

**STATE OF MICHIGAN
95TH LEGISLATURE
REGULAR SESSION OF 2010**

Introduced by Rep. Durhal

ENROLLED HOUSE BILL No. 6421

AN ACT to amend 1995 PA 29, entitled "An act concerning unclaimed property; to provide for the reporting and disposition of unclaimed property; to make uniform the law concerning unclaimed property; to prescribe the powers and duties of certain state agencies and officials; to prescribe penalties and provide remedies; and to repeal acts and parts of acts," by amending sections 3, 5, 6, 7, 8, 8a, 13, 15, 17, and 18 (MCL 567.223, 567.225, 567.226, 567.227, 567.228, 567.228a, 567.233, 567.235, 567.237, and 567.238), section 15 as amended by 2008 PA 208 and section 18 as amended by 1997 PA 195.

The People of the State of Michigan enact:

Sec. 3. (1) Except as otherwise provided by this act, all property, including any income or increment derived from the property, less any lawful charges, that is held, issued, or owing in the ordinary course of a holder's business and remains unclaimed by the owner for more than 3 years after it becomes payable or distributable is presumed abandoned.

(2) Property is payable or distributable for the purpose of this act, notwithstanding the owner's failure to make demand or to present any instrument or document required to receive payment.

Sec. 5. (1) Subject to subsection (4), any sum payable on a travelers check that is outstanding for more than 15 years after its issuance is presumed abandoned unless the owner, within 15 years, has communicated in writing with the issuer concerning it or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the issuer.

(2) Subject to subsection (4), any sum payable on a money order or similar written instrument, other than a third party bank check, that is outstanding for more than 3 years after its issuance is presumed abandoned unless the owner, within 3 years, has communicated in writing with the issuer concerning it or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the issuer.

(3) A holder may not deduct from the amount of a travelers check or money order any charge imposed by reason of the failure to present the instrument for payment unless there is an enforceable written contract between the issuer and the owner of the instrument under which the issuer may impose a charge and the issuer regularly imposes such charges and does not regularly reverse or otherwise cancel them.

(4) A sum payable on a travelers check, money order, or similar written instrument, other than a third party bank check, described in subsections (1) and (2) may not be subjected to the custody of this state as unclaimed property unless 1 or more of the following requirements are met:

(a) The records of the issuer show that the travelers check, money order, or similar written instrument was purchased in this state.

(b) The issuer has its principal place of business in this state and the records of the issuer do not show the state in which the travelers check, money order, or similar written instrument was purchased.

(c) The issuer has its principal place of business in this state, the records of the issuer show the state in which the travelers check, money order, or similar written instrument was purchased and the laws of the state of purchase do not provide for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property.

(5) Notwithstanding any other provision of this act, subsection (4) applies to sums payable on travelers checks, money orders, and similar written instruments presumed abandoned on or after February 1, 1965, except to the extent that those sums have been paid over to a state prior to January 1, 1974.

Sec. 6. (1) Any sum payable on a check, draft, or similar instrument, except those subject to section 5, on which a banking or financial organization is directly liable, including a cashier's check and a certified check, which is outstanding for more than 3 years after it was payable or after its issuance if payable on demand, is presumed abandoned, unless the owner, within 3 years, has communicated in writing with the banking or financial organization concerning it or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the banking or financial organization.

(2) A holder may not deduct from the amount of any instrument subject to this section any charge imposed by reason of the failure to present the instrument for payment unless there is an enforceable written contract between the holder and the owner of the instrument under which the holder may impose a charge, and the holder regularly imposes such charges and does not regularly reverse or otherwise cancel them.

Sec. 7. (1) Any demand, savings, or matured time deposit with a banking or financial organization, including a deposit that is automatically renewable, and any funds paid toward the purchase of a share, a mutual investment certificate, or any other interest in a banking or financial organization is presumed abandoned unless the owner, within 3 years, has met 1 or more of the following requirements:

(a) In the case of a deposit, increased or decreased its amount or presented the passbook or other similar evidence of the deposit for the crediting of interest.

(b) Communicated, in writing, with the banking or financial organization concerning the property.

(c) Otherwise indicated an interest in the property as evidenced by a memorandum or other record on file prepared by an employee of the banking or financial organization.

(d) Owned other property to which subdivision (a), (b), or (c) applies and unless the banking or financial organization communicates, in writing, with the owner with regard to the property that would otherwise be presumed abandoned under this subsection at the address to which communications regarding the other property regularly are sent.

(e) Had another relationship with the banking or financial organization concerning which the owner has met 1 or more of the following requirements:

(i) Communicated, in writing, with the banking or financial organization.

(ii) 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 unless 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.

(2) For purposes of subsection (1), property includes interest and dividends.

(3) A holder may not impose with respect to property described in subsection (1) any charge due to dormancy or inactivity or cease payment of interest unless all of the following requirements are met:

(a) There is an enforceable written contract between the holder and the owner of the property providing that the holder may impose a charge or cease payment of interest.

(b) For the property of a value in excess of \$2.00, the holder, no more than 3 months before the initial imposition of those charges or cessation of interest, has given written notice to the owner of the amount of those charges at the last known address of the owner stating that those charges will be imposed or that interest will cease. However, the notice required in this subdivision need not be given with respect to charges imposed or interest ceased before March 28, 1996.

(c) The holder regularly imposes such charges or ceases payment of interest and does not regularly reverse or otherwise cancel them or retroactively credit interest with respect to the property.

(4) Any property described in subsection (1) that is automatically renewable is matured for purposes of subsection (1) 15 years after the expiration of its initial time period, but in the case of any renewal to which the owner consents at or about the time of renewal by communicating in writing with the banking or financial organization or otherwise indicating consent as evidenced by a memorandum or other record on file prepared by an employee of the organization, the property is matured upon the expiration of the last time period for which consent was given. If, at the time provided for delivery to the administrator under section 20, a penalty or forfeiture in the payment of interest would result from the delivery of the property, the time for delivery is extended until the time when no penalty or forfeiture would result.

(5) The following types of accounts are presumed abandoned 3 years after the owner or the person entitled to the funds last communicated in writing with the banking or financial organization concerning the funds or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the banking or financial organization:

(a) An in trust for account described in section 2 of 1909 PA 248, MCL 487.702.

(b) An account established pursuant to the Michigan uniform gifts to minors act, 1959 PA 172, MCL 554.451 to 554.461.

Sec. 8. (1) Funds held or owing under any life or endowment insurance policy or annuity contract that has matured or terminated are presumed abandoned if unclaimed for more than 3 years after the funds became due and payable as established from the records of the insurance company holding or owing the funds. However, property described in subsection (3)(b) is presumed abandoned if unclaimed for more than 2 years.

(2) If a person other than the insured or annuitant is entitled to the funds and an address of the person is not known to the insurance company or it is not definite and certain from the records of the insurance company who is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the insurance company.

(3) For purposes of this act, a life or endowment insurance policy or annuity contract not matured by actual proof of the death of the insured or annuitant according to the records of the insurance company is matured and the proceeds due and payable if 1 or more of the following requirements are met:

(a) The insurance company knows that the insured or annuitant has died.

(b) The insured has attained, or would have attained if he or she were living, the limiting age under the mortality table on which the reserve is based; the policy was in force at the time the insured attained, or would have attained, the limiting age; and neither the insured nor any other person appearing to have an interest in the policy within the preceding 2 years, according to the records of the insurance company, has assigned, readjusted, or paid premiums on the policy, subjected the policy to a loan, corresponded in writing with the insurance company concerning the policy, or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the insurance company.

(4) For purposes of this act, the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent a policy from being matured or terminated under subsection (1) if the insured has died or the insured or the beneficiary of the policy otherwise has become entitled to the proceeds of the policy before the depletion of the cash surrender value of the policy by the application of those provisions.

(5) If the laws of this state or the terms of the life insurance policy require the insurance company to give notice to the insured or owner that an automatic premium loan provision or other nonforfeiture provision has been exercised and the notice, given to an insured or owner whose last known address according to the records of the insurance company is in this state, is undeliverable, the insurance company shall make a reasonable search to ascertain the policyholder's correct address to which the notice must be mailed.

(6) Notwithstanding any other provision of law, if the insurance company learns of the death of the insured or annuitant and the beneficiary has not communicated with the insurance company within 4 months after the death of the insured or annuitant, the insurance company shall take reasonable steps to pay the proceeds to the beneficiary.

(7) Commencing March 28, 1998, every change of beneficiary form issued by an insurance company under any life or endowment insurance policy or annuity contract to an insured or owner who is a resident of this state must request all of the following information:

(a) The name of each beneficiary, or if a class of beneficiaries is named, the name of each current beneficiary in the class.

(b) The address of each beneficiary.

(c) The relationship of each beneficiary to the insured.

Sec. 8a. (1) Funds held by a provider under the prepaid funeral contract funding act, 1986 PA 255, MCL 328.211 to 328.235, that remain unclaimed for a period of 3 years after the death of the contract beneficiary or, if no contract

beneficiary has been designated under the prepaid funeral contract, 3 years after the death of the owner of the prepaid funeral contract are presumed abandoned.

(2) Funds held pursuant to 1954 PA 70, MCL 328.201 to 328.204, are presumed abandoned, after a period of 3 years, unless the owner or person entitled to the funds has communicated in writing with the banking or financial organization concerning the funds or otherwise indicated in interest as evidenced by a memorandum or other record on file prepared by an employee of the banking or financial organization.

Sec. 13. (1) Property and any income or increment derived therefrom held in a fiduciary capacity for the benefit of another person is presumed abandoned unless the owner, within 3 years after it has become payable or distributable, has increased or decreased the principal, accepted payment of principal or income, communicated concerning the property, or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by the fiduciary.

(2) Funds in an individual retirement account or a qualified retirement plan for self-employed individuals or similar account or qualified plan established under the internal revenue code are not payable or distributable within the meaning of subsection (1) unless, under the terms of the account or qualified plan, distribution of all or part of the funds would then be mandatory.

(3) For the purpose of this section, a person who holds property as an agent for a business association is deemed to hold the property in a fiduciary capacity for that business association alone, unless the agreement between him or her and the business association provides otherwise.

(4) For the purposes of this act, a person who is deemed to hold property in a fiduciary capacity for a business association alone is the holder of the property only insofar as the interest of the business association in the property is concerned, and the business association is the holder of the property insofar as the interest of any other person in the property is concerned.

Sec. 15. (1) Except as provided in subsection (4), a gift certificate, gift card, or credit memo is presumed abandoned if either of the following apply:

(a) The certificate, card, or memo is not claimed or used for a period of 3 years after becoming payable or distributable.

(b) The certificate, card, or memo was used or claimed 1 or more times without exhausting its full value, but subsequently was not claimed or used for an uninterrupted period of 3 years.

(2) For purposes of subsection (1), a gift certificate or gift card is considered to have been claimed or used if there is any transaction processing activity on the gift certificate or gift card including, but not limited to, redeeming, refunding, or adding value to the certificate or card. Activity initiated by the issuer of the certificate or card, including, but not limited to, assessing inactivity fees or similar service fees, does not constitute transaction processing activity for purposes of this subsection.

(3) In the case of a gift certificate or gift card, the owner is presumed to be a gift recipient of the gift certificate or gift card, and the amount presumed abandoned is the price paid by the purchaser for the gift certificate or gift card, less the total of any purchases or fees assessed against the certificate or card. In the case of a credit memo, the amount presumed abandoned is the amount credited to the recipient of the memo.

(4) This act does not apply to a gift certificate as defined in section 3e of the Michigan consumer protection act, 1976 PA 331, MCL 445.903e, that is issued for retail goods or services by a person engaged in the retail sale of goods or services.

Sec. 17. All property held in a safe deposit box or any other safekeeping repository in this state in the ordinary course of the holder's business and proceeds resulting from the sale of the property permitted by law, that remain unclaimed by the owner for more than 3 years after the lease or rental period on the box or other repository has expired, are presumed abandoned.

Sec. 18. (1) A person holding property presumed abandoned and subject to the state's custody as unclaimed property under this act shall report to the administrator concerning the property as provided in this section.

(2) The report shall be verified and shall include all of the following:

(a) The name, if known, social security number, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of property of the value of \$50.00 or more presumed abandoned under this act. This subdivision does not apply to travelers checks and money orders.

(b) In the case of unclaimed funds of \$50.00 or more held or owing under any life or endowment insurance policy or annuity contract, the full name and last known address of the insured or annuitant and of the beneficiary according to the records of the insurance company holding or owing the funds.

(c) In the case of the contents of a safe deposit box or other safekeeping repository or of other tangible property, a description of the property and the place where it is held and may be inspected by the administrator and any amounts owing to the holder.

(d) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due. However, items of value under \$50.00 each may be reported in the aggregate.

(e) The date the property became payable, demandable, or returnable, and the date of the last transaction with the apparent owner with respect to the property.

(f) Other information the administrator requires by rule as necessary for the administration of this act.

(3) If the person holding property presumed abandoned and subject to the state's custody as unclaimed property under this act is a successor to other persons who previously held the property for the apparent owner, or the holder has changed its name while holding the property, the holder shall file with the report all known names and addresses of each previous holder of the property.

(4) Except as otherwise provided in this subsection, the report shall be filed on or before November 1 of each year for the 12-month period ending on the immediately preceding June 30. However, in 2011, the report shall be filed on or before July 1, 2011 for the 9-month period ending on March 31, 2011, and for years ending after December 31, 2011, the report shall be filed on or before July 1 of each year for the 12-month period ending on the immediately preceding March 31. The administrator may postpone the date to file a report, on written request by any person required to file a report under this section. The administrator may extend the filing date for up to 60 days after the deadline if an estimated payment is paid on or before the deadline for the applicable period. Remittance of an estimated payment without a report on or before the deadline shall be considered a request for extension. A request for extension of time to file the report is not a request for an extension of time to remit payments. Interest and penalties will not accrue during the extension period against a person who remits an estimated payment. The administrator shall determine how estimated payments are to be remitted.

(5) Not less than 60 days or more than 365 days before filing the report required by this section, the holder in possession of property presumed abandoned and subject to the state's custody as unclaimed property under this act shall send written notice to the apparent owner at his or her last known address informing him or her that the holder is in possession of property subject to this act if all of the following requirements are met:

(a) The holder has in its records an address for the apparent owner that the holder's records do not disclose to be inaccurate.

(b) The claim of the apparent owner is not barred by the statute of limitations.

(c) The property has a value of \$50.00 or more or, if the holder filing a report under this section is reporting for the current report year at least 25,000 properties over \$50.00 each, the property has a value of \$100.00 or more.

(6) There is appropriated from funds generated by unclaimed properties deposited under this act the sum of \$4,800,000.00 to the department of treasury for administration and public awareness of unclaimed property filing and compliance requirements created by the amendatory act that added this subsection. This appropriation is allotted for expenditure on and after October 1, 2010. The appropriation authorized in this subsection is a work project appropriation, and any unencumbered or unallotted funds are carried forward into the following year. The following is in compliance with section 451a(1) of the management and budget act, 1984 PA 431, MCL 18.1451a:

(a) The purpose of the project is to provide technical and administrative support for the 2011 unclaimed property program in the department of treasury. Costs related to this project will include, but are not limited to:

(i) Information technology system changes.

(ii) Staffing-related costs.

(iii) Costs to promote public awareness.

(iv) Any other costs related to implementation of the program.

(b) The work project will be accomplished through the use of interagency agreements, grants, state employees, and contracts. Contracts, if any, for the work project authorized by this subsection shall be subject to competitive solicitation of bids from the private sector in compliance with section 261 of the management and budget act, 1984 PA 431, MCL 18.1261.

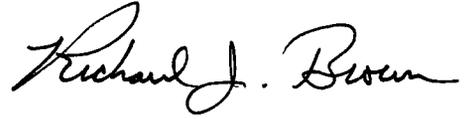
(c) The total estimated completion cost of the project is \$4,800,000.00.

(d) The expected completion date is September 30, 2012.

(7) The provisions modifying the dormancy periods of the amendatory act that added this subsection do not apply if the owner of the property is on active duty military service outside the United States.

Enacting section 1. This amendatory act applies to property presumed abandoned and subject to the state's custody as unclaimed property under this act reportable to the state for any period ending after June 30, 2010.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor