

HOUSE BILL No. 4703

May 7, 2013, Introduced by Rep. Farrington and referred to the Committee on Tax Policy.

A bill to amend 1995 PA 29, entitled
"Uniform unclaimed property act,"
(MCL 567.221 to 567.265) by adding section 31a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 31A. (1) IF, AFTER EXAMINING ANY REPORT REQUIRED BY THIS
2 ACT AND FILED BY OR ON BEHALF OF A HOLDER OR AFTER THE CONCLUSION
3 OF AN EXAMINATION OF A HOLDER, THE ADMINISTRATOR DETERMINES THAT A
4 HOLDER HAS UNDERREPORTED ABANDONED OR UNCLAIMED PROPERTY DUE AND
5 OWING UNDER THIS ACT, THE ADMINISTRATOR SHALL MAIL A STATEMENT OF
6 FINDINGS AND REQUEST FOR PAYMENT TO THE HOLDER THAT FILED, OR ON
7 WHOSE BEHALF THE REPORT WAS FILED, OR THAT WAS THE SUBJECT OF AN
8 EXAMINATION. SIXTY DAYS AFTER THE DATE ON WHICH THE ADMINISTRATOR
9 MAILES A STATEMENT OF FINDINGS AND REQUEST FOR PAYMENT, THE
10 STATEMENT OF FINDINGS SHALL CONSTITUTE THE ADMINISTRATOR'S FINAL

1 DETERMINATION OF THE AMOUNT OF THE HOLDER'S LIABILITY, INCLUDING
2 INTEREST AND PENALTIES, IF ANY, FOR THE ABANDONED OR UNCLAIMED
3 PROPERTY SPECIFIED IN THE STATEMENT OF FINDINGS AND REQUEST FOR
4 PAYMENT. THE STATEMENT OF FINDINGS AND REQUEST FOR PAYMENT DOES NOT
5 CONSTITUTE THE ADMINISTRATION'S FINAL DETERMINATION FOR PROPERTY
6 TYPES AND AMOUNTS AS TO WHICH THE HOLDER FILES A TIMELY PROTEST
7 WITH THE ADMINISTRATOR UNDER SUBSECTION (2). THE ADMINISTRATOR MAY
8 ENFORCE ANY FINAL DETERMINATION AS PROVIDED IN THIS ACT.

9 (2) WITHIN 60 DAYS AFTER THE DATE OF THE MAILING OF A
10 STATEMENT OF FINDINGS AND REQUEST FOR PAYMENT UNDER SUBSECTION (1),
11 THE HOLDER MAY FILE WITH THE ADMINISTRATOR A WRITTEN PROTEST OF THE
12 STATEMENT OF FINDINGS AND REQUEST FOR PAYMENT IN WHICH THE HOLDER
13 SHALL SET FORTH THE PROPERTY TYPE OR TYPES AND AMOUNT OF ABANDONED
14 OR UNCLAIMED PROPERTY PROTESTED, AND THE SPECIFIC GROUNDS UPON
15 WHICH THE PROTEST IS BASED. THE PROTEST ALLOWS THE HOLDER TO HAVE
16 HIS OR HER OBJECTIONS TO THE FINAL REQUEST FOR PAYMENT RECONSIDERED
17 INTERNALLY WITHIN THE DEPARTMENT OF TREASURY BY THE ADMINISTRATOR
18 AS A MEANS OF EXPEDITING RESOLUTION OF ANY DISPUTE. IF THE HOLDER
19 ELECTS TO FILE A PROTEST AND TO HAVE ITS OBJECTIONS TO THE FINAL
20 REQUEST FOR PAYMENT RECONSIDERED INTERNALLY WITHIN THE DEPARTMENT
21 OF TREASURY, AS PROVIDED BY SUBSECTIONS (2) THROUGH (11), THE
22 HOLDER SHALL EXHAUST THESE ADMINISTRATIVE REMEDIES BEFORE
23 INITIATING ANY PROCEEDING IN A CIRCUIT COURT OF COMPETENT
24 JURISDICTION IN THIS STATE.

25 (3) THE ONLY MATTERS THAT THE ADMINISTRATOR SHALL RECONSIDER
26 ON A PROTEST ARE THE PROPERTY TYPES, AMOUNTS, AND ISSUES RELATED TO
27 THE EXAMINATION THAT ARE SET OUT IN THE WRITTEN PROTEST OF THE

1 HOLDER. THE HOLDER SHALL REMIT WITH THE PROTEST ANY ABANDONED OR
2 UNCLAIMED PROPERTY LIABILITY ATTRIBUTABLE TO PROPERTY TYPES FOR
3 WHICH PAYMENT IS REQUESTED IN THE STATEMENT OF FINDINGS AND REQUEST
4 FOR PAYMENT THAT ARE NOT PROTESTED AND SHALL ALSO REMIT WITH THE
5 PROTEST THE AMOUNT OF ABANDONED OR UNCLAIMED PROPERTY LIABILITY, IF
6 ANY, THAT THE HOLDER BELIEVES TO BE DUE AND OWING WITH RESPECT TO
7 THE PROPERTY TYPES OR LIABILITY THAT IS THE SUBJECT OF THE PROTEST.
8 THE PENDENCY OF A PROTEST SHALL NOT PREVENT THE ACCRUAL OF INTEREST
9 ON ANY PROTESTED AMOUNT FINALLY FOUND TO BE DUE AND OWING. HOLDERS
10 MAY REMIT THE ENTIRE AMOUNT IN THE STATEMENT OF FINDINGS AND
11 REQUEST FOR PAYMENT IN ORDER TO PREVENT THE ACCRUAL OF ADDITIONAL
12 INTEREST WITHOUT WAIVING ANY RIGHTS FOR RECONSIDERATION OR REVIEW
13 OF PROTESTED AMOUNTS UNDER THIS SECTION, AND THAT REMITTANCE SHALL
14 BE SUBJECT TO REFUND FROM THE DATE OF PAYMENT, WITH STATUTORY
15 INTEREST, TO THE EXTENT NOT FINALLY DETERMINED TO BE DUE AND OWING.
16 FAILURE TO REMIT AMOUNTS REQUIRED BY THIS SUBSECTION SHALL RESULT
17 IN TERMINATION OF THE PROTEST, AND THE ADMINISTRATOR MAY ENFORCE
18 ANY FINAL DETERMINATION IN ACCORDANCE WITH SUBSECTION (11).

19 (4) THE HOLDER MAY SUBMIT ADDITIONAL DOCUMENTATION AND WRITTEN
20 SUBMISSIONS TO THE ADMINISTRATOR IN SUPPORT OF THE PROTEST,
21 PROVIDED, HOWEVER, THAT THE ADDITIONAL DOCUMENTATION AND WRITTEN
22 SUBMISSIONS SHALL BE MADE NO LATER THAN 60 DAYS FOLLOWING RECEIPT
23 OF THE HOLDER'S PROTEST. THE ADMINISTRATOR MAY CONVENE MEETINGS
24 WITH THE HOLDER TO FACILITATE REVIEW OF THE STATEMENT OF FINDINGS
25 AND REQUEST FOR PAYMENT AND THE PROTEST.

26 (5) THE ADMINISTRATOR SHALL, WITHIN 60 DAYS OF THE RECEIPT OF
27 THE HOLDER'S PROTEST OR, IF ADDITIONAL DOCUMENTATION IS SUBMITTED,

1 NO LATER THAN 120 DAYS AFTER THE RECEIPT OF THE HOLDER'S PROTEST,
2 MAKE A WRITTEN DETERMINATION ON THE PROTEST SETTING FORTH THE
3 ADMINISTRATOR'S BASIS OF ANY DETERMINATION THAT IS ADVERSE, IN
4 WHOLE OR IN PART, TO THE HOLDER. HOWEVER, THE TIME PERIODS SET
5 FORTH IN THIS SUBSECTION MAY BE EXTENDED BY THE ADMINISTRATOR FOR
6 GOOD CAUSE, BUT IN NO EVENT SHALL ANY EXTENSION EXCEED 183 DAYS
7 FROM THE DAY THE ADMINISTRATOR RECEIVED THE HOLDER'S PROTEST. THE
8 ADMINISTRATOR SHALL MAIL THE WRITTEN DETERMINATION ON THE PROTEST
9 TO THE HOLDER BY CERTIFIED OR REGISTERED MAIL AT THE ADDRESS
10 PROVIDED IN THE HOLDER'S PROTEST.

11 (6) THIRTY DAYS AFTER THE DATE ON WHICH IT IS MAILED, THE
12 DETERMINATION BY THE ADMINISTRATOR OF A HOLDER'S PROTEST SHALL BE
13 FINAL, UNLESS WITHIN THAT TIME A HOLDER FILES A NOTICE OF APPEAL
14 WITH THE TREASURER. IF THE HOLDER DOES NOT FILE A TIMELY NOTICE OF
15 APPEAL WITH THE TREASURER, THE ADMINISTRATOR MAY ENFORCE ANY FINAL
16 DETERMINATION IN ACCORDANCE WITH SUBSECTION (11). THE NOTICE OF
17 APPEAL SHALL SET FORTH THE HOLDER'S NAME, MAILING ADDRESS,
18 TELEPHONE NUMBER, THE NAME OF THE PERSON OR PERSONS REPRESENTING
19 THE HOLDER, THEIR MAILING ADDRESS AND TELEPHONE NUMBER, AND THE
20 MATTERS IN WHICH THE HOLDER ASSERTS THAT THE ADMINISTRATOR ERRED IN
21 THE DETERMINATION ON THE PROTEST OF THE HOLDER.

22 (7) AFTER RECEIPT OF A HOLDER'S WRITTEN NOTICE OF APPEAL, THE
23 TREASURER SHALL AS SOON AS PRACTICABLE, BUT IN NO EVENT LATER THAN
24 90 DAYS AFTER RECEIPT, APPOINT A PERSON WHO IS NOT OTHERWISE
25 CURRENTLY EMPLOYED BY THE DEPARTMENT OF TREASURY TO ACT AS AN
26 INDEPENDENT REVIEWER TO CONSIDER THE APPEAL OF THE ADMINISTRATOR'S
27 FINDINGS AND MAKE A WRITTEN REPORT TO THE TREASURER. THE

1 INDEPENDENT REVIEWER SHALL BE A FORMER MEMBER OF THE JUDICIARY OR
2 AN ATTORNEY LICENSED IN THIS STATE WHO IS QUALIFIED BY EXPERIENCE
3 OR TRAINING TO SERVE.

4 (8) THE APPEAL TO THE INDEPENDENT REVIEWER IS DE NOVO ON THE
5 RECORD. THE RECORD ON THE APPEAL TO THE INDEPENDENT REVIEWER SHALL
6 BE BASED SOLELY UPON DOCUMENTS SUBMITTED DURING THE COURSE OF THE
7 EXAMINATION TO THE ADMINISTRATOR OR A PERSON WHO CONDUCTED AN
8 EXAMINATION ON THE ADMINISTRATOR'S BEHALF, OTHER NONPRIVILEGED
9 MATERIALS PREPARED BY OR FOR THE ADMINISTRATOR DURING THE CONDUCT
10 OF AN EXAMINATION, EXPERT REPORTS SUBMITTED TO THE ADMINISTRATOR BY
11 THE PERSON FILING A PROTEST, OTHER NONPRIVILEGED MATERIALS, AND
12 EXPERT REPORTS PREPARED BY OR FOR THE ADMINISTRATOR DURING THE
13 CONSIDERATION OF A PROTEST.

14 (9) THE INDEPENDENT REVIEWER SHALL HOLD AN ORAL HEARING ON THE
15 APPEAL, WHICH SHALL BE HELD, UNLESS OTHERWISE AGREED BY THE
16 PARTIES, WITHIN 90 DAYS AFTER THE DATE ON WHICH THE TREASURER
17 APPOINTS THE INDEPENDENT REVIEWER UNDER SUBSECTION (7). AT LEAST 7
18 DAYS PRIOR TO THE ORAL HEARING DATE, OR AT SUCH OTHER TIME ORDERED
19 BY THE INDEPENDENT REVIEWER, THE HOLDER AND ADMINISTRATOR SHALL
20 EACH SUBMIT TO THE INDEPENDENT REVIEWER AND EACH OTHER A BRIEF
21 CONTAINING ARGUMENT AND REFERENCING SUPPORTING DOCUMENTATION FROM
22 THE RECORD BEFORE THE ADMINISTRATOR OR AN EXPLANATION AS TO WHY THE
23 SUPPORTING DOCUMENTATION IS NOT AVAILABLE. A DECISION IN WRITING BY
24 THE INDEPENDENT REVIEWER SETTING FORTH FINDINGS OF FACT AND
25 CONCLUSIONS OF LAW SHALL BE SUBMITTED BY THE INDEPENDENT REVIEWER
26 TO THE TREASURER WITHIN 90 DAYS FROM THE DATE OF THE CONCLUSION OF
27 THE ORAL HEARING OR THE COMPLETION OF ANY POST-HEARING BRIEFING

1 REQUESTED BY THE INDEPENDENT REVIEWER, WHICHEVER IS LATER. THE
2 INDEPENDENT REVIEWER SHALL ASSESS COSTS, INCLUDING THE INDEPENDENT
3 REVIEWER'S FEE, AGAINST A PARTY OR BETWEEN THE PARTIES IN THE
4 INDEPENDENT REVIEWER'S DISCRETION.

5 (10) THE TREASURER MAY ADOPT OR REJECT THE INDEPENDENT
6 REVIEWER'S DETERMINATION IN WHOLE OR IN PART. IF THE TREASURER
7 MODIFIES OR REJECTS, IN WHOLE OR IN PART, THE DETERMINATION OF THE
8 INDEPENDENT REVIEWER, THE TREASURER SHALL ISSUE A DECISION IN
9 WRITING SETTING FORTH THE BASIS OF ANY REJECTION OR MODIFICATION OF
10 THE DETERMINATION OF THE INDEPENDENT REVIEWER. WITHIN 60 DAYS OF
11 THE RECEIPT BY THE TREASURER OF THE INDEPENDENT REVIEWER'S
12 DECISION, A COPY OF THE TREASURER'S DETERMINATION, IF ANY, ALONG
13 WITH THE INDEPENDENT REVIEWER'S WRITTEN DECISION, SHALL BE SENT TO
14 THE HOLDER BY CERTIFIED OR REGISTERED MAIL AT THE ADDRESS SET FORTH
15 IN THE HOLDER'S NOTICE OF APPEAL. THE DETERMINATION OF THE
16 TREASURER AS TO THOSE LIABILITIES THAT ARE THE SUBJECT OF THE
17 APPEAL SHALL BE FINAL AS TO THE DEPARTMENT OF TREASURY. THE HOLDER
18 MAY, WITHIN 30 DAYS AFTER THE TREASURER'S WRITTEN DECISION WAS
19 MAILED, APPEAL THE TREASURER'S DETERMINATION IN THE CIRCUIT COURT.
20 THE COURT'S REVIEW SHALL BE LIMITED TO WHETHER THE TREASURER'S
21 DETERMINATION WAS SUPPORTED BY SUBSTANTIAL EVIDENCE ON THE RECORD.
22 IF THE COURT DETERMINES THAT THE RECORD IS INSUFFICIENT FOR ITS
23 REVIEW, IT SHALL REMAND THE CASE TO THE DEPARTMENT FOR FURTHER
24 PROCEEDINGS ON THE RECORD.

25 (11) IF ANY PERSON REFUSES TO PAY OR DELIVER PROPERTY,
26 INCLUDING PENALTY OR INTEREST ON THAT PROPERTY, TO THE
27 ADMINISTRATOR AS REQUIRED BY THIS ACT, THE ADMINISTRATOR MAY BRING

1 AN ACTION IN THE CIRCUIT COURT IN THE COUNTY WHEREIN THE HOLDER
2 RESIDES OR HAS A PRINCIPAL PLACE OF BUSINESS OR, IF NO RESIDENCE OR
3 PRINCIPAL PLACE OF BUSINESS EXISTS, IN INGHAM COUNTY TO ENFORCE THE
4 PAYMENT OR DELIVERY.

5 (12) WHENEVER A HOLDER DISPUTES WHETHER REASONABLE CAUSE
6 EXISTS FOR ABATING PENALTY OR INTEREST DETERMINED BY THE
7 ADMINISTRATOR TO BE DUE UNDER THIS ACT, THE HOLDER MAY BRING AN
8 ACTION IN CIRCUIT COURT FOR THE PURPOSE OF SHOWING AN ABUSE OF
9 DISCRETION BY THE ADMINISTRATOR IN MAKING THE DETERMINATION THAT
10 PENALTY OR INTEREST WAS DUE.