matter of public policy.

1 SECTION 1. 177.26 of the statutes is amended to read:

2 **177.26 Action to establish claim.** A person aggrieved by a decision of the
3 administrator or whose claim has not been acted upon within 90 days after its filing
4 may bring an action to establish the claim in the circuit court, naming the
5 administrator as a defendant. The action shall be brought petition for judicial review
6 of the decision or of the claim under s. 227.52, except that petitions for review shall
7 be served and filed within 90 days after the decision of the administrator or within
8 180 days after the filing of the claim if the administrator has failed to act on it. ~~If the~~
9 ~~person establishes the claim in an action against the administrator, the court shall~~
10 ~~award the person costs and reasonable attorney fees.~~

***NOTE: In the Justification portion of the drafting instructions for this bill, the state treasurer notes, among other things, that judicial review under chapter 227 would "provide for attorney's fees only when the Administrator's position was not substantially justified, not simply if a court disagrees with the Administrator's decision" (emphasis supplied).

Although the state treasurer did not include a statutory reference for this statement, I assume the state treasurer is referring to the provisions of s. 227.485, which governs costs to certain prevailing parties. Is that correct? If not, please advise. If so, it is not clear that the provisions of s. 227.485 will apply to petitions for judicial review authorized by s. 177.26.

X Section 227.485, stats., governs costs, including attorney fees, awarded by a hearing examiner in "any contested case." See s. 227.485 (3) and (5). This section also governs judicial review of a final decision made by the hearing examiner in such a contested case in which such costs are awarded. See s. 227.485 (6). Section 227.485 (2) (a), stats., defines hearing examiner to mean "the agency or hearing examiner conducting the hearing." Contested case is defined under s. 227.01 (3), stats.

✓
In contrast, s. 177.26, as amended by this bill, authorizes a person to obtain judicial review of a decision of the Administrator; specifically, a decision not to act on a claim or a decision to deny a claim. There is no right to a contested case hearing granted under chapter 177, nor is there any requirement that a contested case hearing be held prior to a person seeking judicial review under s. 177.26 (currently and as amended by this bill). In fact, there is no reference to "hearing" or "contested case" at all in chapter 177. For these reasons, I don't believe the "substantially justified" standard for awarding costs and attorneys fees under s. 227.684 will apply to petitions for judicial review under s. 177.52. x

It would be possible to import this "substantially justified" standard into s. 177.26. Please let me know if you would like me to do so. 485 26

***NOTE: The Proposed Language offered in the drafting instructions does not include the following sentence in current law, s. 177.26, stats.:

"If the person establishes the claim in an action against the administrator, the court shall award the person costs and reasonable attorney fees."

I have stricken this sentence in this draft. Because the provisions of s. 227.485 ✓
not apply to petitions for review authorized under s. 177.26, you may wish to retain some language governing the award of costs or attorneys fees in actions brought under s. 177.26.

History: 1983 a. 408.

1

(END)

Kuczenski, Tracy

From: Rose, Laura
Sent: Friday, October 28, 2011 8:43 AM
To: Kuczenski, Tracy
Subject: FW: 11/3 Law Revision meeting
Attachments: 11-0525P1.pdf

Hi, Tracy,

Could you please redraft this in accordance with the OST's direction to import the "substantially justified" standard for awarding costs and fees from s. 277.485 into s. 177.26?

Thanks,

Laura

Laura D. Rose, Deputy Director

Wisconsin Legislative Council

One East Main Street, Suite 401

PO Box 2536

Madison, WI 53701-2536

tel: 608.266.9791

fax: 608.266.3830

laura.rose@legis.wisconsin.gov

From: Celentani, Mary E - OST [<mailto:Mary.Celentani@Wisconsin.gov>]
Sent: Friday, October 28, 2011 8:30 AM
To: Rose, Laura
Subject: RE: 11/3 Law Revision meeting

Yes please

Mary Celentani
Unclaimed Property Administrator
Office of State Treasurer
www.statetreasury.wi.gov

10/28/2011

608.267.2208 ph
608.261.6799 fx

From: Rose, Laura [mailto:Laura.Rose@legis.wisconsin.gov]
Sent: Friday, October 28, 2011 8:20 AM
To: Celentani, Mary E - OST
Subject: RE: 11/3 Law Revision meeting

Hi Mary

I'll talk to the drafter and see if we can get this taken care of. To be clear, your request is that the "substantially justified" standard for awarding costs and fees should be imported from s. 277.485 into s. 177.26, correct?

Laura

Laura D. Rose, Deputy Director

Wisconsin Legislative Council

One East Main Street, Suite 401

PO Box 2536

Madison, WI 53701-2536

tel: 608.266.9791

fax: 608.266.3830

laura.rose@legis.wisconsin.gov

From: Celentani, Mary E - OST [mailto:Mary.Celentani@Wisconsin.gov]
Sent: Monday, October 24, 2011 11:56 AM
To: Rose, Laura
Subject: RE: 11/3 Law Revision meeting

Laura, I just noticed a question in the draft for the amendment to 177.26 asks about including "substantially justified" to the proposed language—is it too late to have this added? Thanks.

Mary Celentani
Unclaimed Property Administrator
Office of State Treasurer
www.statetreasury.wi.gov

10/28/2011

608.267.2208 ph
608.261.6799 fx

From: Rose, Laura [<mailto:Laura.Rose@legis.wisconsin.gov>]
Sent: Monday, October 24, 2011 9:50 AM
To: Celentani, Mary E - OST; Feldt, Scott - OST
Cc: Sappenfield, Anne - LEGIS; Young, Tracey - LEGIS
Subject: 11/3 Law Revision meeting

Hi Mary and Scott,

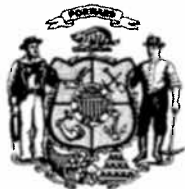
Just wanted to give you a "heads up" that the Law Revision Committee plans to meet on Thursday, 11/3 at 8:30. Your agency's proposed legislation will be on the agenda. I will send you a copy of the notice as soon as it is available. Your agency should have the appropriate person or persons available at the meeting to answer any questions that the members may have.

Thanks, and please call or email me with any questions.

Laura

Laura D. Rose, Deputy Director
Wisconsin Legislative Council
One East Main Street, Suite 401
PO Box 2536
Madison, WI 53701-2536
tel: 608.266.9791
fax: 608.266.3830
laura.rose@legis.wisconsin.gov

10/28/2011



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-0525/P1

TKK:kjf:rs

RMN12

inset

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

10/28/11
wanted for
8:30 hearing on
11/3/11

Regen

- 1 AN ACT to amend 177.26 of the statutes; relating to: procedures for establishing
- 2 a claim (suggested as remedial legislation by the Office of the State Treasurer).

Analysis by the Legislative Reference Bureau

Under current law, a person may claim an interest in abandoned, intangible property by filing a claim with the state treasurer. Intangible property is presumed to be abandoned if it is held, issued, or owing in the ordinary course of a holder's business and it has remained unclaimed by the owner for more than five years after it became payable or distributable. Current law requires the state treasurer to consider each claim within 90 days after the claim is filed. The state treasurer may also refer a claim to the attorney general for an opinion on whether to either allow the claim or deny the claim in whole or in part.

A person aggrieved by a decision of the state treasurer or whose claim has not been acted upon within 90 days (claimant) may, under current law, bring an action to establish the claim in circuit court. If, in circuit court, the claimant establishes the claim against the state treasurer, the court must award costs and reasonable attorney fees to the claimant.

This bill permits a claimant to petition for judicial review of the decision or inaction of the state treasurer under chapter 227 of the statutes; chapter 227 establishes uniform procedures for the review of administrative actions and decisions. The bill also eliminates the mandatory award of costs and reasonable attorneys fees to a claimant who prevails against the state treasurer in circuit court.

Inset analysis

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SECTION 1. 177.26 of the statutes is amended to read:

177.26 Action to establish claim. A person aggrieved by a decision of the administrator or whose claim has not been acted upon within 90 days after its filing may bring an action to establish the claim in the circuit court, naming the administrator as a defendant. The action shall be brought petition for judicial review of the decision or of the claim under s. 227.52, except that petitions for review shall be served and filed within 90 days after the decision of the administrator or within

180 days after the filing of the claim if the administrator has failed to act on it. If the person establishes the claim in an action against the administrator, the court shall award the person costs and reasonable attorney fees.

***NOTE: In the Justification portion of the drafting instructions for this bill, the state treasurer notes, among other things, that judicial review under chapter 227 would "provide for attorney's fees only when the Administrator's position was not substantially justified, not simply if a court disagrees with the Administrator's decision" (emphasis supplied).

Although the state treasurer did not include a statutory reference for this statement, I assume the state treasurer is referring to the provisions of s. 227.485, which governs costs to certain prevailing parties. Is that correct? If not, please advise. If so, it is not clear that the provisions of s. 227.485 will apply to petitions for judicial review authorized by s. 177.26.

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plain
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9
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Insert
2-10

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2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0525/P1ins
TKK:kjf:rs

no ff **Insert analysis**

in those cases in which the circuit court determines the state treasurer was substantially justified in taking its position or in which special circumstances exist that would make the award of costs and attorney fees unjust

Insert 2-10

no ff

incurred in connection with the petition for judicial review, unless the court finds that the administrator was substantially justified in taking its position or that special circumstances exist that would make the award unjust

Godwin, Gigi

From: Julian, Jamie
Sent: Tuesday, November 15, 2011 1:47 PM
To: LRB.Legal
Subject: Draft Review: LRB 11-0525/1 Topic: change action to establish claim under Unclaimed Property Act

Please Jacket LRB 11-0525/1 for the SENATE.