

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 538

A bill to amend 1995 PA 29, entitled
"Uniform unclaimed property act,"
by amending sections 2, 30, and 31 (MCL 567.222, 567.250, and
567.251), section 2 as amended by 2008 PA 208, section 30 as
amended by 2012 PA 292, and section 31 as amended by 2013 PA 148,
and by adding sections 4a and 31b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act, unless the context otherwise
2 requires:

3 (a) "Administrator" means the state treasurer.

4 (b) "Apparent owner" means the person whose name appears on
5 the records of the holder as the person entitled to property held,
6 issued, or owing by the holder.

1 (c) "Attorney general" means the department of attorney
2 general.

3 (d) "Banking organization" means a bank, trust company,
4 savings bank, industrial bank, land bank, safe deposit company,
5 private banker, or any organization defined by law as a bank or
6 banking organization.

7 (e) "Business association" means a nonpublic corporation,
8 joint stock company, investment company, business trust,
9 partnership, or association for business purposes of 2 or more
10 individuals, whether or not for profit, including a banking
11 organization, financial organization, insurance company, or
12 utility.

13 (f) "Domicile" means the state of incorporation of a
14 corporation and the state of the principal place of business of an
15 unincorporated person.

16 (G) "ELIGIBLE HOLDER" MEANS A HOLDER THAT MEETS 1 OR MORE OF
17 THE FOLLOWING:

18 (i) IS A BUSINESS WHOSE PRINCIPAL PLACE OF BUSINESS IS IN THIS
19 STATE AS EVIDENCED BY 20% OR MORE OF ITS PAYROLL OR 20% OR MORE OF
20 ITS REAL AND TANGIBLE PERSONAL PROPERTY, EXCEPT INVENTORY, OWNED OR
21 RENTED IN THIS STATE DURING THE PERIOD SUBJECT TO EXAMINATION OR
22 THE MAJORITY OF OFFICERS THAT DIRECT, CONTROL, AND COORDINATE THE
23 ACTIVITIES OF THE BUSINESS ARE EMPLOYED IN THIS STATE.

24 (ii) IS A CORPORATION THAT WHOLLY OWNS A CORPORATION THAT HAS
25 INCORPORATED IN THIS STATE AND THE CORPORATION INCORPORATED IN THIS
26 STATE MEETS THE CRITERIA UNDER SUBPARAGRAPH (i) .

27 (iii) IS A CORPORATION THAT IS WHOLLY OWNED BY A CORPORATION

1 THAT IS INCORPORATED IN THIS STATE AND THE CORPORATION INCORPORATED
2 IN THIS STATE MEETS THE CRITERIA UNDER SUBPARAGRAPH (i) .

3 (H) ~~(g)~~—"Financial organization" means a savings and loan
4 association, cooperative bank, building and loan association,
5 savings bank, or credit union.

6 (I) ~~(h)~~—"Holder" means a person, wherever organized or
7 domiciled, who is 1 or more of the following:

8 (i) In possession of property belonging to another.

9 (ii) A trustee.

10 (iii) Indebted to another on an obligation.

11 (J) ~~(i)~~—"Insurance company" means an individual, association,
12 corporation, fraternal or mutual benefit organization, or any other
13 legal entity, whether or not for profit, that is engaged or
14 attempting to engage in the business of making insurance or surety
15 contracts.

16 (K) ~~(j)~~—"Intangible property" includes all of the following:

17 (i) Money, checks, drafts, deposits, interest, dividends, and
18 income.

19 (ii) Credit balances, customer overpayments, security
20 deposits, refunds, credit memos, unpaid wages, unused airline
21 tickets, and unidentified remittances.

22 (iii) Except as provided in sections 15(4) and 30(1), gift
23 certificates and gift cards.

24 (iv) Stocks and other intangible ownership interests in
25 business associations.

26 (v) Money deposited to redeem stocks, bonds, coupons, and
27 other securities, or to make distributions.

1 (vi) Amounts due and payable under the terms of insurance
2 policies.

3 (vii) Amounts distributable from a trust or custodial fund
4 established under a plan to provide health, welfare, pension,
5 vacation, severance, retirement, death, stock purchase, profit
6 sharing, employee savings, supplemental unemployment insurance, or
7 similar benefits.

8 (I) ~~(k)~~—"Last known address" means a description of the
9 location of the apparent owner sufficient for the purpose of the
10 delivery of mail.

11 (M) ~~(l)~~—"Owner" means a depositor, in the case of a deposit; a
12 beneficiary, in case of a trust other than a deposit in trust; a
13 creditor, claimant, or payee, in the case of other intangible
14 property; or a person having a legal or equitable interest in
15 property subject to this act. Owner includes the legal
16 representative of the person defined as an owner in this
17 subdivision.

18 (N) ~~(m)~~—"Person" means an individual, business association,
19 state or other government, governmental subdivision or agency,
20 public corporation, public authority, estate, trust, 2 or more
21 persons having a joint or common interest, or any other legal or
22 commercial entity.

23 (O) ~~(n)~~—"Property" means tangible or intangible personal
24 property owned by a person.

25 (P) ~~(o)~~—"State" means any state, district, commonwealth,
26 territory, insular possession, or any other area subject to the
27 legislative authority of the United States.

1 (Q) ~~(p)~~ "Utility" means a person who owns or operates for
2 public use any plant, equipment, property, franchise, or license
3 for the transmission of communications or the production, storage,
4 transmission, sale, delivery, or furnishing of electricity, water,
5 steam, or gas.

6 **SEC. 4A. (1) EXCEPT AS PROVIDED IN SUBSECTION (2), PROPERTY IS**
7 **NOT SUBJECT TO THE CUSTODY OF THIS STATE AS UNCLAIMED PROPERTY IF**
8 **ITS VALUE IS \$25.00 OR LESS.**

9 **(2) SUBSECTION (1) DOES NOT APPLY TO PROPERTY DESCRIBED IN**
10 **SECTION 11A OR DIVIDENDS.**

11 Sec. 30. (1) The expiration, before or after the effective
12 date of this act, of any period of time specified by contract,
13 statute, or court order, during which a claim for money or property
14 can be made or during which an action or proceeding may be
15 commenced or enforced to obtain payment of a claim for money or to
16 recover property, does not prevent the money or property from being
17 presumed abandoned or affect any duty to file a report or to pay or
18 deliver abandoned property to the administrator as required by this
19 act. This subsection does not apply to gift cards or gift
20 certificates.

21 (2) ~~An~~ **EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3), AN**
22 action or proceeding shall not be commenced by the administrator
23 with respect to any duty of a holder under this act more than 10
24 years, or, for the holder of records of transactions between 2 or
25 more associations as defined under section 37(a)(2), more than 5
26 years, after the duty arose.

27 **(3) FOR ELIGIBLE HOLDERS ELECTING TO PARTICIPATE IN THE**

1 STREAMLINED AUDIT PROCESS DESCRIBED IN SECTION 31B, AN ACTION OR
2 PROCEEDING SHALL NOT BE COMMENCED BY THE ADMINISTRATOR WITH RESPECT
3 TO ANY DUTY OF A HOLDER UNDER THIS ACT MORE THAN 4 YEARS AFTER THE
4 DUTY AROSE.

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

14 (2) The administrator, at reasonable times and upon reasonable
15 notice, may examine the records of a person to determine whether
16 the person has complied with this act. The administrator may
17 conduct the examination even if the person believes he or she is
18 not in possession of any property reportable or deliverable under
19 this act. The administrator may contract with any other person to
20 conduct the examination on behalf of the administrator.

21 (3) If a person is treated under section 13 as the holder of
22 the property only insofar as the interest of the business
23 association in the property is concerned, the administrator,
24 pursuant to subsection (2), may examine the records of the person
25 if the administrator has given the notice required by subsection
26 (2) to both the person and the business association at least 90
27 days before the examination.

1 (4) Any examination performed by the administrator or his or
2 her duly authorized agents must be performed in accordance with the
3 generally accepted auditing standards to the extent applicable to
4 unclaimed property examinations. A person who has been audited by
5 the administrator or his or her duly authorized agents or a person
6 whose books, records, and papers have been examined by the
7 administrator or his or her duly authorized agents shall be
8 provided a complete copy in printed or electronic format of the
9 audit report, which shall identify in detail the work performed,
10 the property types reviewed, any estimation techniques employed,
11 calculations showing the potential amount of property due, and a
12 statement of findings as well as all other correspondence and
13 documentation which formed a basis for the findings. Not later than
14 6 months after the effective date of the amendatory act that added
15 this subsection, the administrator shall electronically file a
16 request for rule-making with the office of regulatory reinvention
17 pursuant to the administrative procedures act of 1969, 1969 PA 306,
18 MCL 24.201 to 24.328, to initiate rules on auditing standards.

19 (5) When the person being examined does not have substantially
20 complete records, the administrator or his or her duly authorized
21 agents may determine the amount of any abandoned or unclaimed
22 property due and owing based upon a reasonable method of estimation
23 consistent with the standards described in subsection (4). If the
24 person being examined has filed all the required reports and has
25 maintained substantially complete records, then all of the
26 following apply to the examination:

27 (a) The examination shall include a review of the person's

1 books and records.

2 (b) The examination shall not be based on an estimate.

3 (c) The administrator or his or her duly authorized agents
4 shall consider all evidence presented by the holder to remediate
5 the findings.

6 (6) If an examination of the records of a person results in
7 the disclosure of property reportable and deliverable under this
8 act, the administrator may assess the cost of the examination
9 against the holder at the rate of \$50.00 a day for each examiner;
10 however, the charges shall not exceed the value of the property
11 actually found to be reportable and deliverable. The cost of
12 examination made pursuant to subsection (3) shall be imposed only
13 against the business association.

14 (7) If a holder fails after the effective date of this act to
15 maintain the records required by section 32 and the records of the
16 holder available for the periods subject to this act are
17 insufficient to permit the preparation of a report, the
18 administrator may require the holder to report and pay an amount as
19 may reasonably be estimated from any available records.

20 **(8) FOR AN ELIGIBLE HOLDER THAT HAS ELECTED TO FOLLOW THE**
21 **STREAMLINED PROCESS DESCRIBED IN SECTION 31B, EXAMINATIONS SHALL**
22 **NOT INCLUDE CHECKS VOIDED WITHIN 180 DAYS FROM THE DATE OF ISSUANCE**
23 **OF THE CHECK.**

24 (9) ~~(8)~~—As used in this section, "substantially complete
25 records" means at least 90% of the records necessary for unclaimed
26 property examination purposes as defined under the principles of
27 internal controls. The determination of substantially complete

1 records shall not be made solely as a percentage of the total
2 overall individual records to be examined, but also on a
3 materiality level of value of the records. The lack of greater than
4 10% of records in 1 particular property class to be examined does
5 not result in the extrapolation of error in those areas in which a
6 person has filed all the required reports and has maintained at
7 least 90% of the overall records for that particular property
8 class. Substantially complete records are not meant to be an
9 absolute measurement of all available records.

10 **SEC. 31B. (1) ELIGIBLE HOLDERS BEING EXAMINED BY THE**
11 **ADMINISTRATOR UNDER SECTION 31(2) MAY ELECT TO FOLLOW THE**
12 **STREAMLINED AUDIT PROCESS DESCRIBED IN THIS SECTION. ELIGIBLE**
13 **HOLDERS MAY ELECT THE STREAMLINED AUDIT PROCESS BY EXECUTING A**
14 **NONDISCLOSURE AGREEMENT ACCEPTABLE TO THE ADMINISTRATOR WITHIN 30**
15 **DAYS FROM THE RECEIPT OF THE AUDIT NOTICE.**

16 **(2) AN AUDIT CONDUCTED UNDER THE STREAMLINED AUDIT PROCESS**
17 **DESCRIBED IN THIS SECTION SHALL MEET BOTH OF THE FOLLOWING:**

18 **(A) BE COMPLETED WITHIN A TIME FRAME JOINTLY DEVELOPED BY THE**
19 **HOLDER AND THE ADMINISTRATOR, WITH THE GOAL OF COMPLETING THE AUDIT**
20 **WITHIN 18 MONTHS FROM THE RECEIPT OF THE AUDIT NOTICE.**

21 **(B) BE CONDUCTED ACCORDING TO STANDARDS SET FORTH IN RULES AND**
22 **REGULATIONS PROMULGATED IN ACCORDANCE WITH SECTION 31(4).**

23 Enacting section 1. This amendatory act is retroactive and
24 applies to audits in progress as of August 15, 2015, but does not
25 retroactively apply to contested determinations in litigation
26 before the date of enactment of this amendatory act.