

State of Misconsin 2011 - 2012 LEGISLATURE



2011 SENATE BILL 294

November 18, 2011 – Introduced by Senator GROTHMAN, cosponsored by Representative KRAMER. Referred to Committee on Judiciary, Utilities, Commerce, and Government Operations.

1 AN ACT to amend 177.26 of the statutes; relating to: procedures for establishing

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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 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.

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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:

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is a remedial legislation proposal, requested by the Office of 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.

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 $\mathbf{5}$ 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 be served and filed within 90 days after the decision of the administrator or within 7 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 award the person costs and reasonable attorney fees incurred in connection with the 10 11 petition for judicial review, unless the court finds that the administrator was substantially justified in taking its position or that special circumstances exist that 12would make the award unjust. 13

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(END)