

# HOUSE BILL No. 5991

November 8, 2012, Introduced by Rep. Nesbitt and referred to the Committee on Tax Policy.

A bill to amend 1995 PA 29, entitled  
"Uniform unclaimed property act,"  
by amending section 31 (MCL 567.251), as amended by 1997 PA 195.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 31. (1) The administrator may require a person who has  
2 not filed a report under this act or a person who the administrator  
3 believes has filed an inactive, incomplete, or false report, to  
4 file a verified report in a form specified by the administrator.  
5 The report shall state whether the person is holding any unclaimed  
6 property reportable or deliverable under this act, describe  
7 unclaimed property not previously reported or as to which the  
8 administrator has made inquiry, and specifically identify and state  
9 the amounts of property that may be in issue.

1           (2) The administrator, at reasonable times and upon reasonable  
2 notice, may examine the records of a person to determine whether  
3 the person has complied with this act. The administrator may  
4 conduct the examination even if the person believes he or she is  
5 not in possession of any property reportable or deliverable under  
6 this act. The administrator may contract with any other person to  
7 conduct the examination on behalf of the administrator.

8           (3) If a person is treated under section 13 as the holder of  
9 the property only insofar as the interest of the business  
10 association in the property is concerned, the administrator,  
11 pursuant to subsection (2), may examine the records of the person  
12 if the administrator has given the notice required by subsection  
13 (2) to both the person and the business association at least 90  
14 days before the examination.

15           **(4) ANY EXAMINATION PERFORMED BY THE ADMINISTRATOR OR HIS OR**  
16 **HER DULY AUTHORIZED AGENTS MUST BE PERFORMED IN ACCORDANCE WITH THE**  
17 **GENERALLY ACCEPTED GOVERNMENT AUDITING STANDARDS PUBLISHED BY THE**  
18 **GOVERNMENT ACCOUNTABILITY OFFICE OF THE UNITED STATES GOVERNMENT.**  
19 **THE ADMINISTRATOR OR HIS OR HER DULY AUTHORIZED AGENTS MAY**  
20 **DETERMINE THE LIABILITY BASED UPON THE FACTS CONTAINED IN THE**  
21 **REPORT BEING AUDITED OR OTHER INFORMATION IN THE ADMINISTRATOR'S**  
22 **POSSESSION.**

23           **(5) THE ADMINISTRATOR OR HIS OR HER DULY AUTHORIZED AGENTS MAY**  
24 **DETERMINE THE LIABILITY BASED UPON A REASONABLE STATISTICAL SAMPLE**  
25 **OR OTHER SAMPLING TECHNIQUES CONSISTENT WITH GENERALLY ACCEPTED**  
26 **GOVERNMENT AUDITING STANDARDS IN EXAMINING REPORTS OR RECORDS ONLY**  
27 **WHEN THE PERSON BEING EXAMINED DOES NOT HAVE COMPLETE RECORDS OF**

1 TRANSACTIONS OR WHEN THE PERSON BEING EXAMINED HAS ADEQUATE RECORDS  
2 OF TRANSACTIONS AND BOTH PARTIES HAVE AGREED IN WRITING TO THE USE  
3 SUCH STATISTICAL SAMPLE OR OTHER SAMPLING TECHNIQUE. HOWEVER,  
4 UNLESS THE ADMINISTRATOR OR HIS OR HER DULY AUTHORIZED AGENTS HAVE  
5 DOCUMENTED REASON TO BELIEVE THAT ANY RECORDS MAINTAINED OR REPORTS  
6 FILED ARE INACCURATE OR INCOMPLETE, IF THE PERSON BEING EXAMINED  
7 HAS FILED ALL THE REQUIRED REPORTS AND HAS MAINTAINED AND PRESERVED  
8 ADEQUATE RECORDS, THEN ALL THE FOLLOWING APPLY TO THE EXAMINATION:

9 (A) THE EXAMINATION SHALL INCLUDE A REVIEW OF THE PERSON'S  
10 BOOKS AND RECORDS.

11 (B) THE EXAMINATION SHALL NOT BE BASED ON A DETERMINATION ON  
12 ANY INDIRECT AUDIT PROCEDURE.

13 (C) THE EXAMINATION SHALL NOT EXTRAPOLATE A DETERMINATION  
14 BASED ON ANY INDIRECT AUDIT PROCEDURE.

15 (6) WHEN USING AN INDIRECT AUDIT PROCEDURE TO SUPPORT  
16 EXAMINATION DETERMINATIONS, BOTH THE CREDIBILITY OF THE EVIDENCE  
17 AND THE REASONABLENESS OF THE CONCLUSION MUST BE EVALUATED BEFORE  
18 THE DETERMINATION OF TAX LIABILITY IS MADE. IN ADDITION, WHEN USING  
19 AN INDIRECT AUDIT PROCEDURE, THE ADMINISTRATOR AND HIS OR HER DULY  
20 AUTHORIZED AGENTS SHALL FOLLOW THE FOLLOWING GUIDELINES:

21 (A) THE ADMINISTRATOR AND HIS OR HER DULY AUTHORIZED AGENTS  
22 MAY USE ANY METHOD TO ESTABLISH THE EXAMINATION DETERMINATION.

23 (B) THE ADMINISTRATOR AND HIS OR HER DULY AUTHORIZED AGENTS  
24 MAY NOT BE ARBITRARY IN THE USE OF THE AUTHORITY DESCRIBED IN THIS  
25 SECTION.

26 (C) THE ADMINISTRATOR AND HIS OR HER DULY AUTHORIZED AGENTS  
27 MAY USE AN INDIRECT METHOD TO TEST THE ACCURACY OF THE TAXPAYER'S

1 BOOKS AND RECORDS.

2 (D) THE ADMINISTRATOR AND HIS OR HER DULY AUTHORIZED AGENTS  
3 SHALL INVESTIGATE ALL REASONABLE EVIDENCE PRESENTED BY THE TAXPAYER  
4 REFUTING THE COMPUTATION.

5 (E) THE ADMINISTRATOR AND HIS OR HER DULY AUTHORIZED AGENTS  
6 MAY USE THIRD-PARTY RECORDS IN THE DETERMINATION.

7 (7) A PERSON BEING EXAMINED BY AN INDIRECT AUDIT PROCEDURE MAY  
8 CHALLENGE THE ACCURACY OF ANY METHOD OR TEST USED BY PROVIDING  
9 CLEAR AND CONVINCING EVIDENCE THAT THE METHOD OR TEST IS ERRONEOUS,  
10 LACKS A RATIONAL BASIS, OR PRODUCES A DIFFERENT RESULT WHEN THE  
11 COMPLETE RECORDS ARE CONSIDERED.

12 (8) ~~(4)~~—If an examination of the records of a person results  
13 in the disclosure of property reportable and deliverable under this  
14 act, the administrator may assess the cost of the examination  
15 against the holder at the rate of \$50.00 a day for each examiner;  
16 however, the charges shall not exceed the value of the property  
17 found to be reportable and deliverable. The cost of examination  
18 made pursuant to subsection (3) shall be imposed only against the  
19 business association.

20 (9) ~~(5)~~—If a holder fails after the effective date of this act  
21 to maintain the records required by section 32 and the records of  
22 the holder available for the periods subject to this act are  
23 insufficient to permit the preparation of a report, the  
24 administrator may require the holder to report and pay an amount as  
25 may reasonably be estimated from any available records.

26 (10) AS USED IN THIS SECTION:

27 (A) "CIRCUMSTANTIAL EVIDENCE" IS EVIDENCE FROM WHICH MORE THAN

1 1 LOGICAL CONCLUSION CAN BE REACHED.

2 (B) "INDIRECT AUDIT PROCEDURE" IS AN AUDIT METHOD THAT  
3 INVOLVES THE USE OF CIRCUMSTANTIAL EVIDENCE, INCLUDING ACTIVITY  
4 FROM PERIODS THAT ACCURATE AND COMPLETE RECORDS ARE AVAILABLE, TO  
5 DETERMINE ANY UNCLAIMED PROPERTY REPORTABLE OR DELIVERABLE UNDER  
6 THIS ACT.