



SPONSOR: Sen. Gay & Sen. Townsend & Rep. Bush
Sens. Walsh, Wilson

DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE BILL NO. 281

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:

3 § 1130. Definitions.

4 As used in this chapter:

5 (19) "Property" means tangible property described in § 1134 of this title or a fixed and certain interest in
6 intangible property held, issued, or owed in the course of a holder's business or by a government, governmental
7 subdivision, agency, or instrumentality. The term:

8 c. Does not include any of the following:

9 1. "Uninvoiced payables," as defined in this section. Nothing in this section shall be construed to
10 create a business-to-business exemption of any kind regardless of whether a current business relationship
11 exists between the holder and the owner.

12 2. "Nonescheat capital credits," as defined in § 909 of Title 26.

13 3. Layaway accounts issued or maintained by any person in the business of selling tangible personal
14 property at retail.

15 4. A loyalty card.

16 5. Game-related digital content.

17 6. Property where the apparent owner is a foreign government, the federal government, any other
18 state government, or any local or municipal government not within this State.

19 7. Any payment or credit arising under the 2022 Delaware Relief Rebate Program, Chapter 290 of
20 Volume 83 of the Laws of Delaware.

21 Section 2. Amend § 1145, Title 12 of the Delaware Code by making deletions as shown by strike through and
22 insertions as shown by underline as follows:

§ 1145. Retention of records by holder.

(a) A holder required to file a report under § 1142 of this title shall retain records for 10 years after the date the report was filed, unless a shorter period is provided by the State Escheator by rule or regulation.

(b) A holder who has received a notice of an examination under this chapter or has submitted a written election to enter into an unclaimed property voluntary disclosure agreement under § 1173 of this title shall retain, until the conclusion of the examination, voluntary disclosure agreement review process, or any related appeal or litigation, records to the present day for 10 years plus the applicable dormancy period under § 1133 of this title before the earliest of the following:

(1) The State Escheator's delivery of a notice of an examination to a holder under this chapter.

(2) The Secretary of State's delivery of notice that the person may enter into an unclaimed property voluntary disclosure agreement under § 1172(a) of this title.

(3) The holder's written election to enter into an unclaimed property voluntary disclosure agreement under § 1173 of this title.

(c) A holder may satisfy the requirement to retain records under this section through an agent.

(d) The records retained must contain all of the following:

(1) The verifiable information required to be included in the report.

(2) The date, place, and nature of the circumstances that gave rise to the property right.

(3) The amount or value of the property.

(4) The last address of the owner, if known to the holder.

(5) If the holder sells, issues, or provides to others for sale or issue in this State traveler's checks or money orders, a record of the instruments while they remain outstanding indicating the state and date of issue.

(6) Sufficient records of items that were not reported as unclaimed, to allow review to determine whether the holder has complied with this chapter.

Section 3. 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 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 ~~prior to liquidation~~ 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.

(b) In providing notice under subsection (a) of this section, the State Escheator shall send written notice to each owner of a security or other property that is not money held by the State Escheator to the last-known address of the owner

contained in the records of the holder as provided to the State Escheator, unless the State Escheator determines that the notice would not be received by the owner or the State Escheator determines that the total value of the security or other property that is not money does not exceed \$50. If, on reasonable inspection, the State Escheator determines that the notice may not be received by the owner, the State Escheator may take reasonable steps to correct, update, or validate the last-known address of the owner as contained in the records of the holder as provided to the State Escheator to make it more likely that the notice may be received by the owner.

(c)(1) The State Escheator and the State of Delaware ~~shall not be~~ are not liable to an owner based upon the liquidation of a security or other property that is not money if one of the following applies:

a. ~~notice~~ Notice has been sent as provided by this ~~section and~~ section.

b. ~~if the~~ The State Escheator has not acted unreasonably in determining that mailed notice would not be received by the ~~owner-~~ owner.

c. On reasonable inspection, the State Escheator does or does not take reasonable steps to correct, update, or validate the last-known address of the owner as contained in the records of the holder as provided to the State Escheator to make it more likely that the notice may be received by the owner.

(2) Except with respect to the provisions of § 1160(a)(2) of this title, the State Escheator and the State of Delaware are not liable to the owner of a security or other property that is not money for an amount that exceeds that which was actually received upon the liquidation of the security.

Section 4. Amend § 1159, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1159. Disposal of securities.

If a security is delivered to the State Escheator under this chapter on or after July 1, 2017, the State Escheator shall, ~~subsequent to satisfying the notice requirements of § 1150 of this title,~~ subject to § 1150 of this title, sell the security on any established stock exchange or by such other means as the State Escheator deems advisable as soon as the State Escheator deems practicable after the delivery. The State Escheator may not sell a security listed on an established stock exchange for less than the price prevailing on the exchange at the time of sale. The State Escheator may sell a security not listed on an established exchange by any commercially-reasonable method.

Section 5. Amend § 1160, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1160. Recovery of securities or value by owner [For application of this section, see 83 Del. Laws, c. 59, § 25].

(a) Beginning on July 1, 2017, a person that makes a valid claim under this chapter of ownership of a security following delivery of a security to the State Escheator is entitled to receive from the State Escheator 1 of the following:

(1) If the security is in the custody of the State Escheator at the time of the claim, the security the holder delivered to the State Escheator, plus dividends, interest, and other increments on the security up to the time the claim is paid, to the extent paid to the State Escheator.

(2) If the claim is made within 558 days from 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 ~~statute~~law in effect at the time the property was delivered to the State Escheator, the replacement of the security or the market value of the security at the time the claim is filed, at the option of the State Escheator, plus any dividends, interest, and other increments on the security paid to the State Escheator.

(3) If the claim is made more than 558 days after 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, the net proceeds of the sale of the security, plus dividends, interest, and other increments on the security up to the time the security is sold, to the extent paid to the State Escheator.

(b) The State Escheator is not liable in any action for any act ~~of his or hers~~ by the State Escheator made in good faith under this section.

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

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

Section 6. Amend § 1166, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1166. When State Escheator must honor claim for property [For application of this section, see 83 Del. Laws, c. 59, § 25].

(b) The State Escheator shall allow or deny the claim and give the claimant notice of the determination in a written ~~record.~~ record, which includes the State Escheator's initial attempt to pay or deliver the property to the claimant. If the claim is denied, the State Escheator shall inform the claimant of the reason for the denial and specify what additional evidence, if any, is required for the claim to be reconsidered.

(1), (2) [Repealed.]

(c) The State Escheator may exercise the powers granted by § 1171 of this title to investigate any suspicion of fraudulent activity in a claim and may refer the matter to law enforcement notwithstanding the confidentiality provisions contained in §§ 1174 and 1189 of this title.

(d)(1) For any property paid or delivered to the State Escheator before August 1, 2022, or for any property paid or delivered to the State Escheator from a bankruptcy proceeding, where the State Escheator subsequently determines that the holder's payment or delivery of property is less than the amount reported by the holder, the State Escheator shall pay any claim allowed on a pro rata basis determined by dividing the amount of property paid or delivered by the amount of property reported.

(2) This subsection is not to be construed to permit a holder to pay or deliver to the State Escheator less property than indicated by a report or determined as due under §§ 1142, 1152, 1170, 1171, 1172, or 1173 of this title.

Section 7. Amend § 1167, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1167. Claims and rights of appeal [For application of this section, see 83 Del. Laws, c. 59, § 25].

(a) The State Escheator shall possess full and complete authority to determine all claims filed under § 1165 of this title and shall immediately send written notice of such determination to the ~~claimant.~~ claimant as provided under § 1166(b) of this title. At any time within 120 days after the State Escheator sends notice of the determination, which includes the State Escheator's initial attempt to pay or deliver the property to a claimant, a claimant may apply for a hearing and determination of the claim by the Tax Appeal Board created by subchapter II, Chapter 3, Title 30. The procedure before the Tax Appeal Board for such hearings is the same as that provided for by § 329 of Title 30 and the Board has the same power to compel the attendance of witnesses and the production of evidence as is provided in § 330 of Title 30.

Section 8. Amend § 1170, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1170. Request for report of property; compliance reviews.

(a) If a person does or does not file a report required by § 1142 of this title ~~or the State Escheator believes that a person may have filed an inaccurate, incomplete, or false report, title~~, the State Escheator may require the person to file a verified report in a form prescribed by the State Escheator. The verified report must do all of the following:

(1) State whether the person is holding property reportable under this chapter.

(2) Describe property not previously reported or about which the State has inquired or about which there is a dispute as to whether it is reportable under this chapter.

(3) State the amount or value of the property.

(b) ~~If the State Escheator believes that a person may have filed an inaccurate, incomplete, or false report, including a report submitted under paragraph (a)(1) of this section, the~~ The State Escheator may authorize a compliance review of ~~that a~~ report and the notification requirements of § 1172(a) of this title do not apply. The compliance review must be limited to the contents of the report filed as required by §§ ~~1142, 1142 and~~ 1143 of this title, ~~and~~ subsection (a) of this section, and all supporting documents related to ~~such the~~ reports. If the compliance review results in a finding of a deficiency in unclaimed property due and payable to the State, the State Escheator shall notify the holder in writing of the amount of deficiency within 1 year from the authorization of the compliance review. If the holder fails to pay the deficiency within 90 days, the State Escheator may seek to enforce the assessment ~~pursuant to~~ under § 1171 or § 1180 of this title or may refer the holder to the Department of State in order to request that the holder enter into an unclaimed property voluntary disclosure agreement under § 1173 of this title. The State Escheator ~~shall not be~~ is not required to conduct a compliance review under this section ~~prior to~~ before initiating an examination under §§ 1171 and 1172 of this title. Except as provided under § 1173(e) of this title, the filing of a verified report or participation in a compliance review does not preclude the holder from participating in the Secretary of State's voluntary disclosure program under § 1173 of this title.

(c) A notification or request for information made ~~pursuant to~~ under subsection (a) or (b) of this section may be sent to a person or an agent in possession of the records, including an agent, representative, subsidiary, or affiliate of the person subject to review under subsection (a) or (b) of this section in order to determine whether the person complied with this chapter.

Section 9. Amend § 1172, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1172. Rules and procedures for conducting an examination [For application of this section, see 83 Del. Laws, c. 59, § 25].

(d) The State Escheator may authorize an examination of records or an investigation of any person under this section without the person having been notified in writing by the Secretary of State as outlined in subsection (a) of this section in any of the following circumstances:

(1) Pursuant to information received under Chapter 12 of Title 6.

(2) As a joint examination initiated by another state under § 1182 of ~~this title after consultation with the Secretary of State.~~ this title.

(3) Where the Secretary of State may not enter into an unclaimed property voluntary disclosure agreement with person subject to § 1173(e) of this title.

(4) Where the State Escheator determines that the person has not completed or responded to a verified report or compliance review as required under § 1170 of this title.

Section 10. Amend § 1186, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1186. When agreement to locate property enforceable.

An agreement by an owner and a person, a purpose of which is to locate, deliver, recover, or assist in the location, delivery, or recovery of property held by the State Escheator, is enforceable only if the agreement meets all of the following criteria:

(1) It is in a record that clearly sets forth the nature of the property and the services to be provided.

(2) It is signed by or on behalf of the owner, with signature notarized.

(3) It states the amount or value of the property reasonably estimated or expected to be recovered ~~computed~~ computed, to the extent disclosure of the amount is permitted under § 1189 of this title, both before and after a fee or other compensation to be paid to the other person has been deducted.

(4) It discloses that the property is being held by the Department of Finance.

Section 11. Sections 1, 8, 9, and 10 of this Act take effect on enactment.

Section 12. Sections 2, 3, 4, 5, 6, and 7 of this Act apply retroactively to any claims, examinations, voluntary disclosure agreements, or litigation pending as of the effective date of this Act.

SYNOPSIS

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

(1) Section 1 specifically exempts property owed to non-Delaware government entities and payment or credit arising under the 2022 Delaware Relief Rebate Program, Chapter 290 of Volume 83 of the Laws of Delaware.

(2) Section 2 clarifies and confirms current practice that a holder under examination or in the voluntary disclosure program shall retain records from ten years plus the dormancy period to present day until completion of the examination or voluntary disclosure agreement.

(3) Section 3 clarifies and confirms current practice regarding the timing of the liquidation of securities and the mailing of written notice to owners to eliminate litigation risk for the State. Under current practice, the State Escheator liquidates securities and mails written notice to owners relatively contemporaneously in weekly batches. Practically, however, at times liquidation may precede the mailing of notice by several days. However, because a claimant's recovery is determined by the date the claim is filed relative to the date of notice, the claimant's recovery is not impacted by this change. Because owner addresses reported by holders are often incomplete or have obvious errors, this Section also allows, but does not require, the State Escheator to take reasonable steps to update, correct, or validate owner addresses to make delivery of the written notice more likely, and limits liability for the State Escheator for any such actions or lack of actions.

(4) Section 4 clarifies and confirms current practice regarding the timing of the liquidation of securities and the mailing of written notice to owners.

(5) Section 5 clarifies how to determine the value of claims for securities property by clarifying a date certain for the statutory 558-day period to begin when the date of notice cannot otherwise be determined or when notice is not required or sent.

(6) Section 6 clarifies and confirms current practice that the time for a claimant appeal to the Tax Appeal Board, where the State Escheator has paid the claim, begins to run on the initial issuance of payment, and is not reset or tolled by the re-issuance of a check. This Section also expressly permits the State Escheator to pay claims on a pro rata basis for property received before August 1, 2022, or resulting from a bankruptcy proceeding, when the reported amount of property exceeds the remitted amount, and expressly prohibits holders from relying on this Section to engage in this practice prospectively.

(7) Section 7 clarifies and confirms current practice that the time for a claimant appeal to the Tax Appeal Board, where the State Escheator has paid the claim, begins to run on the initial issuance of payment, and is not reset or tolled by the re-issuance of a check.

(8) Section 8 makes changes to allow the State Escheator to issue a notice of examination to any holder who has failed to respond to requests made pursuant to a verified report or compliance review or to complete a verified report or compliance review. This Section also makes changes to clarify and confirm current practice that a "reason to believe" standard does not apply to inquiries under § 1170 of Title 12.

(9) Section 9 allows the State Escheator to issue a notice of examination to any holder who has failed to respond to requests made pursuant to a verified report or compliance review or to complete a verified report or compliance review under § 1170 of Title 12.

(10) Section 10 responds to feedback received from the professional finder industry and clarifies and confirms current practice that the State will not disclose the exact amount of claimable property until a claimant's rightful ownership of the property has been established and permits finder agreements to reflect this fraud prevention measure.

(11) Section 11 states that Sections 1, 8, 9, and 10 of this Act take effect on enactment.

(12) Section 12 states that it is the intent of the General Assembly that Sections 2, 3, 4, 5, 6, and 7 of this Act apply retroactively to any claims, examinations, voluntary disclosure agreements, or litigation pending as of 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 Gay