



SPONSOR: Sen. Townsend & Sen. Blevins & Rep. B. Short
Sen. Lavelle; Reps. Longhurst, Spiegelman

DELAWARE STATE SENATE
148th GENERAL ASSEMBLY

SENATE BILL NO. 141

AN ACT TO AMEND TITLE 12 OF THE DELAWARE CODE AND THE LAWS OF DELAWARE RELATING TO UNCLAIMED PROPERTY.

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

Section 1. Amend § 1155, Chapter 11, Title 12 of the Delaware Code by inserting as shown by making insertions as shown by underlining and deletions as shown by underlining the following new subsections (c), (d), and (e) to § 1155 to read as follows:

(c) Effective July 1, 2015, the State Escheator shall not initiate any new examination of records or an investigation of any person or business association or organization pursuant to this Section unless first the person or business association or organization has been notified in writing by the Secretary of State that the person, business association, or organization may enter into an unclaimed property voluntary disclosure agreement, or if the holder fails to otherwise comply with a requirement imposed on such holder pursuant to Section 1177 of this Title.

(d) Effective from the date of enactment of this legislation, the State Escheator may seek payment as to any amounts owed pursuant to this Chapter for any pending unclaimed property examination; however, the State Escheator shall not seek payment of any amounts owed pursuant to this Chapter related to any transactions prior to January 1, 1986. Effective from the date of enactment of this legislation through December 31, 2016, the State shall not initiate any new examination of records or an investigation pursuant to § 1155 of this title for any amounts owed pursuant to this Chapter related to any transaction prior to January 1, 1991, nor seek payment of any amounts arising from such examination owed pursuant to this Chapter of this title, with respect to any transaction prior to January 1, 1991.

(e) Effective January 1, 2017, the State Escheator shall not initiate any new examination of records or an investigation pursuant to § 1155 of this title for any amounts owed pursuant to this Chapter related to any transaction more than twenty-two (22) years prior to the report year for which the State Escheator provides written notice of such examination, nor seek payment of any amounts arising from such examination owed pursuant to this Chapter of this title, with respect to any transaction that is more than twenty-two (22) years prior to the calendar year in which the State Escheator provides written notice of such examination.

Section 2. Amend § 1159, Chapter 11, Title 12 of the Delaware Code by deleting subsection (d) in its entirety and inserting as shown by underlining the following new subsection (d) to read as follows:

(d) Interest at 0.5% per month on outstanding unpaid amounts shall accrue from the date the amounts or property were due under this subchapter until paid, unless it is shown that such failure is due to reasonable cause and not willful neglect as determined by the State Escheator. Interest due in accordance with this subsection shall in no event exceed 25% 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. This subsection shall be effective for any late-filed unclaimed property that is reported and remitted on or after March 1, 2016.

Section 3. Amend § 1177, Chapter 11, Title 12 of the Delaware Code by deleting subsections (b) and (c) in their entirety and inserting as shown by underlining the following new subsections (b) and (c) as follows:

(b) The Secretary of State is hereby authorized to request that any person, business association, or organization enter into an unclaimed property voluntary disclosure agreement to determine whether the person, business association or organization has complied with any provision of this Chapter. If the form indicating the person, business association or organization's intent to enter into a voluntary disclosure agreement is not received by the Secretary of State within sixty days after the request to enter the voluntary disclosure agreement program was mailed, any such person, business association or organization will be referred to the State Escheator for examination pursuant to § 1155 of this Title.

(c) With respect to any holder that has indicated in writing its intent to enter into an unclaimed property voluntary disclosure agreement pursuant to this Chapter by completing, executing and delivering to the Secretary of State such form as is acceptable to the Secretary of State, the holder shall complete a review of its books and records and file reports of abandoned property related to the following transaction years:

(1) Beginning January 1, 1996, with respect to any holder whose intent to enter into an unclaimed property voluntary disclosure agreement was accepted by the Secretary of State on or before September 30, 2014, and who enters an unclaimed property voluntary disclosure agreement and makes payment in full or enters into a payment plan no later than June 30, 2016;

(2) Beginning January 1, 1996, with respect to any holder whose intent to enter into an unclaimed property voluntary disclosure agreement was accepted by the Secretary of State after September 30, 2014 and on or before December 31, 2016, and who enters an unclaimed property voluntary disclosure agreement and makes payment in full or enters into a payment plan within two years from the date the holder's intent to enter into an unclaimed property voluntary disclosure agreement was accepted by the Secretary of State. The due date for entering into an unclaimed property voluntary disclosure agreement and making payment in full or entering into a

52 payment plan in this subsection (c)(2) may be amended at the sole discretion of the Secretary of State. Any holder
53 who does not enter into an unclaimed property voluntary disclosure agreement and make payment or enter into a
54 payment plan within 30 days of the two year period, or the period as amended by the Secretary of State as
55 provided herein, shall be deemed to be referred to the State Escheator for examination pursuant to Section 1155 of
56 this Title; or

57 (3) Beginning January 1, nineteen (19) years prior to the year in which the holder's intent to enter into an
58 unclaimed property voluntary disclosure agreement was accepted by the Secretary of State, with respect to any
59 holder whose intent to enter into an unclaimed property voluntary disclosure agreement was accepted by the
60 Secretary of State on or after January 1, 2017. The holder shall enter an unclaimed property voluntary disclosure
61 agreement and make payment in full or enter into a payment plan within two years from the date the holder's
62 intent to enter into an unclaimed property voluntary disclosure agreement was accepted by the Secretary of State.
63 The due date for entering into an unclaimed property voluntary disclosure agreement and making payment in full
64 or entering into a payment plan in this subsection (c)(3) may be amended at the sole discretion of the Secretary of
65 State.

66 Section 4. Amend §1177(d)(4), Chapter 11, Title 12 of the Delaware Code by making insertions as shown by
67 underlining and deletions as shown by strike through as follows:

68 (d) Notwithstanding any other provision of this section or of this Chapter, the Secretary of State shall have no
69 authority to enter an unclaimed property voluntary self-disclosure agreement with or otherwise receive or seek payment of
70 any amounts of abandoned property from:

71 (1) Those holders that have indicated in writing their intent to enter into an unclaimed property voluntary
72 disclosure agreement by completing, executing and delivering, on or before June 30, 2012, the appropriate form
73 promulgated by the State Escheator;

74 (2) Those holders that have entered a voluntary self-disclosure agreement with the State Escheator on or
75 before June 30, 2012, provided that the Secretary of State shall be permitted to enter an unclaimed property
76 voluntary disclosure agreement with any holder with respect to property types or periods or both property types
77 and periods that were not included in a voluntary self-disclosure agreement executed prior to June 30, 2012, or
78 with respect to the holder, its subsidiaries or related entities that were not included in a voluntary self-disclosure
79 agreement executed prior to June 30, 2012;

80 (3) Those holders to which a notice of examination has been mailed by the State Escheator; and

(4) Those holders that had previously enrolled in the voluntary disclosure agreement program and that either (i) formally withdrew from the voluntary disclosure agreement program, or (ii) that the Secretary of State removed from the voluntary disclosure agreement program for failure to work in good faith to complete the voluntary disclosure agreement program as soon as practicable referred to the State Escheator.

Section 5. Amend §1177(e), Chapter 11, Title 12 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

(e) Each of the holders described in paragraph (d)(1) or (d)(2) of this section shall be accorded the benefit of the same deadlines established in subsection ~~(b)~~(c) of this section, but the State Escheator shall retain authority over all voluntary self-disclosure agreements so described.

Section 6. Amend §1199(a), Chapter 11, Title 12 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

(a) Every holder of funds or other property, tangible or intangible, deemed abandoned under this subchapter shall file with the State Escheator, on or before March 1 of each year, as of December 31 next preceding, a report with respect to such property. The State Escheator shall send a notice no later than 120 days prior to March 1 to holders that have filed reports in the past five (5) report years, notifying the holder of their apparent obligation to file a report. The report shall be verified and shall include:

(1) The name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property deemed abandoned under this subchapter;

(2) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, except that items of value under \$50 each may be reported in aggregate;

(3) The date when the property became payable, demandable or returnable and the date of the last transaction with the owner with respect to the property; ~~and~~

(4) A designated individual employed by the holder who will serve as the contact for all correspondence with the State related to the reporting and remittance of unclaimed property pursuant to this Chapter. Such designation shall also include the contact's mailing address, telephone number, email address, and title. The holder is obligated to notify the State in the case of any change of the designated individual, or any change of contact information provided; and

(5) Other information which the State Escheator may prescribe.

Section 7. Amend § 3, Chapter 317, Volume 78 of the Laws of Delaware by making deletions as shown by strike through as follows:

111 ~~“Section 3. This Act shall sunset July 1, 2016.”~~

112 Section 8. If any provision of this Act or the application thereof to any person or circumstance is held invalid,
113 such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid
114 provisions or application, and to that end the provisions of this Act are declared to be severable.

SYNOPSIS

This legislation modifies Delaware's unclaimed property laws in accordance with the recommendations of the Unclaimed Property Task Force formed pursuant to Senate Concurrent Resolution 59 of the 147th General Assembly.

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