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Testimony on AB 752 by Peter Barca, Secretary
Assembly State Affairs Committee
January 22, 2020

Chairman Swearingen, Ranking Member Sinicki, and members of the Assembly Committee on State Affairs: I am honored that you have brought AB 752 forward today as this bill represents an important and necessary modernization of our unclaimed property law.

Wisconsin's unclaimed property law dates back to 1983 when Wisconsin passed a version of the Uniform Unclaimed Property Act of 1981 in 1983 Wis. Act 408. There was an update to the law in 1995, but has mostly otherwise gone unchanged, with one key exception which I will highlight. However, Business practices and technology have changed significantly since 1981, and 1995 and our unclaimed property law needs to be updated in order to allow the Department to utilize best practices now made available by technology.

The one exception I would like to highlight is Representative August's bill, enacted in April of 2014, 2013 WI Act 308, which enabled more proactive outreach and more streamlined return methods to property owners. In 2019 alone, the updates in the bill enabled \$2.2M to be automatically returned to owners.

We believe those changes were among the main drivers behind Wisconsin's having the 3rd highest state rate in the country for returning unclaimed property for the years 2013-2017 by the Unclaimed Property Professionals Organization. During those years, we returned \$156M of the \$240M, or 65% of the property received.

Our goal with this legislation is similar – to modernize our processes, use tools that technology has facilitated and update our business processes to more effectively identify unclaimed property and more efficiently reunite owners with their property.

The National Conference of Commissioners on Uniform State Laws, which oversees Uniform Unclaimed Property Laws created a Revised Uniform Unclaimed Property Act of 2016. AB 752 conforms Wisconsin law to many provisions of RUUPA, which provides clarity to businesses and protections to individuals.

AB 752 modernizes Wisconsin Chapter 177 in the following ways:

- Creates a voluntary disclosure program for holders.
- Prescribes confidentiality provisions for information obtained from holders and claimants.
- Eliminates interest and revises penalties for holders that do not report or deliver property.

- Authorizes DOR to use any tax records to identify owners of unclaimed property and process claims.
- Explains what is required of a holder to contact owner (due diligence) before turning property over to DOR.
- Clarifies examination authority of holder records and provides audit appeal rights.
- Requires holders to report tax ID numbers, if known, so that owners can be better identified for return of property.
- Clarifies/Expands the current "business to business" exemption.
- Clarifies existing law with respect to a claimant's requirement to substantiate or prove their claim.
- Provides for setoffs for other state and municipal debts prior to paying claims.
- Provides authority for DOR to collect amounts paid to a wrongful owner.
- Decreases the abandonment period for money orders from 7 years to 5 years.
- Decreases the abandonment period for certain insurance policies from 5 years to 3 years.
- Clarifies that virtual currency is property subject to unclaimed property laws, but only if the holder can convert to U.S. currency prior to delivery to DOR.
- Clarifies the information a holder must provide in a notice to an apparent owner prior to reporting and delivery of the property to this state.
- Reduces the maximum fee a locator service may charge from 20% to 10% of the actual value of the property recovered.

As you can clearly see, AB 752 is a common-sense piece of legislation that will help the Department of Revenue reunite more property to citizens of Wisconsin and their heirs. We appreciate the interest of the bill's authors, Representative August and Senator Petrowski, as well as the cosponsors of this legislation.

Thank you again for hearing this testimony. I would be happy to offer myself and the staff I have brought with me to answer any questions you may have at this time.

Overhaul to Chapter 177, Unclaimed Property Act

Introduction

Wisconsin's current unclaimed property laws are modeled after the Uniform Unclaimed Property Act of 1981 and have remained mostly unchanged since 1983 Wis. Act 408. Since business practices and technology has changed significantly since 1981, Wisconsin's unclaimed property laws are not protecting Wisconsin residents (or former residents) to the fullest extent possible.

The National Conference of Commissioners on Uniform State Laws oversees Uniform Unclaimed Property Laws. Since 1981, the Commissioners updated the Uniform Act in 1995 and 2016. The 2016 Uniform Act is called the Revised Uniform Unclaimed Property Act (RUUPA). This bill conforms Wisconsin law to many provisions of RUUPA, which provides clarity to businesses and protections to individuals, including:

- Increasing the amount of unclaimed property reported and paid to DOR through voluntary disclosure by holders,
- Increasing the amount of property returned to owners,
- Decreasing the time required to process claims, and
- Providing safeguards for confidential information provided by claimants and holders

Changes from Current Law to Model RUUPA

The most impactful changes from current law that were modeled in some aspect after RUUPA include:

Confidentiality – Current law does not contain confidentiality provisions with respect to information DOR receives from holders and claimants. This bill prescribes confidentiality provisions similar to those currently in place with respect to tax records.

The bill also limits access to holder reports and claims for unclaimed property, and prohibits DOR employees from browsing or disclosing of such reports and claims.

Holder Appeal Rights and Obligations – Current law does not provide appeal rights for holders that undergo an examination of records. The bill provides procedures by which a holder may appeal a DOR audit determination of the holder's liability for unclaimed property. The appeal procedures are similar to those existing for a taxpayer who has been audited for income, franchise, or sales and use taxes.

The bill authorizes DOR to use any information available to determine the amount of unclaimed property to be remitted to DOR for any reporting period, including the use of estimates in the

case of inadequate records. It also provides specific authority to collect unpaid balances from holders similar to the methods allowed for collection of unpaid taxes.

The bill requires holders to file reports electronically and to retain records for 10 years. The bill also authorizes DOR to require any person to file a report, even if the person believes it is not in possession of any property reportable or deliverable.

Business to Business Exemption – Current law provides that a "credit balance" issued by a business to another business is not reportable as unclaimed property to this state. This bill clarifies the exemption to provide that any payment or credit shown on the books and records of a business association owed to another business association in the ordinary course of business is not reportable to this state.

Abandonment Periods – The presumption of abandonment for most properties will remain unchanged from current law. The exceptions are for money orders and certain insurance policies. This bill reduces the abandonment period for money orders from 7 years to 5 years to be consistent with the other "cash" type properties, which have a 5 year period. The abandonment period for certain insurance is reduced from 5 years to 3 years.

Virtual Currency – The bill clarifies that virtual currency is subject to unclaimed property laws, but only if the holder is able to convert to U.S. currency and such property must be converted prior to delivery.

Clarifications – the bill provides clarifications in a variety of areas, including:

- Definitions of terms not found in current law
- Explanations of what constitutes an owners interest in property
- Description of what information is required in the notice a holder must provide to the apparent owner of property, prior to reporting and delivery to this state
- Clarification that a claimant must provide evidence to support their claim for property

Heir Finder/Locator Services – The bill reduces the maximum fee a locator service may charge from 20% to 10% of the actual value of the property recovered (RUUPA provides that a locator fee cannot be "unconscionable"). It also provides additional requirements to be provided in the agreement or contract between the locator service and apparent owner. The bill also extends the valid agreement from 12 months to 24 months.

Changes from Current Law Not in RUUPA

Voluntary Disclosure Program for Holders – This bill allows the administrator to enter into voluntary disclosure agreements to waive penalties for holders that voluntarily disclose and report unclaimed property. This program enables DOR to encourage voluntary compliance through education. Increased compliance means more property is returned to its rightful owner.

The program waives penalties if the holder files reports for the 5 most recent reporting periods. The holder must waive appeal rights and maintain future compliance. An application must be submitted between the 3rd and 12th month after the effective date of the bill.

Under the program, DOR will waive the right to examination for the years under the agreement and prior years, unless the holder is fraudulent, underreports property, or fails to remain in compliance.

Tax ID numbers – This bill requires holders to maintain the SSN or ITIN and DOB of apparent owners when the information is known to the holder, and to furnish such information to DOR as part of the holder report so that owners can be better identified for return of property.

Interest and Penalties – Interest computations for unclaimed property programs are complex because it often requires a separate calculation for each property reported, as it is dependent upon the property type, the abandonment date, and the date property is paid/delivered to the state. This bill eliminates interest and replaces it with a simple penalty computation for failure to timely file or pay.

DOR Authorities – Current law allows DOR use Social Security Numbers from tax records to match numbers given to DOR on holder reports. This bill authorizes DOR to use any tax records to identify owners of unclaimed property and process claims. This bill also provides authority for DOR to collect amounts paid to a wrongful owner, and for DOR to use unclaimed property to set off other state and municipal debts certified to DOR for collection.

Exemption for state agencies – The bill clarifies that property held by Wisconsin state agencies is exempt from unclaimed property provisions. Current law provides that uncashed state checks are credited to the appropriation from which drawn.

Organization – This bill uses section numbers consistent with RUUPA, and also uses subchapters to easily find the information.



WISCONSIN NEWSPAPER ASSOCIATION

TO: Assembly Committee on State Affairs

FROM: Beth Bennett, Executive Director of the WI Newspaper Association

DATE: Wednesday, January 22, 2020

RE: Amendment to AB 752 (Reinstate Publication of Public Sale of Abandoned Property Notices)

Thank you Chairman Swearingen and members of the committee for the opportunity to testify on behalf of the Wisconsin newspaper industry today. By way of introduction, my name is Beth Bennett and I am the Executive Director of the Wisconsin Newspaper Association.

The member newspapers of the WNA respectfully request a simple amendment to Assembly Bill 752 that will retain a published notice for the notification of the public sale of abandoned property.

AB 752 creates an option for unclaimed property to be sold online, which we support. However, as the bill is currently drafted it would allow for the online sale without a published notice beyond a government website.

Retaining the published notice will ensure the widest possible participation in an online sale, which is a benefit to the government and taxpayers. We've had positive initial conversations with the Department of Revenue and the bill's authors about this simple amendment. We hope it will have your support.

For more than 200 years, Wisconsin's newspapers have helped ensure that our state's citizens are well informed through public notices. These notices serve as a critically important independent reporter between units of government and the taxpayers. On behalf of the 221 members newspapers of the Wisconsin Newspaper Association, I thank you again for the opportunity to speak before you today and hope we can come to an agreement in supporting the preservation of publication of all unclaimed property sales.



Testimony of the Wisconsin Bankers Association
Jon Turke, Director - Government Relations, WBA

Assembly Committee on State Affairs
AB 752
January 22, 2020

Chair Swearingen and members of the committee:

My name is Jon Turke and I am the Director of Government Relations at the Wisconsin Bankers Association (WBA). WBA represents approximately 240 commercial banks and savings institutions, their nearly 2,300 branch offices and more than 30,000 employees. Today we are registering against the current version of AB 752.

We do agree it is well passed time to update the Uniform Unclaimed Property Act. Unfortunately, bankers in other states have found problems with the language put out by the Uniform Law Commission. To date, only 4 states have enacted the new law. In fact, in Minnesota, a task force was set up over a year ago to discuss the law that meets weekly and they still have been unable to introduce a version there.

Below I am listing just several of the areas we have identified as concerns in this version as drafted. We feel a better course would be to work on this after session and be ready to introduce a bill for the 2021-2022 session.

- Congress passed the SECURE Act of 2019 that changed the age for minimum distributions to begin at age 72 (changed from 70.5) in 2020. This bill should change the age requirements to reflect that.
- **177.0201(5)**: "(5) A payroll card or demand, savings, or time deposit, including a deposit that is automatically renewable, 5 years after the maturity of the deposit, except a deposit that is automatically renewable is deemed matured on its initial date of maturity unless the apparent owner consented in a record on file with the holder to renewal at or about the time of the renewal."
 - The issue is that it does not provide actual conditions for a demand or savings account to be considered abandoned. Neither of those types of products has a "date of maturity." The proposed language is ambiguous as to when the dormancy period begins. Other states have drafted more clear provisions on this topic.
- **177.0202(1)**: RUUPA's intent in this section is very different from what is drafted. RUUPA replaces the "earlier" in the state's draft with "later." The drafters on the Uniform Law Commission took into account that an IRA owner most often waits until the required distribution age to access those funds because it maximizes the value they get from their deposits. The section as drafted in no way benefits the owners and because the states cannot be custodians under IRS rules, any funds reported will incur tax withholding.

- **177.0204** – When custodial account for a minor presumed abandoned. “(1) Subject to s. 177.0210, property held in an account established under any state's uniform gifts to minors act or uniform transfers to minors act is presumed abandoned if it is unclaimed by or on behalf of the minor on whose behalf the account was opened 3 years after the earliest of the following:” This provision should be amended to read, “... 3 years after the **later** of the following:” By design in the UTMA Act and UGMA, the age of majority is the controlling factor for these properties. It should be the controlling factor for their dormancy as well.
- **177.0210** – The state has not included the linkage provision in its current law in the proposed Act. Currently, WI 177.06 reads in part: “(e) Had another relationship with the banking or financial organization concerning which the owner has either: 1. Communicated in writing with the banking or financial organization. 2. Otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the banking or financial organization and if the banking or financial organization communicates in writing with the owner with regard to the property that would otherwise be abandoned under this subsection at the address to which communications regarding the other relationship regularly are sent.” That provision is missing from this revision and we recommend reinstating it.
- **177.0702** – We recommend that the state use the 3-year limitation on the sale of an escheated security that is recommended in RUUPA. In their commentary on that provision, the ULC Commissioners said, “In order to give additional protection to the missing owner of a security which has been presumed abandoned, subsection (a) directs the administrator to hold that security for at least three years and requires that the apparent owner be given notice that the administrator holds the security. Subsection (b) is similar to Section 22(b) of the 1981 Uniform Act and Section 12(b) of the 1995 Uniform Act, except that it provides the administrator with greater latitude in selling a security which is not listed on an established exchange.” Also, the “Unless the administrator determines that it is in the best interest of the STATE to do otherwise ...” should be deleted from the bill. The administrator should determine what is in the best interest of the owner.

I want to again thank Chair Swearingen and members for taking the time to hear the bill today. Please contact me if you have any questions.

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