

TITLE XXVII.

Actions and Proceedings in Special Cases.

CHAPTER 285.

ACTIONS AGAINST STATE.

285.01 Actions against state; undertaking. | 285.05 Compensation for innocent convicts.
285.04 Judgment, how paid.

285.01 Actions against state; undertaking. Upon the refusal of the legislature to allow a claim against the state the claimant may commence an action against the state by serving the summons and complaint on the attorney-general or by leaving copies at his office and by filing with the clerk of court a bond, not exceeding one thousand dollars, with two or more sureties, to be approved by the attorney-general, to the effect that he will indemnify the state against all costs that may accrue in such action and pay to the clerk of court all costs, in case he shall fail to obtain judgment against the state. [1935 c. 483 s. 2]

Revisor's Note, 1935: The district attorney must defend in the courts of his county, 59.47 (1). The attorney-general defends in supreme court and, when asked by the governor, in other courts, 14.53. Actions against the state are triable in Dane county, 261.01 (9). (Bill No. 75 S. s. 2)

In actions against the state, failure to file the statutory bond is jurisdictional. *State v. Reis*, 230 W 683, 284 NW 580.

This section, permitting the bringing of an

action against the state on the refusal of the legislature to allow a "claim" applies only as to claims rendering the state a debtor and not to equitable claims or to tort claims, and does not authorize an action against the state for personal injuries sustained by a spectator at the University stadium as the result of alleged negligence of officers or agents of the state. *Holzworth v. State*, 238 W 63, 298 NW 163.

285.02, 285.03 [Repealed by 1935 c. 483]

285.04 Judgment, how paid. No execution shall issue against the state on any judgment, but whenever a final judgment against the state shall have been obtained in any such action the clerk shall make and furnish to the secretary of state a duly certified transcript of such judgment; and the secretary of state shall thereupon audit the amount of damages and costs therein awarded, and the same shall be paid out of the state treasury.

285.05 Compensation for innocent convicts. (1) The governor and the director of the state department of public welfare constitute a commission for the relief of innocent persons who have been convicted of crime.

(2) Any person who after May 10, 1913 shall serve a term of imprisonment under conviction for a crime against the state, of which crime he claims to be innocent, or any person who has been pardoned on the ground of innocence and whose imprisonment shall thereby be shortened, may petition the commission for compensation for such wrongful imprisonment.

(3) After hearing the evidence on the petition, the commission shall find either that it is clear beyond a reasonable doubt that the petitioner was innocent of the crime for which he suffered imprisonment, or that it is not clear beyond a reasonable doubt that he was innocent. Upon the hearing the record of the trial in which the conviction was had may be presented to the commission for the purpose of enabling it to understand the situation, but the finding of the commission shall be based only on such evidence or circumstances as have been discovered or have arisen since conviction.

(4) If the commission shall find that the petitioner was innocent and that he did not by his act or failure to act contribute to bring about the conviction and imprisonment for which he seeks compensation, the commission shall find the amount which will compensate him for his wrongful imprisonment but not to exceed five thousand dollars and at a rate of compensation not greater than fifteen hundred dollars per year for the imprisonment. If the commission shall find that the amount it is able to award will not be an adequate compensation it shall report an amount to the legislature which it shall deem adequate.

(5) The commission shall keep a complete record of its proceedings in each case and of all the evidence. The findings and the award of the commission shall be subject to review as provided in chapter 227. [1935 c. 483 s. 5; 1941 c. 301; 1943 c. 375 s. 94]

285.06 [Renumbered section 227.26 by 1943 c. 375 s. 2]