

Act No. 242
Public Acts of 2015
Approved by the Governor
December 22, 2015
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December 22, 2015
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**STATE OF MICHIGAN
98TH LEGISLATURE
REGULAR SESSION OF 2015**

Introduced by Senators Brandenburg, Smith, Proos, MacGregor, Marleau and Bieda

ENROLLED SENATE BILL No. 538

AN ACT to amend 1995 PA 29, entitled “An act concerning unclaimed property; to provide for the reporting and disposition of unclaimed property; to make uniform the law concerning unclaimed property; to prescribe the powers and duties of certain state agencies and officials; to prescribe penalties and provide remedies; and to repeal acts and parts of acts,” 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:

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

- (a) “Administrator” means the state treasurer.
- (b) “Apparent owner” means the person whose name appears on the records of the holder as the person entitled to property held, issued, or owing by the holder.
- (c) “Attorney general” means the department of attorney general.
- (d) “Banking organization” means a bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, or any organization defined by law as a bank or banking organization.
- (e) “Business association” means a nonpublic corporation, joint stock company, investment company, business trust, partnership, or association for business purposes of 2 or more individuals, whether or not for profit, including a banking organization, financial organization, insurance company, or utility.
- (f) “Domicile” means the state of incorporation of a corporation and the state of the principal place of business of an unincorporated person.
- (g) “Eligible holder” means a holder that meets 1 or more of the following:
 - (i) Is a business whose principal place of business is in this state as evidenced by 20% or more of its payroll or 20% or more of its real and tangible personal property, except inventory, owned or rented in this state during the period subject to examination or the majority of officers that direct, control, and coordinate the activities of the business are employed in this state.
 - (ii) Is a corporation that wholly owns a corporation that has incorporated in this state and the corporation incorporated in this state meets the criteria under subparagraph (i).
 - (iii) Is a corporation that is wholly owned by a corporation that is incorporated in this state and the corporation incorporated in this state meets the criteria under subparagraph (i).
- (h) “Financial organization” means a savings and loan association, cooperative bank, building and loan association, savings bank, or credit union.

(i) “Holder” means a person, wherever organized or domiciled, who is 1 or more of the following:

(i) In possession of property belonging to another.

(ii) A trustee.

(iii) Indebted to another on an obligation.

(j) “Insurance company” means an individual, association, corporation, fraternal or mutual benefit organization, or any other legal entity, whether or not for profit, that is engaged or attempting to engage in the business of making insurance or surety contracts.

(k) “Intangible property” includes all of the following:

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

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

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

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

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

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

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

(l) “Last known address” means a description of the location of the apparent owner sufficient for the purpose of the delivery of mail.

(m) “Owner” means a depositor, in the case of a deposit; a beneficiary, in case of a trust other than a deposit in trust; a creditor, claimant, or payee, in the case of other intangible property; or a person having a legal or equitable interest in property subject to this act. Owner includes the legal representative of the person defined as an owner in this subdivision.

(n) “Person” means an individual, business association, state or other government, governmental subdivision or agency, public corporation, public authority, estate, trust, 2 or more persons having a joint or common interest, or any other legal or commercial entity.

(o) “Property” means tangible or intangible personal property owned by a person.

(p) “State” means any state, district, commonwealth, territory, insular possession, or any other area subject to the legislative authority of the United States.

(q) “Utility” means a person who owns or operates for public use any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

Sec. 4a. (1) Except as provided in subsection (2), property is not subject to the custody of this state as unclaimed property if its value is \$25.00 or less.

(2) Subsection (1) does not apply to property described in section 11a or dividends.

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

(2) Except as otherwise provided in subsection (3), an action or proceeding shall not be commenced by the administrator with respect to any duty of a holder under this act more than 10 years, or, for the holder of records of transactions between 2 or more associations as defined under section 37(a)(2), more than 5 years, after the duty arose.

(3) For eligible holders electing to participate in the streamlined audit process described in section 31b, an action or proceeding shall not be commenced by the administrator with respect to any duty of a holder under this act more than 4 years after the duty arose.

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

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

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

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

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

(a) The examination shall include a review of the person's books and records.

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

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

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

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

(8) For an eligible holder that has elected to follow the streamlined process described in section 31b, examinations shall not include checks voided within 180 days from the date of issuance of the check.

(9) As used in this section, "substantially complete records" means at least 90% of the records necessary for unclaimed property examination purposes as defined under the principles of internal controls. The determination of substantially complete records shall not be made solely as a percentage of the total overall individual records to be examined, but also on a materiality level of value of the records. The lack of greater than 10% of records in 1 particular property class to be examined does not result in the extrapolation of error in those areas in which a person has filed all the required reports and has maintained at least 90% of the overall records for that particular property class. Substantially complete records are not meant to be an absolute measurement of all available records.

Sec. 31b. (1) Eligible holders being examined by the administrator under section 31(2) may elect to follow the streamlined audit process described in this section. Eligible holders may elect the streamlined audit process by executing a nondisclosure agreement acceptable to the administrator within 30 days from the receipt of the audit notice.

(2) An audit conducted under the streamlined audit process described in this section shall meet both of the following:

(a) Be completed within a time frame jointly developed by the holder and the administrator, with the goal of completing the audit within 18 months from the receipt of the audit notice.

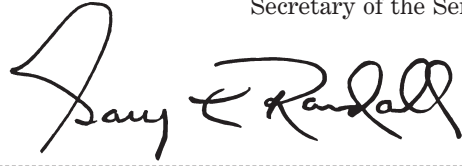
(b) Be conducted according to standards set forth in rules and regulations promulgated in accordance with section 31(4).

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

This act is ordered to take immediate effect.



Secretary of the Senate



Clerk of the House of Representatives

Approved

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Governor