

Act No. 89
Public Acts of 1992
Approved by the Governor
June 4, 1992
Filed with the Secretary of State
June 4, 1992

**STATE OF MICHIGAN
86TH LEGISLATURE
REGULAR SESSION OF 1992**

Introduced by Reps. Jondahl and Bryant

ENROLLED HOUSE BILL No. 5801

AN ACT to amend sections 1, 2, 4, 5, 6, 7a, 10, 11, and 28 of Act No. 329 of the Public Acts of 1947, entitled as amended "An act to create a state board of escheats; to prescribe its powers and duties; to provide for the descent and devolution of escheated and abandoned property; to provide for the discovery, marshalling, protection, conservation and disposition of escheatable, abandoned and escheated property; to prescribe the procedure to declare escheatable and abandoned property escheated; to protect the rights and interests of owners and holders of escheatable, abandoned and escheated property in and to such property; to prescribe the procedure for the administration of this act and to prescribe penalties for violations of certain of its provisions; and to remove the bar of general statutes of limitation as a defense to proceedings instituted under this act in certain cases," sections 2 and 5 as amended by Act No. 76 of the Public Acts of 1991, being sections 567.11, 567.12, 567.14, 567.15, 567.16, 567.17a, 567.20, 567.21, and 567.38 of the Michigan Compiled Laws.

The People of the State of Michigan enact:

Section 1. Sections 1, 2, 4, 5, 6, 7a, 10, 11, and 28 of Act No. 329 of the Public Acts of 1947, sections 2 and 5 as amended by Act No. 76 of the Public Acts of 1991, being sections 567.11, 567.12, 567.14, 567.15, 567.16, 567.17a, 567.20, 567.21, and 567.38 of the Michigan Compiled Laws, are amended to read as follows:

Sec. 1. The attorney general of this state shall take charge of all matters pertaining to lands or other property that is subject to escheat or is escheatable because the owner died intestate leaving no known heirs-at-law, the owner disappeared or is missing from his or her last known place of residence for a continuous period of 5 years or more leaving no known heirs-at-law, or the owner abandoned the property.

Sec. 2. The department shall investigate and make inquiry into every county of this state to ascertain whether there is any property in the county that, because the owner died intestate leaving no known heirs-at-law, the owner disappeared or is missing from his or her last known place of residence for a continuous period of 5 years or more leaving no known heirs-at-law, or the property has been abandoned by the owner, has escheated, is subject to escheat, or is escheatable to this state pursuant to this act or any other act.

Sec. 4. All property the title to which has failed and the power of alienation of which has been suspended because the owner died intestate leaving no known heirs-at-law, the owner disappeared or is missing from his or her last known place of residence for a continuous period of 5 years or more leaving no known heirs-at-law, or the property has been abandoned by the owner, shall descend to this state as an escheat property.

Sec. 5. (1) As used in this act:

(a) "Person" includes a natural person, corporation, partnership, voluntary association, estate, trust, 2 or more persons having a joint or common interest, or any other legal or commercial entity; the United States government, including any official, officer, agency, department, authority, instrumentality, board, bureau, or court of the United States government, and any corporation organized by the United States for public purposes; and a state of the United States including this state, including any official, officer, agency, department, board, commission, constitutional body, or court of the state, any body politic and corporation created by the state for public purposes, and any political subdivision of the state.

(b) "Property", except as otherwise provided in subsection (2), means personal property, tangible or intangible, in the possession or under the control of a holder, and includes, but is not limited to, all of the following:

(i) Money.

(ii) Bills of exchange.

(iii) Stocks, bonds, and other securities.

(iv) Credits, including wages and other allowances for services earned or accrued on or after January 1, 1958, and funds due and payable on checks certified in this state or on written instruments issued in this state on which a banking or financial institution or any other holder is liable, including but not limited to certificates of deposit, drafts, cashier checks, money orders, and travelers checks; and proceeds or property interests represented by unredeemed gift certificates. Credits also include checks or other similar written instruments as described in section 403a of the nonprofit health care corporation reform act, Act No. 350 of the Public Acts of 1980, being section 550.1403a of the Michigan Compiled Laws.

(v) Deposits, including accrued interest and increments on the deposits.

(vi) Dividends, cash, or stock.

(vii) Certificates of membership in a corporation or association.

(viii) Money due and payable pursuant to the terms of a policy of insurance and money held and owing by any life insurance company doing business in this state that has remained unclaimed and unpaid for 5 years or more after it is established from the records of the company that the money became due and payable under a life or endowment insurance policy or annuity contract that has matured or terminated. A life insurance policy not matured by actual proof of the prior death of the insured is considered to be matured, and the proceeds of that policy are due and payable within the meaning of this act if the policy is in force when the insured has attained the limiting age under the mortality table on which the reserve is based. Money otherwise admittedly due and payable is considered to be held and owing within the meaning of this act although the policy or contract has not been surrendered as required.

(ix) Security deposits.

(x) Funds deposited by a holder with fiscal agents or fiduciaries for payment to an owner of dividends, coupon interest, and liquidation value of stocks and bonds.

(xi) Funds to redeem stocks and bonds.

(xii) Amounts refundable from excess or increased rates or charges collected by a corporation for utility services lawfully furnished by it that were ordered refunded to consumers or other persons entitled to them, and that remain unclaimed by the persons entitled to them for 5 years from the date they became payable pursuant to the final determination or order providing for the refunds. Property defined in this subparagraph includes interest due on the refunds.

(xiii) All other liquidated choses-in-action.

(c) "Owner", in addition to its commonly accepted meaning, means any person having the legal or equitable title or right to make demand to property that is subject to this act.

(d) "Holder" means any person having possession, custody, or control of the property of another person, and includes, but is not limited to, a bank, either state or national; a savings and loan association; a credit union; a trust company; a depository; a bailee; a trustee; a receiver or other liquidating officer; a fiduciary; a federal or state governmental department, official, officer, board, public corporation, commission, constitutional body, court, institution or agency, or political subdivision of the state; a municipal corporation and its fiscal officers; a custodian or officer appointed by a court to receive, keep, handle, or disburse money or other property; a public utility, insurance, or service corporation; and every other legal entity doing business in this state. This definition distinguishes the term "holder" of property from the term "owner" of property.

(e) "Abandoned property" means property against which a full period of dormancy has run.

(f) "Period of dormancy", except as provided in section 7a, means the full and continuous period of 5 years, during which an owner has ceased, failed, or neglected to exercise dominion or control over his or her property

or to assert a right of ownership or possession; to make presentment and demand for payment and satisfaction; or to do any other act in relation to or concerning the property. This definition does not include an act of a holder of abandoned property that is not done at the express request or authorization of the owner. For a life insurance policy not matured by actual proof of the prior death of the insured, the period of dormancy shall begin running at the time that the insured attains the limiting age under the mortality table on which the reserve is based, if the policy is in force at that time. For a prepaid funeral contract established under the prepaid funeral contract funding act, Act No. 255 of the Public Acts of 1986, being sections 328.211 to 328.235 of the Michigan Compiled Laws, the period of dormancy shall begin running at the date of death of the contract beneficiary, or if no contract beneficiary has been designated under the contract, the date of death of the owner of the contract, if the contract is in force at that time. For an account established under Act No. 70 of the Public Acts of 1954, being sections 328.201 to 328.204 of the Michigan Compiled Laws, the period of dormancy shall begin running at the date of death of the person for whom the account was established, if the account is in existence at that time. If it is unclear whether the contract beneficiary, the owner of the contract, or the person for whom the account was established has died, the department may prescribe the method to be utilized by the holder of the property to determine whether a report should be filed.

(g) "Escheat" means the descent or devolution of property to this state pursuant to the state constitution of 1963, the laws of this state, or this act.

(h) "Escheatable property" means property that is subject to escheat to this state pursuant to the state constitution of 1963, the laws of this state, or this act.

(i) "Escheated property" means property that has descended to this state as an escheat.

(j) "Appropriation" means the act of this state, through its duly constituted officers or agencies, in taking or accepting possession or custody of abandoned, unprotected, unclaimed, or lost property as conservator for later disposition by descent to this state as an escheat or redemption by the owner as provided in this act.

(k) "Redemption" means the reclamation of escheated or escheatable property, or the proceeds of the sale of the property, made by the owner or other person entitled to the property, pursuant to this act.

(l) "Unprotected property" means property that the owner has mislaid or left unprotected against loss, damage, waste, or deterioration under circumstances indicating the disappearance of the owner or an abandonment of the property.

(m) "Department", unless the context clearly requires otherwise, means the department of treasury.

(2) As used in this act, the word "property" does not include credits or deposits evidenced by cash balances on unclaimed or refused personal property, or any property, except the items specified in subsection (1)(b)(i) to (xiii), that the owner could not recover because of any state or federal statute of limitations. "Property" does not include sewage tap or connection fees or charges that a court has ordered to be refunded by a local government to property owners or other persons paying the fees or charges and that are unclaimed within a period of 5 years from the date of the court order and are used to retire judgment bonds issued to refund the sewage tap or connection fees. This act applies to unclaimed property held by a life insurance company as described in subsection (1)(b)(viii) where the last known address, according to the records of the life insurance company, of the person entitled to the property is within this state. If a person other than the insured or annuitant is entitled to the property and no address for that person is known to the life insurance company or if it is not definite and certain from the records of the life insurance company what person is entitled to the property, then it is presumed for the purposes of this act that the last known address of the person entitled to the property is the same as the last known address of the insured or annuitant according to the records of the life insurance company.

Sec. 6. (1) Except as provided in section 7a, each year, each holder of abandoned property shall make and file with the department a report, in duplicate, as of January 1 of that year, containing a full, true, and itemized statement of all abandoned property in his or her possession or under his or her control. The report shall be filed on or before June 30. However, if abandoned property is required to be reported in 1992 but would not have been required to be reported in 1992 if the period of dormancy had been 7 years, the property may be reported in a separate report filed on or before September 30, 1992. The holder shall pay over or deliver the abandoned property when the report is required to be filed. However, in 1992, the holder may pay over and deliver any abandoned property on or before September 30 without penalty or interest charges under subsection (5).

(2) The requirements of subsection (1) do not apply to fiduciaries of decedent estates or to municipal corporations and their fiscal officers, other than counties and their fiscal officers, unless the municipal corporation is a holder of the property in a capacity other than a governmental capacity, as bailee, or by virtue of other special contract, express or implied. The requirements of subsection (1) do not apply to any account or item of property evidenced by a written investment contract, time certificate of deposit, or other written contract maturing on a specified date, or upon notice in writing to the holder by the owner, or at the end of a fixed or adjusted term, unless the owner or beneficiary fails to reduce to cash any benefit or interest payment on

the account or item of property for a full and continuous period of 5 years, or the owner or beneficiary fails or neglects for a period of 5 years after the initial maturity date of the contract to claim and demand his or her property. The requirements of subsection (1) do not apply if, according to the books and records of the holder, the owner of the abandoned property is a nonresident of this state and the holder reports and, if required, pays over or delivers the abandoned property to any other state under the provisions of the escheats laws of that state.

(3) A corporation or any other legal entity organized under the laws of any other state licensed to transact business in this state is required to report and pay over or deliver only abandoned property belonging to an owner who, according to the last known address of the owner, was a resident of this state, except that shares of stock, membership, or other evidences of interest, and the interest, profits, dividends, or other increment thereon, as well as cash, as set forth in section 12, the physical situs of which property is within this state, is considered to be abandoned property and shall be reported and paid over or delivered to the department by the holder without regard to the last known address of the owner.

(4) If the address of the owner entitled to the funds is not known to the holder, it is presumed that the last known address of the owner is the same as the address of the place where the certificate of deposit, draft, cashier check, money order, travelers check, or other like instrument was issued or where the transaction was initiated.

(5) A person who fails to pay over or deliver abandoned property pursuant to subsection (1) is liable for a penalty equal to 1% of the value of the abandoned property, per month, not to exceed 25% of the value of the abandoned property, and for interest calculated in the manner provided in section 23 of Act No. 122 of the Public Acts of 1941, being section 205.23 of the Michigan Compiled Laws, during the period of noncompliance.

(6) Procedures for the collection of the amount or value of abandoned property not paid over or delivered pursuant to subsection (1) and for the enforcement and collection of penalties and interest under subsection (5) shall be administered by the department pursuant to Act No. 122 of the Public Acts of 1941, being sections 205.1 to 205.31 of the Michigan Compiled Laws. The remedies provided in this section do not preclude any other remedy provided by law. However, a penalty or interest shall not be imposed for failure to pay over or deliver abandoned property except as provided in this section.

Sec. 7a. (1) The "period of dormancy" for travelers checks means the full and continuous period of 15 years from the date of sale during which the instruments have remained outstanding. The "period of dormancy" for money orders means the full and continuous period of 7 years from the date of sale during which the instruments have remained outstanding.

(2) Pursuant to sections 601 to 603 of title VI of Public Law 93-495, 12 U.S.C. 2501 to 2503, if the books and records of an issuer of travelers checks or money orders show that a travelers check or money order was purchased in this state, it shall be included in the report required to be filed with the department if another address of the owner entitled to the funds is not known to the issuer of the instrument. An issuer of travelers checks or money orders who maintains records of the date and location of the sale of the instruments shall not be required to enumerate the names and addresses of the purchasers or payees in reports required to be filed pursuant to this act, but may make reports by serial numbers of the instruments and amounts, or by gross sums. The department may audit the basic records for verification of reports submitted at its discretion. The holder at the request of the department shall make the basic records available for audit.

Sec. 10. (1) Every corporation in this state conducting a safe deposit and collateral deposit business, referred to in this section as "company", shall attach to each report made and filed by it under the requirements of this act a copy of any inventory of property in its possession, not previously reported, that has been removed from any safe deposit box or compartment more than 5 years before the date as of which the report is made by reason of the termination of the lease of the safe deposit box or compartment for failure to pay the rental charges. The report shall include a statement of the name and last known address of each lessee whose lease has been terminated for failure to pay the rental charges, the number or identifying description of the safe deposit box or compartment from which the contents have been removed, and the date of the opening of the safe deposit box or compartment. The report shall contain further identifying data and information as required by the department.

(2) The company, its officers, employees, or agents, at the time of the opening of any safe deposit box or compartment and removal of the contents because of the termination of the lease for failure to pay rental charges, shall make an inventory of the contents and a true copy of the inventory shall be attached to its report to the department as provided in subsection (1).

Sec. 11. (1) If an officer of a court in this state, including a federal court, or any county officer is in possession of any money or other property collected or received pursuant to an order of court, and the officer is unable to distribute or pay out the money or property to the person or persons entitled to it as prescribed by an order of a court because of the failure of the distributee or distributees to claim the money or property or because the

whereabouts of the distributee or distributees cannot be ascertained for a period of 5 years from and after the receipt of the money or property by the officer, then the officer shall report the money or property to the department as abandoned property pursuant to section 6 or 8.

(2) Upon the receipt of the report required by this section, the department shall immediately deliver a copy of the report to the attorney general who shall institute or cause to be instituted a proper suit or proceeding for an adjudication of abandonment and the descent of the property to this state as an escheat. However, this section does not divest the court, under whose order the money was received by the officer, of jurisdiction over the money or property and the power to control the distribution of the money or property to the rightful owner or owners, except if the court waives jurisdiction or the owner or owners of the property fail to appear or cause their appearance to be entered in the suit or proceeding instituted by the attorney general, or at his or her instance, as provided in this act.

Sec. 28. If it appears to the attorney general that there is property that has been unclaimed, uncalled for, or abandoned by persons legally entitled to the property for a period of 5 years or more, the attorney general may institute an action in the circuit court in the name of the people of the state of Michigan for the purpose of determining the issue of actual abandonment of the property, and to procure a judgment for the descent and devolution of the property, including the increment thereon, to this state as an escheat. The action may be commenced in the circuit court of the county in which the owner, named as defendant, has the owner's last known address in this state, or in which the holder of the property resides or has its principal office or place of business. The holder of the property may be named as a party defendant with the owner, and any number of owners or holders may be joined as parties defendant. Process in the action shall be served upon all named holders defendant in the same manner as is provided by law, or rules of court, for service of process in other actions. Process in the action shall be served upon all owners named as parties defendant by delivering an original and true copy of summons issued out of the court, together with a true copy of the plaintiff's complaint, to the sheriff of the county. The sheriff, within 15 days after the delivery to him or her of the process, shall post the true copy of the summons and the true copy of the complaint on the bulletin board or other panel provided for the public posting of legal process or notices in or on the courthouse of his or her county, or in the absence of a bulletin board or other panel, then upon a front door of the courthouse and make a return of the summons and complaint. The service shall not be construed to be substituted service.

This act is ordered to take immediate effect.

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Clerk of the House of Representatives.

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Secretary of the Senate.

Approved.....

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Governor.