



SPONSOR: Sen. Blevins & Rep. Schwartzkopf & Rep. Longhurst
Sen. Henry; Reps. Q. Johnson, Mitchell, B. Short, Wilson

DELAWARE STATE SENATE
147th GENERAL ASSEMBLY

SENATE BILL NO. 228

AN ACT TO AMEND TITLE 12, CHAPTER 11 OF THE DELAWARE CODE AND VOLUME 78, CHAPTER 317 OF THE LAWS OF DELAWARE RELATING TO ABANDONED PROPERTY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 11 of Title 12 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 1141 ~~Escheator to maintain public record~~ Confidentiality of records.

(a) Confidentiality of Unclaimed Property Owner Information. The State Escheator shall maintain a public record of all names and last known addresses of the person or persons appearing to be entitled to abandoned property paid or delivered to the State Escheator pursuant to this chapter. Other identifying information set forth in any report or record made or delivered to the State Escheator shall be retained by the State Escheator but shall be considered confidential and may be disclosed only in the discretion of the State Escheator. The State Escheator shall not reveal the amount of any abandoned property, except to a person who has presented satisfactory proof of an interest in or title to such property or except for purposes directly connected with the administration of this chapter.

(b) Confidentiality of Certain Records Provided by Holders. Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for any officer or employee of the Department of Finance or the Department of State or for any other officer or employee of this State to disclose or make known in any manner to any person who is not a current officer or employee of this State the amount of abandoned or unclaimed property that has been reported to and received by the State Escheator or the Secretary of State or both by any holder, pursuant to this chapter, or to disclose the terms of or supporting documentation related to any annual filing, unclaimed property voluntary self-disclosure agreement, or settlement agreement resulting from the reporting of any unclaimed property pursuant to this chapter. This applies to all agreements entered into pursuant to this chapter, including past agreements.

For purposes of this section, the term "officer or employee" shall include present and former officers and employees, and any person or persons currently or formerly employed or retained by the State. In addition, for purposes of this section, the term "person" shall include a natural person, a corporation, a copartnership, a voluntary association and any other association or organization of individuals.

(c) Any violation of this section shall be a misdemeanor, punishable upon conviction by a fine not to exceed \$1,000, or imprisonment not to exceed 6 months, or both. The Superior Court shall have exclusive original jurisdiction over such misdemeanor.

§ 1159. Penalties.

(a) In the case of the failure to file any report required by this chapter on or before the due date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not wilful neglect, there shall be added to the amount of abandoned or unclaimed property required to be shown on the report the lesser of 5% of the amount thereof if the failure is not for more than 1 month, with an additional 5% for each additional month or fraction thereof during which such failure continues, not to exceed 50% in the aggregate or a civil penalty of \$100 for each day the report is withheld or the duty is not performed, but not more than \$5,000. For purposes of this section the amount of abandoned or unclaimed property required to be shown on any report shall be reduced by the amount of property which is paid on or before the date

(d) Interest at .5% per month on outstanding unpaid amounts, including penalty shall accrue from the date the amounts or property were due under this subchapter until paid. Interest due in accordance with this subsection shall in no event exceed 50% of the amount required to be paid; provided, however, that penalties under subsection (a), (b) or (c) of this section shall not be deemed to be interest for purposes of this subsection.

§ 1177 Abandoned property reporting outreach program [Sunsets on July 1, 20152016, by operation of 78 Del. Laws, c. 317, § 3]

(b) The Secretary of State may not initiate an examination of records or an investigation pursuant to § 1155 of this title, or seek payment of any amounts of property pursuant to § 1156 or § 1158 of this title, as to any calendar year prior to:

(2) 1993, with respect to any holder that has indicated in writing its intent to enter into an unclaimed property voluntary disclosure agreement by completing, executing and delivering, after June 30, 2013, and on or before June 30 September 30, 2014, to the Secretary of State such form as is acceptable to the Secretary of State, and who enters an unclaimed property voluntary disclosure agreement and makes payment in full or enters into a payment plan on or before June 30, 2015 2016.

(c) The Secretary of State shall have no authority to accept a notice in writing of intent to enter into an unclaimed property voluntary disclosure agreement after June 30 September 30, 2014, and shall have no authority to enter an

unclaimed property voluntary self-disclosure agreement with a holder or otherwise receive or seek payment of any amounts of abandoned property after June 30, ~~2015~~ 2016

(f) Unless referred by the Secretary of State pursuant to subsection (a) of this section, the State Escheator shall not conduct, prior to July 1, ~~2015~~ 2016, any examination of records or an investigation pursuant to § 1155 of this title of any holder who has indicated in writing its intent to enter into an unclaimed property voluntary disclosure agreement by completing, executing and delivering to the Secretary of State, on or before ~~June 30~~ September 30, 2014, such form as is acceptable to the Secretary of State, unless such holder's participation is prohibited by subsection (d) of this section.

Section 2. Amend § 3, Chapter 317, Volume 78 of the Laws of Delaware by making insertions as shown by underlining and deletions as shown by strike through as follows:

Section 3. This Act shall sunset July 1, ~~2015~~ 2016.

SYNOPSIS

This Act codifies the longstanding practice of the Department of Finance and the Secretary of State to hold as confidential the financial information obtained during the course of examinations, settlements, or voluntary self-disclosure agreements that are conducted pursuant to Title 12, Chapter 11 of the Delaware Code.

The Act also changes the penalty for failing to file an abandoned property report from 5% per month to the lesser of 5% per month or \$100 per day. The maximum penalty changes from 50% of the amount required to be shown on the report to \$5,000. The Act also eliminates the assessment of interest on outstanding unpaid amounts.

Finally, the Act extends the period that a holder may submit and the Secretary of State may accept a letter of intent to enter into an unclaimed property voluntary self-disclosure agreement from June 30, 2014 to September 30, 2014 and extend the sunset of the Secretary of State's voluntary self-disclosure program by one year from July 1, 2015 to July 1, 2016 in order to provide sufficient time for all holders to complete and the Secretary of State to process all such voluntary self-disclosures agreements.

Author: Senator Blevins