

SENATE BILL No. 173

By Committee on Financial Institutions and Insurance

2-7

AN ACT concerning unclaimed property; relating to demutualization of insurance companies; amending K.S.A. 2002 Supp. 58-3935 and 58-3950 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2002 Supp. 58-3935 is hereby amended to read as follows: 58-3935. (a) Property is presumed abandoned if it is unclaimed by the apparent owner during the time set forth below for the particular property:

- (1) Traveler's check, 15 years after its issuance;
- (2) money order, seven years after issuance;
- (3) except as provided in K.S.A. 58-3943, and amendments thereto, stock or other equity interest in a business association or financial organization, including a security entitlement under article 8 of the uniform commercial code, five years after the earlier of:
 - (A) The date of the most recent dividend, stock split or other distribution unclaimed by the apparent owner; or
 - (B) the date of the second mailing of a statement of account or other notification or communication that was returned as undeliverable or after the holder discontinued mailings, notifications or communications to the apparent owner;
- (4) debt of a business association or financial organization, other than a bearer bond or an original issue discount bond, five years after the date of the most recent interest payment unclaimed by the apparent owner;
- (5) a demand, savings or time deposit, including a deposit that is automatically renewable, five years after the earlier of maturity or the date of the last indication by the owner of interest in the property, except that a deposit that is automatically renewable is deemed matured for purposes of this section upon its initial date of maturity, unless the owner has consented to a renewal at or about the time of the renewal and the consent is in writing or is evidenced by a memorandum or other record on file with the holder;
- (6) money or credits owed to a customer as a result of a retail business transaction, five years after the obligation accrued;
- (7) amount owed by an insurer on a life or endowment insurance

1 policy or an annuity that has matured or terminated, three years after the
2 obligation to pay arose or, in the case of a policy or annuity payable upon
3 proof of death, three years after the insured has attained, or would have
4 attained if living, the limiting age under the mortality table on which the
5 reserve is based;

6 (8) property distributable by a business association or financial or-
7 ganization in a course of dissolution, one year after the property becomes
8 distributable;

9 (9) property received by a court as proceeds of a class action, and not
10 distributed pursuant to the judgment, one year after the distribution date;

11 (10) property held by a court, state or other government, govern-
12 mental subdivision, agency or instrumentality, one year after the property
13 becomes distributable;

14 (11) wages or other compensation for personal services, one year after
15 the compensation becomes payable;

16 (12) deposit or refund owed to a subscriber by a utility, one year after
17 the deposit or refund becomes payable;

18 (13) property held by agents and fiduciaries in a fiduciary capacity
19 for the benefit of another person, five years after it has become payable
20 or distributable, unless the owner has increased or decreased the prin-
21 cipal, accepted payment of principal or income, communicated concern-
22 ing the property or otherwise indicated an interest as evidenced by a
23 memorandum or other record on file prepared by the fiduciary;

24 (14) property in an individual retirement account, defined benefit
25 plan or other account or plan that is qualified for tax deferral under the
26 income tax laws of the United States, three years after the earliest of the
27 date of the distribution or attempted distribution of the property, the
28 date of the required distribution as stated in the plan or trust agreement
29 governing the plan, or the date, if determinable by the holder, specified
30 in the income tax laws of the United States by which distribution of the
31 property must begin in order to avoid a tax penalty;

32 (15) *property distributable in the course of a demutualization of an*
33 *insurance company five years after the date of either the distribution of*
34 *the property or the last contact with the policyholder, whichever occurs*
35 *first;*

36 (16) all other property, five years after the owner's right to demand
37 the property or after the obligation to pay or distribute the property arises,
38 whichever first occurs; and

39 ~~(16)~~ (17) any proceeds of a sale pursuant to K.S.A. 58-817, and
40 amendments thereto, which remain after satisfaction of the lien provided
41 by K.S.A. 58-816, and amendments thereto, that have been unclaimed by
42 the owner for one year from receipt of the proceeds of the sale and
43 satisfaction of the lien.

1 (b) At the time that an interest is presumed abandoned under sub-
2 section (a) any other property right accrued or accruing to the owner as
3 a result of the interest, and not previously presumed abandoned, is also
4 presumed abandoned.

5 (c) Property is unclaimed if, for the applicable period set forth in
6 subsection (a), the apparent owner has not communicated in writing or
7 by other means reflected in a contemporaneous record prepared by or
8 on behalf of the holder, with the holder concerning the property or the
9 account in which the property is held, and has not otherwise indicated
10 an interest in the property. A communication with an owner by a person
11 other than the holder or the holder's representative who has not in writing
12 identified the property to the owner is not an indication of interest in the
13 property by the owner.

14 (d) An indication of an owner's interest in property includes:

15 (1) The presentment of a check or other instrument of payment of a
16 dividend or other distribution made with respect to an account or un-
17 derlying stock or other interest in a business association or financial or-
18 ganization or, in the case of a distribution made by electronic or similar
19 means, evidence that the distribution has been received;

20 (2) owner-directed activity in the account in which the property is
21 held, including a direction by the owner to increase, decrease or change
22 the amount or type of property held in the account;

23 (3) the making of a deposit to or withdrawal from a bank account;
24 and

25 (4) the payment of a premium with respect to a property interest in
26 an insurance policy, except that the application of an automatic premium
27 loan provision or other nonforfeiture provision contained in an insurance
28 policy does not prevent a policy from maturing or terminating if the in-
29 sured has died or the insured or the beneficiary of the policy has otherwise
30 become entitled to the proceeds before the depletion of the cash surren-
31 der value of a policy by the application of those provisions.

32 (e) Property is payable or distributable for the purpose of this act
33 notwithstanding the owner's failure to make demand or to present any
34 instrument or document otherwise required to obtain payment.

35 (f) Any demand or savings account or matured timed deposit with a
36 financial organization shall not be presumed abandoned if regular cor-
37 respondence to an owner of the account has not been returned to the
38 sender.

39 (g) Any outstanding check, draft, credit balance, customer's overpay-
40 ment or unidentified remittance issued to a sole proprietorship or busi-
41 ness association as part of a commercial transaction in the ordinary course
42 of a holder's business shall not be presumed abandoned.

43 (h) A holder may not impose with respect to any property payable or

1 distributable for the purpose of this act, including any income or incre-
2 ment derived therefrom, any fee or charge due to dormancy or inactivity
3 or cease payment of interest unless:

4 (1) There is an enforceable written contract between the holder and
5 the owner of the property pursuant to which the holder may impose a
6 charge or cease payment of interest;

7 (2) for property in excess of \$100, the holder, no more than three
8 months before the initial imposition of those charges or cessation of in-
9 terest, has mailed written notice to the owner of the amount of those
10 charges at the last known address of the owner stating that those charges
11 will be imposed or that interest will cease, but the notice provided in this
12 section need not be given with respect to charges imposed or interest
13 ceased before the effective date of this act, or for property described in
14 K.S.A. 58-3937 and 58-3938, and amendments thereto; and

15 (3) the holder regularly imposes such charges or ceases payment of
16 interest and in no instance reverses or otherwise cancels them or retro-
17 actively credits interest with respect to the property. Charges imposed
18 because of dormancy or inactivity may be made and collected monthly,
19 quarterly or annually except that beginning with the effective date of this
20 act, such charges may only be imposed for a maximum of five calendar
21 years.

22 (i) For the purpose of this section, a person who holds property as
23 an agent for a business association is deemed to hold the property in a
24 fiduciary capacity for that business association alone unless the agreement
25 between the agent and the business association provides otherwise.

26 (j) For the purposes of this act, a person who is deemed to hold
27 property in a fiduciary capacity for a business association alone is the
28 holder of the property only insofar as the interest of the business asso-
29 ciation in the property is concerned, and the business association is the
30 holder of the property insofar as the interest of any other person in the
31 property is concerned.

32 (k) Any property held by a financial organization that would otherwise
33 be presumed abandoned under this section shall not be presumed aban-
34 doned if the apparent owner:

35 (1) Owns other property which is not presumed abandoned and if
36 the financial organization communicates in writing with the owner with
37 regard to the property that would otherwise be presumed abandoned
38 under this section at the address to which communications regarding the
39 other property regularly are sent; or

40 (2) had another relationship with the financial organization concern-
41 ing which the owner has:

42 (A) Communicated in writing with the financial organization; or

43 (B) otherwise indicated an interest as evidenced by a memorandum

1 or other record on file prepared by an employee of the financial organi-
2 zation and if the financial organization communicates in writing with the
3 owner with regard to the property that would otherwise be abandoned
4 under this section at the address to which communications regarding the
5 other relationship regularly are sent.

6 Sec. 2. K.S.A. 2002 Supp. 58-3950 is hereby amended to read as
7 follows: 58-3950. (a) Except as provided in subsection (i), a holder of
8 property presumed abandoned shall make a report to the administrator
9 concerning the property.

10 (b) The report must be verified and must contain:

11 (1) A description of the property;

12 (2) except with respect to a traveler's check or money order, the
13 name, if known, and last known address, if any, and social security number
14 or taxpayer identification number, if readily ascertainable, of the apparent
15 owner of property of the value of \$100 or more;

16 (3) an aggregated amount of items valued under \$100 each;

17 (4) in the case of an amount of \$100 or more held or owing under an
18 annuity or a life or endowment insurance policy, the full name and last
19 known address of the insured or annuitant and of the beneficiary;

20 (5) in the case of property held in a safe deposit box or other safe-
21 keeping depository, a description of the property and any amounts owing
22 to the holder;

23 (6) the date, if any, on which the property became payable, demand-
24 able or returnable and the date of the last transaction with the apparent
25 owner with respect to the property; and

26 (7) other information that the administrator prescribes by rules and
27 regulations as necessary for the administration of this act.

28 (c) If a holder of property presumed abandoned is a successor to
29 another person who previously held the property for the apparent owner
30 or the holder has changed its name while holding the property, the holder
31 shall file with the report its former names, if any, and the known names
32 and addresses of all previous holders of the property.

33 (d) The report must be filed before November 1 of each year and
34 cover the 12 months next preceding July 1 of that year, but a report with
35 respect to a life insurance company *or the proceeds from the demutuali-*
36 *zation of any insurance company* must be filed before May 1 of each year
37 for the calendar year next preceding.

38 (e) The holder of property presumed abandoned shall send written
39 notice to the apparent owner, not more than 120 days or less than 60 days
40 before filing the report, stating that the holder is in possession of property
41 subject to this act if:

42 (1) The holder has in its records an address for the apparent owner
43 which the holder's records do not disclose to be inaccurate;

1 (2) the claim of the apparent owner is not barred by a statute of
2 limitations; and

3 (3) the value of the property is \$100 or more, or is reported under
4 K.S.A. 58-3943 or 58-3949 and amendments thereto.

5 (f) The written notice shall also contain the following:

6 (1) Nature and identifying number, if any, or description of the funds
7 or other property; ~~and~~

8 (2) the amount appearing on the records of the holder to be due the
9 apparent owner;

10 ~~(g) If the holder is not a life insurance company, the written notice
11 shall set forth; and~~

12 (3) an additional statement that the funds or other property will be
13 reported as unclaimed property to the state treasurer of Kansas ~~no later~~
14 ~~than November 1 of the current year~~ *on or before the reporting date*
15 *specified in subsection (d).*

16 ~~(h) If the holder is a life insurance company, the written notice shall
17 set forth an additional statement that the funds or other property will be
18 reported as unclaimed property to the state treasurer of Kansas no later
19 than May 1 of the current year.~~

20 ~~(i) (g)~~ (g) The holder of property presumed abandoned does not need to
21 file a report under the provisions of this section if such holder has no
22 individual property valued over \$100 and the total value of such holder's
23 aggregated property is under \$250, unless required to do so by the pro-
24 visions of subsection ~~(h)~~ (i).

25 ~~(j) (h)~~ (h) Before the date for filing the report, the holder of property
26 presumed abandoned may request the administrator to extend the time
27 for filing the report. The administrator may grant the extension for good
28 cause. The holder, upon receipt of the extension, may make an interim
29 payment on the amount the holder estimates will ultimately be due which
30 terminates the accrual of additional interest on the amount paid.

31 ~~(k) (i)~~ (i) The administrator, in the administrator's discretion, may re-
32 quire that any holder of property presumed abandoned, file a report as
33 required by this section.

34 Sec. 3. K.S.A. 2002 Supp. 58-3935 and 58-3950 are hereby repealed.

35 Sec. 4. This act shall take effect and be in force from and after its
36 publication in the statute book.

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