

LAWS OF DELAWARE
VOLUME 84
CHAPTER 367
152nd GENERAL ASSEMBLY
FORMERLY
SENATE SUBSTITUTE NO. 1
FOR
SENATE BILL NO. 266

AN ACT TO AMEND TITLE 6 AND TITLE 12 OF THE DELAWARE CODE RELATING TO UNCLAIMED PROPERTY.

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

Section 1. Amend Chapter 12, Title 6 of the Delaware Code by making insertions as shown by underline as follows:

§ 1206. Certain actions ~~barred.~~ barred or limited.

(a) In no event may a person bring an action under this chapter which is based upon allegations or transactions which are the subject of a civil suit or an administrative proceeding in which the government is already a party, or which is based upon the reporting requirements of § 1142 of Title 12. This subsection shall have no effect on the Attorney General's ability to bring any such action.

(d) The Attorney General may only bring an action under this chapter which is based upon the reporting requirements of § 1142 of Title 12 if all of the following are true:

(1) The Attorney General has provided written notice to the Secretary of the Department of Finance and the State Escheator setting forth the allegations intended to be pursued.

(2) Either (i) 120 days has passed since the date of such notice; or (ii) the State Escheator has consented in writing to the institution of such action prior to the expiry of the 120-day period.

(3) There is no ongoing examination by the State Escheator pursuant to Subchapter II of Chapter 11 of Title 12 concerning the allegations in the Attorney General's complaint at the time such complaint is filed.

(4) The defendant in such action did not initiate a voluntary disclosure under §1173 of Title 12 of the specific matters that are the subject of the Attorney General's intended action prior to the date on which the Attorney General first become aware of or commenced investigating such matters.

Section 2. Amend Chapter 11, Subchapter II, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 1130. Definitions.

(17) "Original source" has the meaning given to it in § 1206 of Title 6.

(29) "Whistleblower" means any individual who provides, or 2 or more individuals acting jointly who provide, information to the State regarding a holder's noncompliance with the reporting requirements of § 1142 of this title, where such individual is, or individuals are, the original source of such information.

§ 1183. Interest and penalties.

(e) If the State Escheator initiates an examination pursuant to information provided by a whistleblower that results in payment from the holder or recovery of property under this chapter, the State Escheator shall award interest and penalties collected under this section to the whistleblower, provided that the whistleblower and any of its agents and counsel have complied with the obligations set forth in the written agreement required by § 1191(a) of this title.

§ 1185. Waiver of interest and penalty.

(a) The State Escheator may, for good cause, waive, in whole or in part, interest and penalties under § 1183 or § 1184 of this title, subject to the following requirements:

(4) The State Escheator shall not waive interest and penalties for any examination initiated pursuant to information provided by a whistleblower, provided that the whistleblower and any of its agents and counsel have complied with the obligations set forth in the written agreement required by § 1191(a) of this title.

§ 1191. Whistleblower Provisions.

(a) Any whistleblower wishing to provide information regarding a holder's noncompliance with the reporting requirements of §1142 of this title shall provide such information in writing to both the State Escheator and to the Attorney General Fraud Division Director at the same time. Any such submission shall:

(1) Be confidential.

(2) Be exempt from disclosure under Chapter 100 of Title 29.

(3) Include a written agreement by the whistleblower to maintain the confidentiality of the submission, any subsequent investigation, and any resolution thereof.

The State Escheator and the Attorney General shall jointly make publicly available a form agreement to be used by whistleblowers under this section.

(b) If a whistleblower provides information pursuant to subsection (a) of this section, the State Escheator may initiate an examination pursuant to § 1172(d)(1) of this title and the Attorney General may conduct an investigation pursuant to Chapter 12 of Title 6.

(c) If the Secretary of Finance or State Escheator, as a result of information provided by a whistleblower as the original source, resolves an examination or other claim under Subchapter II of Chapter 11 of Title 12, the State Escheator shall make such award as appropriate under § 1183(e) of this subchapter.

(d) If the Attorney General, as a result of information provided by a whistleblower as the original source, resolves a claim under the Title 6, Chapter 12 based upon the reporting requirements of § 1142 of this chapter, then the State shall award to the whistleblower from the total payments to the State by the holder in connection with the resolution:

(1) A minimum of 20% and up to 30% of the first \$5 million of such payments.

(2) A minimum of 10% and up to 20% of any portion of such payments exceeding \$5 million, if any.

(3) Any costs, including attorneys' fees, incurred by the whistleblower as may be agreed to in writing during the pendency of the matter between the whistleblower and the Attorney General.

(e) In determining the amount of an award under subsection (d) of this section, the Attorney General shall take into consideration the significance of the information provided by the whistleblower to the success of the judgment or resolution, the degree of assistance provided by the whistleblower, and its counsel, if any, and the programmatic interest of the Attorney General in deterring violations of this chapter by making awards to whistleblowers who provide information that lead to successful resolutions.

(f) If the Secretary of State under § 1173 of this title resolves any claims for property otherwise owing to the State Escheator where the report of information by a whistleblower preceded the voluntary disclosure under § 1173 of this title of the same or substantially similar information by the holder, the State shall award to the whistleblower from the total payments to the State by the holder in connection with the resolution 30% of the first \$5 million of such payments and 20% of any portion of such payments exceeding \$5 million, if any.

(g) No award shall be made to any whistleblower to whom any of the following apply:

(1) The whistleblower is, or was at the time the whistleblower acquired the information submitted to the State Escheator and Attorney General, an employee or agent of the State of Delaware.

(2) The whistleblower is convicted of a criminal violation related to the matter for which the whistleblower otherwise could receive an award under this section.

(h) A whistleblower may be represented by counsel and may remain anonymous by submitting information through such counsel. Prior to the payment of an award, a whistleblower shall disclose such information as the State may require for payment of the award, which may include the whistleblower's identity.

(i) The Attorney General, the State Escheator, and the Secretary of State shall consult as necessary to ensure the efficient investigation of whistleblower reports under § 1191 of this title and other matters of common interest related to the enforcement of the reporting requirements of § 1142 of this title. All such communications shall be exempt from disclosure under Chapter 100 of Title 29.

Approved August 15, 2024