



SPONSOR: Sen. Mantzavinos & Rep. Bush  
Sen. Walsh; Rep. Carson

DELAWARE STATE SENATE  
152nd GENERAL ASSEMBLY

SENATE BILL NO. 267

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

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

1           Section 1. Amend § 1130, Title 12 of the Delaware Code, by making deletions as shown by strike through and  
2           insertions as shown by underline as follows and by redesignating accordingly:

3           § 1130. Definitions.

4           As used in this chapter:

5           (7) "Foreign country" or "foreign jurisdiction" means any foreign country or jurisdiction or subdivision of a  
6           foreign country or jurisdiction, which is not a state of the United States, the District of Columbia, the Commonwealth of  
7           Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United  
8           States.

9           Section 2. Amend § 1130, Title 12 of the Delaware Code, by making deletions as shown by strike through and  
10          insertions as shown by underline as follows and by redesignating accordingly:

11          ~~(47)~~ (18) "Owner" means a person, or the person's legal representative when acting on behalf of the person, that  
12          has a legal, beneficial, or equitable interest in property subject to this chapter. The term includes all of the following:

13                  a. A depositor, for a deposit.

14                  b. A beneficiary, for a trust other than a deposit in trust.

15                  c. A creditor, claimant, or payee, for other property.

16                  d. The lawful bearer of a record that may be used to obtain money, a reward, or a thing of value.

17          To the extent a holder is not entitled to a return or refund of property under § 1144(e) of this title, the holder does  
18          not have standing as an owner of such property.

19          Section 3. Amend § 1141, Title 12 of the Delaware Code, by making deletions as shown by strike through and  
20          insertions as shown by underline as follows:

21          § 1141. Holder domiciled in this State.

(a) Except as otherwise provided in subsection (b) of this section or § 1140 of this title, the State Escheator may take custody of property presumed abandoned, whether located in this State, another state, or a foreign ~~country~~ jurisdiction, if the holder is domiciled in this State or is the State or a governmental subdivision, agency, or instrumentality of this State, and any of the following circumstances are met:

(1) Another state or foreign jurisdiction is not entitled to the property because there is no last-known address in the records of the holder of the owner or other person entitled to the property.

(2) The state of the last-known address of the owner or other person entitled to the property does not provide for custodial taking of the property.

(3) The last-known address of the owner is in a foreign ~~country~~ jurisdiction, and that foreign jurisdiction does not provide for custodial taking of the property.

(b) Property is not subject to custody of the State Escheator under subsection (a) of this section if the property is specifically exempt from custodial taking under the law of this State or the state or foreign jurisdiction of the last-known address of the owner.

(c) If the holder's ~~state-of~~ domicile has changed since the time the property was presumed abandoned, the holder's ~~state-of~~ domicile in this section is deemed to be the state or foreign jurisdiction where the holder was domiciled at the time the property was presumed abandoned.

Section 4. Amend § 1144, Title 12 of the Delaware Code, by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1144. When report to be filed.

(e) A holder may file an amended report for any report previously filed under this chapter. The holder is not entitled to a return of or refund for property paid or delivered in connection with an initial report that is changed by an amended report for any of the following:

(1) If any claim has been paid under § 1166 of this title for any property paid or delivered in connection with a report.

(2) If the amended report would amend a report previously filed in conjunction with an examination under § 1172 of this title or voluntary disclosure under § 1173 of this title.

(3) On the basis of a change or error in the application of the cost of goods sold to the reported property, unless the amended report is filed no later than 3 years after the earlier of the date the initial report was filed or the date on which the property was paid or delivered in connection with a report.

Section 5. Amend § 1150, Title 12 of the Delaware Code, by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1150. Notice to owner by State Escheator.

(a) ~~Subject~~ Beginning with property reported to the State Escheator on or after February 2, 2017, and subject to subsection (b) of this section, as soon as the State Escheator deems practicable after delivery, the State Escheator shall send written notice to an owner that a security or other property that is not money presumed abandoned and appears to be owned by the owner, is held by the State Escheator under this chapter.

Section 6. Amend § 1152, Title 12 of the Delaware Code, by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1152. Payment or delivery of property to State Escheator.

(a) Except as otherwise provided in this section, on filing a report under § 1142 of this title, the holder shall contemporaneously pay or deliver to the State Escheator the property described in the report.

Section 7. Amend Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1152A. Property held in trust.

A holder who holds property presumed abandoned under this chapter holds the property in trust for the benefit of the State Escheator on behalf of the owner from and after the date such property is presumed abandoned under this chapter. A holder shall establish trust accounts or otherwise segregate property held for the benefit of the State Escheator under this section pending delivery in accordance with § 1152 of this title, provided that any failure to establish trust accounts or otherwise segregate the property shall not affect the owners' interest in the property or the obligation of the holder to report and remit the property.

Section 8. Amend § 1153, Title 12 of the Delaware Code, by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1153. Effect of payment or delivery of property to State Escheator.

(a) Unless otherwise addressed in ~~subsection~~ subsections (b) or (c) of this section, the holder's payment or delivery of property to the State Escheator terminates any legal relationship between the holder and the owner only with respect to the property reported and releases and discharges the holder from any and all liability to the owner, the owner's heirs, personal representatives, successors, or assigns by reason of such payment or delivery, regardless of whether such property is in fact and in law abandoned property and such delivery and payment may be pleaded as a bar to recovery and shall be a conclusive defense in any suit or action brought by such owner, the owner's heirs, personal representatives, successors and

81 assigns or any claimant against the holder ~~by reason of~~ based on such delivery or payment. Application of this subsection is  
82 mutually exclusive of subsection (b) of this section and, accordingly, may not be applied in conjunction with subsection (b)  
83 of this section.

84 (c) If a holder pays or delivers property to the State Escheator in good faith and thereafter another person claims  
85 the property from the holder or another state claims the money or property under its laws relating to escheat or abandoned  
86 or unclaimed property, the State Escheator, acting on behalf of the State, upon written notice of the claim, shall defend the  
87 holder against the claim and indemnify the holder against any liability on the claim, up to the value of the property at the  
88 time of escheatment, except that a holder shall not be indemnified against penalties or interest imposed by or awarded to  
89 another state, or for legal fees or expenses incurred by the holder in connection with the claim. For purposes of this  
90 subsection, ~~state~~ "state" also includes any foreign jurisdiction or subdivision of a foreign jurisdiction that is not a state of  
91 the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, or any  
92 territory or insular possession subject to the jurisdiction of the United States. Notwithstanding the foregoing, the State  
93 Escheator shall not indemnify any holder under this section for any claims made for any property against which a full  
94 period of dormancy has not yet run that was paid or delivered under subsection (e) of this section and § 1155(b) of this title,  
95 except as otherwise allowed by subsection (e) of this section.

96 (d) For the purposes of this section, "good faith" means that all of the following apply:

97 (1) Payment or delivery was made in a reasonable attempt to comply with this chapter and any other  
98 applicable law, including but not limited to relevant decisions of the Supreme Court of the United States and  
99 applicable law of any foreign jurisdiction.

100 (2) The person delivering the property was not a fiduciary then in breach of trust in respect to the property  
101 and had a reasonable basis for believing, based on the facts then known to the person, that the property was  
102 abandoned for the purposes of this chapter.

103 (3) There is no showing that the records pursuant to which the delivery was made did not meet reasonable  
104 commercial standards of practice in the industry.

105 (e) Under § 1155(b) of this title, at the request of a holder, the State Escheator may allow the holder to pay over or  
106 deliver property otherwise properly payable to the State but against which a full period of dormancy has not yet run. ~~If the~~  
107 ~~State Escheator grants the holder's request and accepts the property, the holder is entitled to the protections of this section~~  
108 ~~and the property is to be treated generally as if it had been paid over or delivered after a full period of dormancy had run.~~  
109 ~~Section 1155 of this title does not apply to property accepted by the State Escheator under this subsection until a full period~~  
110 ~~of dormancy has run against the property. The State Escheator, as a condition of such allowance, may require the holder to~~

111 enter into a written agreement acceptable in form and substance to the State Escheator, which agreement may require the  
112 holder to indemnify the State for liability or expenses incurred by the State in connection with property paid or delivered  
113 under § 1155(b) of this title, in addition to any other terms the State Escheator may deem appropriate. The decision to  
114 allow or deny a request under § 1155(b) of this title and to require or refuse the terms of any written agreement under this  
115 section shall be within the complete discretion of the State Escheator and shall not be subject to review. The holder of  
116 property paid or delivered to the State Escheator under § 1155(b) of this title shall not be entitled to the release, discharge,  
117 indemnity, or other protections provided under subsections (a), (b), and (c) of this section until the applicable dormancy  
118 period has run, provided that the State Escheator may agree to provide indemnity for any period prior to the expiration of  
119 the dormancy period in a written agreement under this subsection.

120 Section 9. Amend § 1155, Title 12 of the Delaware Code, by making deletions as shown by strike through and  
121 insertions as shown by underline as follows:

122 § 1155. State Escheator's options as to custody.

123 (a) The State Escheator may decline to take custody of property reported under § 1142 of this title if the State  
124 Escheator determines one of the following:

125 (1) The property has a value less than the estimated expenses of notice and sale of the property.

126 (2) Taking custody of the property would be unlawful.

127 (3) The property is tangible or in physical form, including but not limited to savings bonds and bearer  
128 bonds.

129 (4) Taking custody of the property may expose the State to a risk of litigation.

130 (5) The property is a "nonfreely transferable security" or "worthless security" as defined in § 1130 of this  
131 title.

132 (6) The property is virtual currency for which no ready market exists.

133 Section 10. Amend § 1160, Title 12 of the Delaware Code, by making deletions as shown by strike through and  
134 insertions as shown by underline as follows:

135 § 1160. Recovery of securities or value by owner.

136 (c) For the purpose of this section, the following apply:

137 (1) The date the claim is made is the date of the claimant's first documented contact with the State  
138 Escheator regarding the property or claim, including a request for a property search if the claim is made within 60  
139 days of the contact.

(2) The date notice was mailed by the State Escheator to the rightful owner under § 1150 of this title, or the date notice was otherwise provided as required by the law in effect at the time the property was delivered to the State Escheator, is deemed to be 30 days after the property was delivered to the State Escheator if the date cannot otherwise be reasonably determined or if no notice was required.

(3) In any proceeding under this chapter, or in any case or proceeding involving property paid or delivered under this chapter, the State Escheator may establish the date notice was provided under § 1150 of this title and the contents of such notice by providing an affidavit based on a review of relevant records, procedures, and practices, which affidavit may be considered sufficient evidence of notice.

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

§ 1163A Escheat of certain abandoned state agency moneys.

Property presumed abandoned where the State Escheator reasonably believes the owner is an agency of the State or a discretely presented component unit included in the annual comprehensive financial report of the State shall escheat to the state and be deposited into the General Fund pursuant to § 1163(a) of this title and shall not be claimable under § 1165 of this title.

Section 12. Amend § 1171, Title 12 of the Delaware Code, by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1171. Examination to determine compliance with chapter.

The State Escheator, at reasonable times and on reasonable notice, may do any of the following:

(5) Send, or direct a person to send, owner notice in accordance with § 1148 of this title, or for items identified under § 1172(e) of this title in conjunction with estimation, extrapolation, and statistical sampling, send, or direct a person to send, owner notice in a format substantially similar to notices provided under § 1148 of this title.

Section 13. Amend § 1172, Title 12 of the Delaware Code, by making deletions as shown by strike through and insertions as shown by underline as follows:

(c)(1) For any examination authorized by the State Escheator after February 2, 2017, and before August 1, 2021, the person under examination may notify the State Escheator of the person's request to expedite the completion of the pending examination by providing written notification on a form provided by the State Escheator, responses to all pending or outstanding requests for records, testimony, and information made by the person conducting the examination, and a detailed workplan and schedule for completion of the expedited examination that must be received by the State Escheator by September 29, 2021. For any examination authorized by the State Escheator after August 1,

2021, the person under examination may notify the State Escheator of the person's request to expedite the completion of the pending examination by providing written notification on a form provided by the State Escheator, responses to all pending or outstanding requests for records, testimony, and information made by the person conducting the examination, and a detailed workplan and schedule for completion of the expedited examination. Within 60 days, the State Escheator shall issue a written determination to accept or deny the person's request to expedite completion of the examination, or otherwise seek agreement with the person requesting to expedite to revise the detailed work plan and schedule for completion so that the State Escheator might accept the person's request to expedite completion of the examination. For any person whose request to expedite the completion of the pending examination is accepted, the State Escheator shall provide written notice of the acceptance within 60 days of receipt of the person's request. This determination shall be within the complete discretion of the State Escheator and subject only to the review of the Secretary of Finance, whose review must be requested in writing within 30 days of the State Escheator's determination.

(5) The determination whether the person has responded within the time and in the manner established and a resulting determination to terminate expediting the person's examination under this subsection if the person has not, shall be within the complete discretion of the State Escheator and subject only to the review of the Secretary of Finance, whose review must be requested in writing within 30 days of the State Escheator's determination. Upon termination of the expedited examination, the person shall be under nonexpedited examination, subject to the terms and conditions of such an examination as provided by this subchapter.

(7) A person whose request to expedite has been accepted under paragraph (c)(1) of this section or who received a notice of examination under paragraph (c)(2) of this section ~~this~~ must deliver full and final payment in accordance with § 1179 of this title not later than the earlier of any the following:

- a. Ninety days after the date the State Escheator provides a statement of findings and request for payment.
- b. Not later than 3 years from the acceptance of the request to expedite under paragraph (c)(1) of this section or the notice of examination under paragraph (c)(2) of this section.
- c. No more than 180 days after the date determined under either paragraph (c)(7)a. or b. of this section pursuant to a single extension, which shall be determined within the complete discretion of the State Escheator and subject only to the review of the Secretary of Finance, whose review must be requested in writing within 30 days of the State Escheator's determination. If the person fails to deliver full and final payment, the State Escheator may terminate the expedited examination per paragraph (c)(5) of this section, and the person shall be under nonexpedited examination, subject to the terms and conditions of such an examination as provided by this subchapter.

200 Section 14. Amend § 1173, Title 12 of the Delaware Code, by making deletions as shown by strike through and  
201 insertions as shown by underline as follows:

202 § 1173. Voluntary property reporting outreach program.

203 (a) Notwithstanding ~~any other provision of this title or~~ Chapter 23 of Title 29 and in compliance with the  
204 provisions of this title, the Secretary of State may resolve and compromise claims for property otherwise owing to the State  
205 Escheator under this chapter if a holder of such property voluntarily discloses to the Secretary of State such property on or  
206 before the deadlines provided in this section.

207 Section 15. Sections 1, 3, 6, 7, 8, and 9 of this Act take effect on enactment.

208 Section 16. Sections 5, 10, 12, 13, and 14 of this Act take effect on enactment and apply retroactively to any  
209 claims, examinations, voluntary disclosure agreements, or litigation pending as of the effective date of this Act.

210 Section 17. Sections 2, 4, and 11 of this Act take effect on enactment and apply retroactively to reports filed or  
211 property remitted prior the effective date of this Act.

#### SYNOPSIS

This Act clarifies various aspects of the State's unclaimed property laws, specifically:

Section 1 clarifies and confirms current practice regarding the definition of "foreign country" or "foreign jurisdiction."

Section 2 clarifies and confirms current practice regarding the definition of "owner." This section is not intended to limit holder reimbursement claims, where a holder seeks to claim from the state previously reported property that the holder returned to the owner subsequent to the filing of the report.

Section 3 conforms Delaware's unclaimed property statute more closely to the 2016 Revised Uniform Unclaimed Property Act (RUUPA), clarifying that foreign-addressed property that is reportable to (or specifically exempted by) a foreign country is not reportable to Delaware. This section applies to reports filed and property remitted after the effective date of this Act. This Section shall not be construed to allow for holder refunds under 12 Del. C. § 1144 for reports filed or property remitted prior to the effective date of this Act.

Section 4 limits the filing of amended reports by holders seeking a refund of property when claims have been filed and paid on the property; when the original report was filed in conjunction with an examination or voluntary disclosure agreement submission; or after 3 years, when the holder seeks a refund due to an error in a cost of goods sold (COGS) calculation, as it usually pertains to the reporting of gift card property. This section is not intended to limit holder reimbursement claims, where a holder seeks to claim from the state previously reported property that the holder has since returned to the owner.

Section 5 clarifies when the owner notice requirements enacted on February 2, 2017, took effect.

Section 6 clarifies and confirms current practice that holders must pay and deliver property at the same time they file their report.

Section 7 section enacts provisions that have allowed Texas to successfully pursue claims in bankruptcy for unclaimed property reported, but not paid to the state, prior to a bankruptcy, should Delaware pursue similar claims in the future.

Section 8 clarifies the state's indemnification obligations and definition of good faith generally and specifically for property reported "early" (before the full dormancy period has run). This section also establishes that the State Escheator may enter into written indemnification agreements with holders requesting to report and remit property "early" (before the



full dormancy period has run). The amendment of this section to clarify the State Escheator's complete discretion to grant or deny early escheatment requests under § 1155(b) merely recognizes the unreviewable discretion already provided under that section.

Section 9 clarifies and confirms current practice, allowing the State Escheator to decline to take custody of physical property, including savings and bearer bonds, any property that may present a future litigation risk to the state, worthless or nonfreely transferable securities, and virtual currency for which no ready public market exists.

Section 10 clarifies and confirms current practice, allowing the State Escheator to submit an affidavit after a review of business records and procedures as evidence of owner notice and publication.

Section 11 eliminates inefficient administrative processes and ensures that unclaimed property reported as owned by state agencies and discretely presented component units included in the state's annual comprehensive financial report of the state remains in the state's General Fund to be allocated only via the conventional legislative budget process. This section is similar to a statute adopted by Illinois.

Section 12 clarifies and confirms current practice that during an examination, the State Escheator may send or direct a holder or agent to send an owner notice letter (commonly called a "due diligence letter") in the format specified by the State for any item identified as potential unclaimed property, including items that may be part of a sample population in conjunction with estimation, extrapolation, and statistical sampling, even if the item is not or would not be reportable to Delaware.

Section 13 clarifies that requests to the Secretary of Finance to review certain discretionary determinations of the State Escheator during expedited examinations must be submitted in writing within 30 days of the State Escheator's determination.

Section 14 clarifies and confirms current practice that Voluntary Disclosure Agreements administered by the Secretary of State must comply with all provisions of this title.

Section 15 states that Sections 1, 3, 6, 7, 8, and 9 of this Act take effect on enactment.

Section 16 states that it is the intent of the General Assembly that Sections 5, 10, 12, 13, and 14 of this Act take effect upon enactment and also apply retroactively to any claims, examinations, voluntary disclosure agreements, or litigation pending as of the effective date of this Act.

Section 17 states that it is the intent of the General Assembly that Sections 2, 4, and 11 of this Act take effect upon enactment and also apply retroactively to reports filed or property remitted prior the effective date of this Act.

This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

Author: Senator Mantzavinos