



SPONSOR: Sen. Townsend & Sen. Gay & Rep. Bush
Sens. Hansen, Paradee; Rep. Spiegelman

DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE BILL NO. 104

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 § 1102, Title 12 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 1102. Escheator of the State.

4 There shall be an Escheator of the State, who shall be the Secretary of Finance or the Secretary's delegate. The
5 administration and enforcement of this chapter, including verification of completeness and accuracy of records
6 relating to unclaimed property, are vested in the Secretary of Finance or the Secretary's delegate.

7 Section 2. Amend § 1133, Title 12 of the Delaware Code by making deletions as shown by strike through and
8 insertions as shown by underline as follows:

9 § 1133. When property presumed abandoned.

10 Subject to § 1136 of this title, property is presumed abandoned if it is unclaimed by the owner at the time
11 specified for the following property:

12 (3) A bearer bond or an original-issue-discount bond, 5 3 years after the earliest of the date the bond
13 matures or is called or the obligation to pay the principal of the bond arises.

14 (10) Property held by a government or governmental subdivision, agency, or instrumentality, including
15 state and municipal bond interest and unredeemed principal under the administration of a paying agent or
16 indenture trustee, 5 3 years after the property becomes distributable.

17 (15) Property in an individual retirement account that is qualified for tax deferral under the income tax
18 laws of the United States, ~~upon the earlier of the following:~~

19 a. For an owner for which the holder has no knowledge of death, ~~Three~~ 3 years after the owner's last
20 indication of interest in the account following the date specified in the income tax laws of the United
21 States by which distribution of the property must begin in order to avoid a tax penalty.

22 b. For an owner for which the holder has ~~Three years after~~ knowledge of the death of the account
23 owner

24 that has been confirmed by the holder in its ordinary course of business, one year following the date
25 specified in the income tax laws of the United States by which distribution of the property following
26 the death of the owner must begin in order to avoid a tax penalty, unless a beneficiary of the account
27 has indicated an interest in the account within 3 years after the date of death the most recent 12 month
28 period.

29 c. For purposes of this ~~paragraph (15)b.~~ of this section, “knowledge of the death” is as described in §
30 1137 of this title.

31 Section 3. Amend § 1143, Title 12 of the Delaware Code by making deletions as shown by strike through and
32 insertions as shown by underline as follows:

33 § 1143. Content of report.

34 (d) No reporting shall be required solely by virtue of holding property constituting consideration paid for
35 unredeemed gift cards which, in the aggregate, for the reporting period have a face value of less than ~~\$5,000~~
36 \$5,000, or for gift cards having ~~a face value~~ an original issue amount of \$5.00 or under issued by a holder whose
37 business is described in § 2906 of Title 30, whether or not such firm conducts business in this State.

38 Section 4. Amend § 1148, Title 12 of the Delaware Code by making deletions as shown by strike through and
39 insertions as shown by underline as follows:

40 § 1148. Notice to owner by holder.

41 ~~Effective July 1, 2017, the~~ The holder of property presumed abandoned shall send to the owner notice that
42 complies with § 1149 of this title in a format acceptable to the State Escheator, by first-class United States
43 mail, not more than 120 days nor less than 60 days before filing the report under § 1142 of this title, or at any
44 time as directed under § 1171(5) of this title, if both of the following apply:

45 (1) The holder has in its records an address for the owner sufficient to direct the delivery of first-class
46 United States mail to the owner, which the holder’s records do not disclose to be invalid.

47 (2) The value of the property is \$50 or more, unless the property is a security, in which case the holder
48 must send notice to the owner regardless of the value of the property.

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

51 § 1150. Notice to owner by State Escheator.

52 (f) Subject to the limitations of § 1189 of this title, the internet-based searchable database required by paragraph
53 (e)(2) of this section must set forth all of the following:

54 (1) The names and last known ~~addresses~~ address identifiers of all persons appearing from the records in
55 the State Escheator's office to be entitled to receive unclaimed property that consists of money in an
56 amount not less than \$10.

57 (2) The names and last known ~~addresses~~ address identifiers of all persons appearing from the records in
58 the State Escheator's office to be entitled to receive unclaimed property that consists of personal property
59 other than money and that the State Escheator has not determined under § 1155(a)(1) of this title to be
60 valueless or of such little value that a sale of the property would cost in excess of the probable proceeds
61 from the property.

62 (3) If any unclaimed property consisted of personal property other than money and was converted into
63 money under § 1158 of this title and such money amounted to \$10 or more, the names and last known
64 ~~addresses~~ address identifiers of the persons appearing from the records in the State Escheator's office to
65 be entitled to receive the money.

66 (4) Other information as the State Escheator may prescribe.

67 (h) The State Escheator may not include in the internet-based searchable database the names and last known
68 ~~addresses~~ address identifiers of persons whose claims for unclaimed property have been satisfied previously.

69 (i) Notwithstanding the foregoing provisions of this section, the State Escheator may omit from such internet-
70 based searchable database the name and last known address identifiers of any person if special circumstances
71 make it desirable that such information be withheld.

72 Section 6. Amend § 1153, Title 12 of the Delaware Code by making deletions as shown by strike through and
73 insertions as shown by underline as follows:

74 § 1153. Effect of payment or delivery of property to State Escheator.

75 (c) If a holder pays or delivers property to the State Escheator in good faith and thereafter another person claims
76 the property from the holder or another state claims the money or property under its laws relating to escheat or
77 abandoned or unclaimed property, the State Escheator, acting on behalf of the State, upon written notice of the
78 claim, shall defend the holder against the claim and indemnify the holder against any liability on the claim, except

79 that a holder shall not be indemnified against penalties imposed by another state. For purposes of this subsection,

80 "state" includes any foreign jurisdiction or subdivision of a foreign jurisdiction that is not a state of the United

81 States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, or any
82 territory or insular possession subject to the jurisdiction of the United States.

83 (f) For the purposes of this section, “penalties” means a penalty, interest, any other fee or fine, or damages that
84 may accrue in association with nonperformance of a holder’s statutory obligations.

85 Section 7. Amend § 1156, Title 12 of the Delaware Code by making deletions as shown by strike through and
86 insertions as shown by underline as follows:

87 § 1156. Periods of limitation.

88 (b) The State Escheator may not commence an action or proceeding to enforce this chapter with respect to the
89 reporting, payment, or delivery of property more than 10 years after the duty arose. The period of limitation
90 established by this subsection is tolled by the earlier of the State Escheator’s delivery of a notice of an examination
91 to a holder under this chapter, the Secretary of State’s delivery of notice that the person may enter into an
92 unclaimed property voluntary disclosure agreement under § 1172(a) of this title, or the holder’s written election to
93 enter into an unclaimed property voluntary disclosure agreement under § 1173 of this title, or if the State Escheator
94 reasonably concludes that the holder has filed a report containing a fraudulent or wilful misrepresentation.

95 Section 8. Amend § 1160, Title 12 of the Delaware Code by making deletions as shown by strike through and
96 insertions as shown by underline as follows:

97 § 1160. Recovery of securities or value by owner.

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

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

104 (2) If the claim is made within ~~18 months~~ 558 days from the date notice was mailed by the State
105 Escheator to the rightful owner under § 1150 of this title or the date notice was otherwise provided as
106 required by the statute in effect at the time the property was delivered to the State Escheator, the
107 replacement of the security or the market value of the security at the time the claim is filed, at the option
108 of the State Escheator, plus any dividends, interest, and other increments on the security paid to the State
109 Escheator.

110 (3) If the claim is made more than ~~18 months~~ 558 days after the date notice was mailed by the State
111 Escheator to the rightful owner under § 1150 of this title, the net proceeds of the sale of the security, plus
112 dividends, interest, and other increments on the security up to the time the security is sold, to the extent
113 paid to the State Escheator.

114 Section 9. Amend § 1160, Title 12 of the Delaware Code by making deletions as shown by strike through and
115 insertions as shown by underline as follows:

116 (c) For the purpose of this section, the date the claim is made shall be the date of the claimant's first
117 documented contact with the State Escheator regarding the property or claim, including a request for a
118 property search, if the claim is made within 60 days of such contact.

119 Section 10. Amend § 1166, Title 12 of the Delaware Code by making deletions as shown by strike through and
120 insertions as shown by underline as follows:

121 § 1166. When State Escheator must honor claim for property.

122 (b) The State Escheator shall allow or deny the claim and give the claimant notice of the ~~decision~~ determination in
123 a written record. If the claim is ~~denied~~ denied, the State Escheator shall ~~do all of the following:~~ inform the
124 claimant of the reason for the denial and specify what additional evidence, if any, is required for the claim to be
125 reconsidered.

126 ~~(1) Inform the claimant of the reason for the denial and specify what additional evidence, if any, is~~
127 ~~required for the claim to be allowed.~~

128 ~~(2) Treat an amended claim as an initial claim under this section.~~

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

132 Section 11. Amend § 1167, Title 12 of the Delaware Code by making deletions as shown by strike through and
133 insertions as shown by underline as follows:

134 § 1167. Claims and rights of appeal.

135 (a) The State Escheator shall possess full and complete authority to determine all claims filed under § 1165 of this
136 title and shall immediately send written notice of such determination to the claimant. At any time within ~~4 months~~
137 120 days after the State Escheator sends notice of a the determination, a claimant may apply for a hearing and
138 determination of the claim by the Tax Appeal Board created by subchapter II, Chapter 3, Title 30. The procedure
139 before the Tax Appeal Board for such hearings is the same as that provided for by § 329 of Title 30 and the Board

140 has the same power to compel the attendance of witnesses and the production of evidence as is provided in § 330
141 of Title 30.

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

144 § 1170. Request for report of property; compliance reviews.

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

149 Section 13. Amend § 1171, Title 12 of the Delaware Code by making deletions as shown by strike through and
150 insertions as shown by underline as follows:

151 § 1171. Examination to determine compliance with chapter.

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

153 (1) Examine the records of a person or the records in the possession of an agent, representative,
154 subsidiary, or affiliate of the person under examination in order to determine whether the person
155 complied with this chapter. Such records may include information to verify the completeness or accuracy
156 of the records provided, even if such records may not identify property reportable to the State.

157 (2) Take testimony of a person, including the person's employee, agent, representative, subsidiary, or
158 affiliate, to determine whether the person complied with this chapter.

159 (3) Issue an administrative subpoena to require that the records specified in paragraph (1) of this section
160 be made available for examination and that the testimony specified in paragraph (2) of this section be
161 provided.

162 (4) Bring an action in the Court of Chancery seeking enforcement of an administrative subpoena issued
163 under paragraph (3) of this section, which the Court shall consider under procedures that will lead to an
164 expeditious resolution of the action.

165 (5) Send, or direct a person to send, owner notice in accordance with § 1148 of this title.

166 Section 14. Amend § 1172, Title 12 of the Delaware Code by making deletions as shown by strike through and
167 insertions as shown by underline as follows and by redesignating accordingly:

168 § 1172. Rules and procedures for conducting an examination.

169 (c)(1) For any examination authorized by the State Escheator ~~after before~~ February 2, 2017, and before August
170 1, 2021, the person under examination may notify the State Escheator of the person's ~~intent request~~ to expedite the
171 completion of the pending examination by providing written notification on a form provided by the State
172 Escheator, responses to all pending or outstanding requests for records, testimony, and information made by the
173 person conducting the examination, and a detailed workplan and schedule for completion of the expedited
174 examination that must be received by the State Escheator within 60 days of the effective date of this statute
175 adoption of regulations under § 1176(b) of this title. For any examination authorized by the State Escheator after
176 August 1, 2021, the person under examination may notify the State Escheator of the person's request to expedite
177 the completion of the pending examination by providing written notification on a form provided by the State
178 Escheator, responses to all pending or outstanding requests for records, testimony, and information made by the
179 person conducting the examination, and a detailed workplan and schedule for completion of the expedited
180 examination. Within 60 days, the State Escheator shall issue a written determination to accept or deny the person's
181 request to expedite completion of the examination, or otherwise seek agreement with the person requesting to
182 expedite to revise the detailed work plan and schedule for completion so that the State Escheator might accept the
183 person's request to expedite completion of the examination. For any person whose request to expedite the
184 completion of the pending examination is accepted, the State Escheator shall provide written notice of the
185 acceptance within 60 days of receipt of the person's request. This determination shall be within the complete
186 discretion of the State Escheator and subject only to the review of the Secretary of Finance.

187 (2) Except as otherwise provided in subsection (c)(1), for any person who notifies the State Escheator of
188 the person's request to expedite the completion of the pending examination by providing written notification on a
189 form provided by the State Escheator under § 1173(b) of this title, the State Escheator shall mail a notice of
190 examination within 30 days of receipt of the person's request to expedite the completion of the pending
191 examination .

192 (23) If the request to expedite the completion of the examination is accepted under paragraph (c)(1) of
193 this section or the person received a notice of examination under paragraph (c)(2) of this section ~~person provides~~
194 ~~the written notification under paragraph (c)(1) of this section and~~ the person provides sufficient responses ~~responds~~
195 within the time and in the manner established by the State Escheator to all requests for records, testimony, and
196 information made by the person conducting the examination, the State Escheator shall complete the examination
197 and provide an examination report ~~under § 1177 of this title~~ within 2 years from the date of ~~receipt~~ of the
198 acceptance of the request to expedite under paragraph (c)(1) of this section or the notice of examination under

199 paragraph (c)(2) of this section ~~written notification~~ and shall apply interest per § 1185(a)(2) of this title, provided
200 that the person complies with paragraph (c)(7) of this section. ~~and shall waive interest and penalty under §§ 1183~~
201 ~~and 1184 of this title.~~

202 (34) All requests for records, testimony, and information must be made by the person conducting the
203 examination to the person under examination no later than 18 months after the acceptance of the request to
204 expedite under paragraph (c)(1) of this section or the notice of examination under paragraph (c)(2) of this section.
205 ~~written notification under paragraph (c)(1) of this section.~~

206 (45) The determination whether the person has responded within the time and in the manner established
207 and a resulting determination to terminate expediting the person's examination under this subsection if the person
208 has not, shall be within the complete discretion of the State Escheator and subject only to the review of the
209 Secretary of Finance. Upon termination of the expedited examination, the person shall be under non-expedited
210 examination, subject to the terms and conditions of such an examination as provided by this subchapter.

211 (56) A statement of findings ~~An examination report~~ produced at the conclusion of the expedited
212 examination shall be treated as any other report after the conclusion of an examination of a holder under § 1179(a)
213 of this title.

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

- 217 a. Ninety days after the date the State Escheator provides a statement of findings and request for payment.
218 b. Not later than 3 years from the acceptance of the request to expedite under paragraph (c)(1) of this
219 section or the notice of examination under paragraph (c)(2) of this section.
220 c. No more than 180 days after the date determined under either paragraph a. or b. of this subsection
221 pursuant to a single extension, which shall be determined within the complete discretion of the State
222 Escheator and subject only to the review of the Secretary of Finance. If the person fails to deliver full and
223 final payment, the State Escheator may terminate the expedited examination per paragraph (c)(5) of this
224 section, and the person shall be under non-expedited examination, subject to the terms and conditions of
225 such an examination as provided by this subchapter.

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

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

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

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

234 (h) After February 2, 2017, the State Escheator may not conduct any examination of records or an investigation
235 under this section ~~for any period more than 10 years prior to when property is presumed abandoned under this~~
236 ~~chapter from the calendar year in which the State Escheator provides written notice of such examination~~ with
237 respect to the reporting, payment, or delivery of property more than 10 years after the duty arose under this chapter
238 from the earlier of the date on which the State Escheator delivers written notice of such examination or the
239 Secretary of State delivers notice that the person may enter into an unclaimed property voluntary disclosure
240 agreement under subsection (a) of this section, except if the State Escheator reasonably concludes that the holder
241 has filed a report containing a fraudulent or wilful misrepresentation.

242 (i) For any holder who requests to enter into the voluntary disclosure agreement program under § 1173 of this
243 title and subsequently voluntarily withdraws or is referred to the State Escheator pursuant to § 1173(a)(4) of this
244 title, the State Escheator may not conduct any examination of records or an investigation under this section for any
245 period more than 10 years prior to when property is presumed abandoned under this chapter from the calendar year
246 in which the holder provided written notice of such holder's intent to enter into the voluntary disclosure agreement
247 program pursuant to § 1173 of this title, except if the State Escheator reasonably concludes that the holder has
248 filed a report containing a fraudulent or wilful misrepresentation.

249 Section 15. Amend § 1172, Title 12 of the Delaware Code by making deletions as shown by strike through and
250 insertions as shown by underline as follows:

251 § 1172. Rules and procedures for conducting an examination.

252 (j) Subject to this section and § 1171 of this title, the State Escheator may authorize an examination of records or
253 an investigation of any person, or any agent, representative, subsidiary or affiliate of the person under
254 examination, or party in possession of information related to such examination, for any reason related to an
255 examination and is under no obligation to provide any other more specific or detailed reason or justification for the
256 examination to the person under examination or any agent, representative, subsidiary or affiliate of the person
257 under examination, or any party in possession of information related to such examination, other than the request
258 being related to an examination to determine compliance with this Chapter.

259 Section 16. Amend § 1173, Title 12 of the Delaware Code by making deletions as shown by strike through and
260 insertions as shown by underline as follows:

261 § 1173. Voluntary property reporting outreach program.

262 (b) The Secretary of State may request, via certified mail or any other commercially reasonable means of
263 correspondence that includes evidence of delivery, that a person enter into an unclaimed property voluntary
264 disclosure agreement to determine if the person has complied with any provision of this chapter. If the form
265 indicating the person's intent to enter into a voluntary disclosure agreement is not received by the Secretary of
266 State by certified mail or by other means deemed acceptable by the Secretary of State within 90 ~~60~~ days after the
267 request to enter the voluntary disclosure agreement program was ~~mailed by certified mail~~ delivered, the Secretary
268 of State shall refer the person to the State Escheator for examination under § 1171 of this title. Alternatively,
269 within 90 days after the request to enter the voluntary disclosure agreement program was delivered, a person
270 receiving such a request may notify the State Escheator, by certified mail or by other means deemed acceptable by
271 the State Escheator, of the person's request to expedite an examination under §1172(c) of this title by providing
272 written notification on a form provided by the State Escheator.

273 Section 17. Amend § 1174, Title 12 of the Delaware Code by making deletions as shown by strike through and
274 insertions as shown by underline as follows:

275 § 1174. Records obtained in examination or voluntary disclosure.

276 All of the following apply to records obtained and records, including work papers, compiled by the State
277 Escheator or the Secretary of State in the course of conducting an examination under § 1171 of this title or a
278 voluntary disclosure under § 1173 of this title:

279 (3) The records may not be used in a joint examination conducted with another state, the United States, a
280 foreign country or subordinate unit of a foreign country, or any other governmental entity ~~if the other~~
281 ~~person conducting the examination is legally bound to maintain the confidentiality and security of~~
282 ~~information obtained from a person subject to examination in a manner substantially equivalent to § 1189~~
283 ~~of this title~~ unless the person subject to examination consents to such use in writing.

284 Section 18. Amend § 1177, Title 12 of the Delaware Code by making deletions as shown by strike through and
285 insertions as shown by underline as follows:

286 § 1177. Report to person whose records were examined.

287 At the conclusion of an examination under § 1171 of this title, the State Escheator shall provide to a person
288 whose records were examined a complete and unredacted ~~examination report~~ statement of findings, which must
289 identify in detail all of the following:

290 (1) The property types reviewed.

291 (2) The methodology of any estimation technique, extrapolation, or statistical sampling method used in
292 conducting the examination.

293 (3) The calculation showing the value of property determined to be due.

294 (4) The findings of the person conducting the examination.

295 Section 19. Amend § 1178, Title 12 of the Delaware Code by making deletions as shown by strike through and
296 insertions as shown by underline as follows and redesignating accordingly:

297 § 1178. State Escheator's contract with another to conduct compliance review and examination and limit on future
298 employment.

299 (a) The State Escheator may contract with a person to conduct compliance reviews and examinations in
300 accordance with this chapter but no such person shall be assigned more than 50% of the number of all such
301 compliance reviews and examinations undertaken subsequent to January 1, 2015.

302 (b) Notwithstanding any other provision of this Code, every contract between the State and a person conducting
303 examinations and providing any unclaimed property examination or consulting services must meet ~~both~~ all of the
304 following:

305 (1) Be for a term of no more than 5 years.

306 (2) Provide for payment exclusively on an hourly basis for all compliance reviews and examinations of
307 holders incorporated in Delaware, except for compliance reviews and examinations of customer accounts or
308 policies for securities accounts and life insurance policies.

309 (3) Require compliance with any state-approved nondisclosure agreement and non-solicitation provisions.

310 (24) Provide that the person may not hire, retain, or compensate in any way any employee of the ~~Division~~
311 ~~of Revenue or the~~ Department of Finance who functions in a senior supervisory role related to unclaimed property,
312 including the Secretary of Finance, a Deputy Secretary of Finance, the State Escheator, Assistant Director of
313 Enforcement, or Audit Manager, for a period of 2 years from the time such employee leaves the employ of the
314 State Department of Finance.

315 Section 20. Amend § 1179, Title 12 of the Delaware Code by making deletions as shown by strike through and
316 insertions as shown by underline as follows:

317 § 1179 Judicial review procedure; Court of Chancery jurisdiction.

318 (b) Not later than 90 days after the State Escheator mails a statement of findings and request for payment, the
319 holder may do any of the following:

320 (1) File an action against the State Escheator in the Court of Chancery challenging the State Escheator's
321 determination of liability and seeking a declaration that the determination is unenforceable, in whole or in
322 part.

323 (2) Pay the amount or deliver the property determined by the State Escheator to be paid or delivered to
324 the State Escheator and file an action against the State Escheator in the Court of Chancery for a refund of
325 all or part of the amount paid or return of all or part of the property delivered.

326 (d) In the appeal to the Court of Chancery, the Court, when factual determinations are at issue, shall take due
327 account of the experience and specialized competence of the State Escheator and of the purposes of the basic law
328 under which the State Escheator has acted. The Court's review shall be limited to a determination of whether the
329 statement of findings and request for payment was the product of an orderly and logical deductive process
330 rationally supported by substantial, competent evidence on the hearing record. The Court shall review errors of
331 law de novo, and the Court's review shall include state or federal constitutional questions related to the
332 examination. If the Court determines that the statement of findings and request for payment is insufficient for its
333 review, it shall remand to the State Escheator for further proceedings.

334 Section 21. Amend § 1183, Title 12 of the Delaware Code by making deletions as shown by strike through and
335 insertions as shown by underline as follows:

336 § 1183. Interest and penalties.

337 (a) Interest at 0.5% per month on outstanding unpaid amounts accrues from the date the amounts or property were
338 due under this chapter until paid. Interest due in accordance with this subsection may not exceed 50% of the
339 amount required to be paid. Penalties under subsections (b), (c), or (d) of this section are not interest for purposes
340 of this subsection. This subsection applies to any late-filed unclaimed property that is reported and remitted on or
341 after July 1, 2017.

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

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

348 Section 22. Amend § 1185, Title 12 of the Delaware Code by making deletions as shown by strike through and
349 insertions as shown by underline as follows:

350 § 1185. Waiver of interest and penalty.

351 (a) The State Escheator may, for good cause, waive, in whole or in part, interest and penalties under § 1183 or §
352 1184 of this title, subject to the following requirements:

353 (1) Except as provided in paragraph (2) of this subsection, interest must be no less than 20% per incident
354 for any holder who receives a notice of examination after August 1, 2021.

355 (2) Interest must be 1% per incident for any holder who receives a notice of examination after August 1,
356 2021, who completes and remits payment pursuant to a Department of Finance expedited examination
357 process under § 1172(c) of this title.

358 (3) For the purposes of this section, "per incident" means the total past-due examination liability,
359 including any estimated liability under § 1176(a) of this title.

360 ~~(b) The State Escheator may, for good cause shown, do all of the following related to unclaimed property~~
361 ~~remitted to the State before January 1, 2019:~~

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

364 ~~(2) Waive, in whole or in part, the calculable interest under § 1183 of this title for unclaimed property~~
365 ~~remitted to the State as a result of securities examinations in which estimation is not required under §§~~
366 ~~1171 and 1172 of this title.~~

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

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

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

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

376 (b) The Secretary of State may waive interest due on outstanding unpaid amounts reported through the Secretary
377 of State's voluntary disclosure program pursuant to § 1173 of this title.

378 Section 23. Amend § 1186, Title 12 of the Delaware Code by making deletions as shown by strike through and
379 insertions as shown by underline as follows:

380 § 1186. When agreement to locate property enforceable.

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

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

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

386 (3) It states the amount or value of the property reasonably estimated or expected to be recovered
387 computed both before and after a fee or other compensation to be paid to the other person has been
388 deducted.

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

390 Section 24. Amend § 1189, Title 12 of the Delaware Code by making deletions as shown by strike through and
391 insertions as shown by underline as follows:

392 § 1189. Confidentiality of records.

393 (a) Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for any
394 officer or employee of the Department of Finance or the Department of State or for any other ~~officer~~ officer, ~~or~~
395 employee, or contractor of this State to disclose or make known in any manner to any person who is not a current
396 officer or employee of this State any of the following:

397 (1) The amount of unclaimed property that has been reported to and received by the State Escheator or
398 the Secretary of State, or both, by any holder, under this chapter, or to disclose the terms of or supporting
399 documentation related to any annual filing, unclaimed property voluntary disclosure agreement, or
400 settlement agreement resulting from the reporting of any unclaimed property under this chapter, including
401 all agreements entered into under this chapter, including past agreements.

402 (2) Identifying information regarding any unclaimed property owner that is set forth in any report or
403 record made or delivered to the State Escheator, including the exact amount of any property and the
404 character of any property received by the State Escheator.

405 (b) Notwithstanding subsection (a) of this section, the State Escheator shall maintain a public record of all names
406 and last-known ~~addresses~~ address identifiers of the person or persons appearing to be entitled to property paid or
407 delivered to the State Escheator under this chapter, including whether the value of such property exceeds a set
408 amount to be determined by the State Escheator.

409 (1) The State Escheator shall retain other identifying information in a report or record made or delivered
410 to the State Escheator.

411 (2) The State Escheator shall consider the information in paragraph (b)(1) of this section to be
412 confidential and the information may be disclosed only in the discretion of the State Escheator.

413 (3) The State Escheator may provide additional information regarding unclaimed property as follows:

414 a. To a person who has presented satisfactory proof of an interest in or title to such property.

415 b. For purposes directly connected with the administration of this chapter.

416 (e) Policies and procedures relating to the determination of claims and fraud prevention are confidential and are
417 not a “public record” under Chapter 100 of Title 29.

418 Section 25. Sections 1, 4, 9, 10, 11, 13, 15, 18, 20, and 22 of this Act shall apply retroactively to any claims,
419 examinations, or litigation pending as of the effective date of this legislation.

420 Section 26. Sections 2, 3, 5, 6, 7, 8, 12, 14, 16, 17, 19, 21, 23, and 24 of this Act take effect on August 1, 2021.

SYNOPSIS

This Act clarifies various aspects of the State’s procedures to operate its unclaimed property program, including promoting and determining holder compliance, processing owner claims, and preventing fraudulent claims.

Sections 1, 13, and 15 confirm current examination practice and address recent court decisions that, to determine a holder’s compliance, the State Escheator may request and review records to verify the completeness and accuracy of the holder’s records, even if such records may not identify property reportable to the State, and that the State may initiate an examination to determine compliance for any reason and is under no obligation to provide a detailed or specific reason or justification.

Section 2 clarifies that the dormancy period for various types of bonds is 3 years, which confirms current practice to treat these property types similar to securities-related property. This section also clarifies and addresses recent changes made by the SECURE Act that impact the escheatment of Individual Retirement Accounts. This Section takes effect on August 1, 2021, for the next annual reporting period.

Section 3 clarifies that holders whose business is described in 30 Del. C. § 2906 (“the business of operating a restaurant, snack bar, soda fountain, take-out food service, catering service, private eating or drinking club, or other eating establishment or service”) do not have to report and remit unredeemed gift card property that had an original issue amount of \$5 or less. This Section further clarifies that no report is required from any holder for unredeemed gift cards having an aggregate face value of less than \$5000 for the reporting period.

Sections 4 and 13 clarify and confirm current practice that owner notification (“due diligence”) letters may be sent at any time during an examination at the holder’s initiative or at the direction of the State Escheator. Section 13 expressly allows the State to mail owner notification letters during an examination.

Sections 5 and 24 clarify and confirm current practice that the State Escheator is only required to publish or provide upon request only last known address identifiers, which currently is considered city and state, rather than a property owner's full address.

Section 6 limits the scope of the State's holder indemnification to property claimed by other jurisdictions and excludes penalties, as defined, imposed by other jurisdictions from the State's indemnification obligations.

Sections 7 and 14 clarify and confirm current practice by aligning the scope (included years and legal entities) of a Voluntary Disclosure Agreement ("VDA") or a subsequent examination, which is to be determined as of the earlier of the following: the date the VDA invitation letter is delivered, the date a holder elects to enter the VDA program, or the date the notice of examination is delivered.

Sections 8 and 9 clarify and confirm current practice related to the return of securities-related property to owners. Section 8 makes a technical correction to change the imprecise 18-month time limit to an exact time period of 558 days (31 days multiplied by 18 months), to allow owners the maximum amount of time under the law to file a claim to recover their securities or market value as of the date of the claim, rather than the liquidated cash value. Because an owner's right may be significantly altered after the expiration of this time period, precise calculation of this time period to the owner's benefit is necessary. The 558-day period is the current standard applied by the State Escheator to determine the return of securities or market value as of the date of the claim versus liquidated cash value, and codification of the 558-day period avoids additional software development costs. This Section also clarifies that claimants receive any dividends that the State received while it held the security. Sections 8 and 9 clarify that the 558-day time limit begins to run based on the notice provided as required by the statute in effect when the property was delivered to the State and ends based on the claimant's first documented contact with the State if the claim is made within 60 days of such contact.

Section 10 clarifies procedures for the denial of a claim and the investigation of potentially fraudulent claims.

Section 11 makes a technical correction to change the imprecise 4-month time limit to an exact time period of 120 days for claimant appeals to the Tax Appeal Board.

Section 12 clarifies that the State may send Verified Report and Compliance Review notices to the appropriate legal entity, which may include an agent, affiliate, or subsidiary of the reporting legal entity.

Section 14 establishes a permanent expedited examination program for any company whose examination began after February 2, 2017. Companies who complete their examinations within the parameters of the permanent expedited examination program will receive the benefit of a waiver of penalties and interest, except for a nominal, non-waivable 1% interest assessment. Companies who receive a notice of examination after August 1, 2021, and who do not complete an expedited examination are subject to a minimum, non-waivable 20% interest assessment, up to an assessment of full interest and penalties under the statute.

Section 16 clarifies that the Secretary of State may send notices inviting holders to participate in the VDA program by any commercially reasonable means that includes evidence of delivery. This Section establishes that holders will have a 90-day period during which holders may enter the VDA program or may request to expedite their examination conducted by the State Escheator. Holders who neither enter the VDA program nor elect to expedite their examination will be referred to the State Escheator for a conventional examination.

Section 17 prohibits the use of documents obtained in an examination initiated by Delaware to be used in a multistate examination, unless the holder agrees to such use in writing. This Section applies to examinations initiated after August 1, 2021.

Sections 18 and 20 make a technical correction for consistent nomenclature of the "statement of findings" and "request for payment" issued at the conclusion of an examination.

Section 19 requires exclusively hourly compensation to be paid to third-party audit firms, except for examinations of accounts or policies of insurance and securities-related property. This Section also requires third-party audit firms to comply with the State's standard non-disclosure agreement requirements, regardless of whether the holder under examination agrees to such requirements. Finally, this section clarifies which senior unclaimed property positions in the Department of Finance are prohibited from vendor employment for a 2-year period.

Sections 21 and 22 simplify and clarify the application and possible waivers of interest and penalties for past-due property. To encourage voluntary annual compliance and participation in the Secretary of State's VDA program, under this Act, interest and penalties may be waived by the State Escheator, or Secretary of State for VDAs, in all circumstances, except the following: 1) Past-due property determined in an expedited examination as established by the Act will be subject to a nominal, non-waivable 1% per incident interest assessment; and 2) Past-due property determined in a conventional, non-expedited examination initiated after August 1, 2021, will be subject to a minimum, non-waivable 20% per incident interest assessment.

Section 23 clarifies and confirms current practice regarding limitations on finder agreements to locate property.

Section 24 expressly applies the confidentiality requirements of § 1189 to state contractors, such as third-party audit firms. This Section also excludes policies and procedures related to the determination of claims and fraud prevention measures from disclosure as a public record under the Freedom of Information Act.

Sections 1, 4, 9, 10, 11, 13, 15, 18, 20, and 22 of this Act shall apply retroactively to any claims, examinations, or litigation pending as of the effective date of this legislation.

Sections 2, 3, 5, 6, 7, 8, 12, 14, 16, 17, 19, 21, 23, and 24 of this Act take effect on August 1, 2021.

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

Author: Senator Townsend