SPONSOR: Sen. Townsend & Rep. B. Short

DELAWARE STATE SENATE
149th GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 1
FOR
SENATE BILL NO. 79

AN ACT TO AMEND TITLE 12 OF THE DELAWARE CODE RELATED TO ABANDONED OR UNCLAIMED PROPERTY.

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

Section 1. Amend § 1148, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1148. Notice to owner by holder.

~~The~~ Effective July 1, 2017, the holder of property presumed abandoned shall send to the owner notice that complies with § 1149 of this title in a format acceptable to the State Escheator, by first-class United States mail, not more than 120 days nor less than 60 days before filing the report under § 1142 of this title if both of the following apply:

Section 2. Amend § 1153, Title 12 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

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

(c) If a holder pays or delivers property to the State Escheator in good faith and thereafter another person claims the property from the holder or another state claims the money or property under its laws relating to escheat or abandoned or unclaimed property, the State Escheator, acting on behalf of the State, upon written notice of the claim, shall defend the holder against the claim and indemnify the holder against any liability on the claim. For purposes of this subsection, "state" includes any foreign jurisdiction or subdivision of a foreign jurisdiction that is not a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

Section 3. Amend § 1155, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

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

(c) A holder's request for the State Escheator's consent under ~~paragraph (b)(3)~~ paragraph (b)(4) of this section must be in a record. If the State Escheator fails to respond to the request not later than 90 days after receipt of the request, the

State Escheator is deemed to consent to the payment or delivery of the property and the payment or delivery is considered to have been made in good faith, as defined in § 1153(d) of this title.

Section 4. 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.

(b) Notwithstanding the provisions of § 1173(e)(3) of this title, for any examination authorized by the State Escheator on or before July 22, 2015, except any securities examinations in which estimation is not required, the person under such an examination may notify the State Escheator and the Secretary of State of the person's intent to convert the pending examination into a review under the Secretary of State's voluntary disclosure program and to enter into the Secretary of State's unclaimed property voluntary disclosure program under § 1173 of this title. The person ~~shall, by July 1, 2017,~~ shall notify the State Escheator and Secretary of State in writing in a form and manner provided by the State Escheator and the Secretary of State. If such notice is not received within 60 days of the adoption of regulations under § 1176(b) of this title, the person may not convert the examination into a review under the Secretary of State's unclaimed property voluntary disclosure program under § 1173 of this title. The look back period for any such voluntary disclosure permitted under this section is 10 years prior to when property is presumed abandoned under this chapter from the calendar year in which the State Escheator provided the original notice of examination.

Section 5. Amend § 1176, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1176. Failure of person examined to retain records.

(b) The Secretary of Finance, in consultation with the Secretary of State, shall, on or before ~~July 1, 2017, promulgate~~ December 1, 2017, adopt regulations regarding the method of estimation to create consistency in any examination or voluntary disclosure. These regulations must include permissible base periods, items to be excluded from the estimation calculation, aging criteria for outstanding and voided checks, and the definition of what constitutes complete and researchable records.

Section 6. Amend § 1183, Title 12 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 1183. Interest and penalties.

(a) Interest at 0.5% per month on outstanding unpaid amounts accrues from the date the amounts or property were due under this chapter until paid. Interest due in accordance with this subsection may not exceed 50% of the amount

required to be paid. Penalties under subsections (b), (c), or (d) of this section are not interest for purposes of this subsection. This subsection applies to any late-filed unclaimed property that is reported and remitted on or after July 1, 2017.

(1) Under § 1173 of this title, the Secretary of State possesses the authority to waive interest under this section on outstanding unpaid amounts reported through the Secretary of State's voluntary disclosure program.

(2) Interest is waived for any holder who has filed the holder's intent in accordance with § 1172(c) of this title to enter a Department of Finance expedited examination process ~~on or before July 1, 2017,~~ within 60 days of the adoption of regulations under § 1176(b) of this title if the holder acts in good faith to complete the examination.

Section 7. Amend § 1185, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1185. Waiver of interest and penalty.

(a) The State Escheator may, for good cause, waive, in whole or in part, penalties under §§ 1183 or 1184 of this title.

(b) ~~The State Escheator may, for good cause, waive up to 50% of the calculable interest under § 1183 of this title.~~ The State Escheator may, for good cause shown, do all of the following related to unclaimed property remitted to the State before January 1, 2019:

(1) Waive, in whole or in part, the calculable interest under § 1183 of this title for unclaimed property remitted to the State with a required report under § 1142 or § 1170 of this title.

(2) Waive, in whole or in part, the calculable interest under § 1183 of this title for unclaimed property remitted to the State as a result of securities examinations in which estimation is not required under §§ 1171 and 1172 of this title.

(3) Waive up to 50% of the calculable interest under § 1183 of this title for all unclaimed property remitted to the State and not provided for in paragraphs (b)(1) or (b)(2) of this section.

(c) The State Escheator may, for good cause shown, do all of the following related to unclaimed property remitted to the State on or after January 1, 2019:

(1) Waive, in whole or in part, the calculable interest under § 1183 of this title for unclaimed property remitted to the State with a required report under § 1142 or § 1170 of this title.

(2) Except for examinations expedited under § 1172(c) of this title, waive up to 50% of the calculable interest under § 1183 of this title for all unclaimed property remitted to the State and not provided for in paragraph (c)(1) of this section.

SYNOPSIS

This Act makes corrections and changes to Senate Bill No. 13 of the 149th General Assembly (81 Del. Laws, c. 1), which was signed February 2, 2017, as follows:

Section 1 ensures holders have sufficient time to comply with Senate Bill No. 13's due diligence requirements with owners.

Section 2 clarifies that the State will indemnify and defend a holder against claims made by a foreign jurisdiction for property paid or delivered to the State Escheator in good faith.

Section 3 corrects an internal reference.

Section 4 corrects an inconsistency among dates.

Sections 5 and 6 correct certain date issues that may arise if the Department of Finance chooses to publish final regulations later than July 1, based upon comments received in May on the proposed regulations published in the April issue of the Register of Regulations.

Section 7 allows the State Escheator to waive interest in certain circumstances.

This Substitute to Senate Bill No. 79 differs from Senate Bill No. 79 as follows:

(1) It makes no change to § 1147(a) of Title 12.

(2) It makes changes to §§ 1176 and 1183 of Title 12 (as noted above regarding Sections 5 and 6 of this Act).

(3) It makes changes to the State Escheator's authority to grant waivers of interest under § 1185 of Title 12 (Section 7 of this Act).

Author: Senator Townsend