

HOUSE BILL No. 2246

AN ACT concerning unclaimed property; amending K.S.A. 58-3934, 58-3935 and 58-3954 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 58-3934 is hereby amended to read as follows: 58-3934. As used in this act:

(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) “Business association” means a corporation, joint-stock company, investment company, partnership, unincorporated association, joint venture, limited liability company, business trust, trust company, land bank, safe deposit company, safekeeping depository, financial organization, insurance company, mutual fund, utility, other business entity consisting of one or more persons, whether or not for profit or the United States government or any agency or subdivision thereof.

(d) “Communication in writing” or “correspondence” shall include email or other electronic communications if the recipient has agreed in writing to receive electronic communications concerning the property.

~~(d)~~ (e) “Domicile” means the state of incorporation of a corporation and the state of the principal place of business of a holder other than a corporation.

~~(e)~~ (f) “Financial organization” means a savings and loan association, building and loan association, savings bank, industrial bank, bank, banking organization or credit union.

~~(f)~~ (g) “Holder” means a person obligated to hold for the account of, or deliver or pay to, the owner property that is subject to this act.

~~(g)~~ (h) “Insurance company” means an association, corporation, fraternal or mutual benefit organization, whether or not for profit, engaged in the business of providing life endowments, annuities or insurance, including accident, burial, casualty, credit life, contract performance, dental, disability, fidelity, fire, health, hospitalization, illness, life, malpractice, marine, mortgage, surety, wage protection and workers compensation insurance.

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

~~(i)~~ (j) “Mineral” means oil, gas, uranium, sulphur, lignite, coal and any other substance that is ordinarily and naturally considered a mineral, regardless of the depth at which the oil, gas, uranium, sulphur, lignite, coal or other substance is found.

~~(j)~~ (k) “Mineral proceeds” means amounts payable for the extraction, production or sale of minerals, or, upon abandonment of those payments, all payments that become payable thereafter. The term includes amounts payable:

(1) For the acquisition and retention of a mineral lease, including bonuses, royalties, compensatory royalties, shut-in royalties, minimum royalties and delay rentals;

(2) for the extraction, production or sale of minerals, including net revenue interests, royalties, overriding royalties, extraction payments and production payments; and

(3) under an agreement or option, including a joint operating agreement, unit agreement, pooling agreement and farm-out agreement.

~~(k)~~ (l) “Money order” includes an express money order and a personal money order, on which the remitter is the purchaser. The term does not include a bank money order or any other instrument sold by a financial organization if the seller has obtained the name and address of the payee.

~~(l)~~ (m) “Owner” means a person who has a legal or equitable interest in property subject to this act or the person’s legal representative. The term includes a depositor in the case of a deposit, a beneficiary in the case of a trust other than a deposit in trust and a creditor, claimant or payee in the case of other property.

~~(m)~~ (n) “Person” means an individual, business association, financial organization, estate, trust, state or other government, governmental subdivision, agency or instrumentality or any other legal or commercial entity.

~~(n)~~ (o) “Property” means tangible property or a fixed and certain interest in intangible property that is held, issued or owed in the course of a holder’s business, or by a state or other government, governmental subdivision, agency or instrumentality and all income or increments

therefrom. The term includes property that is referred to as or evidenced by:

- (1) Money, a check, draft, deposit, interest or dividend;
- (2) credit balance, customer's overpayment, security deposit, refund, credit memorandum, unpaid wage, mineral proceeds or unidentified remittance;
- (3) stock or other evidence of ownership of an interest in a business association or financial organization;
- (4) a bond, debenture, note or other evidence of indebtedness;
- (5) money deposited to redeem stocks, bonds, coupons or other securities or to make distributions;
- (6) an amount due and payable under the terms of an annuity or insurance policy, including policies providing life insurance, property and casualty insurance, workers compensation insurance or health and disability insurance; and
- (7) an amount 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.

~~(p)~~ (p) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in a perceivable form.

~~(q)~~ (q) "State" means any state of the United States, the District of Columbia, the commonwealth of Puerto Rico or any territory, insular possession or any other area subject to the jurisdiction of the United States.

~~(r)~~ (r) "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.

(s) "*Interest bearing property*" means demand and savings accounts and certificates of deposit which at the time such accounts and certificates were reported to the administrator paid interest to the owner.

Sec. 2. K.S.A. 58-3935 is hereby amended to read as follows: 58-3935. (a) Property is presumed abandoned if it is unclaimed by the apparent owner during the time set forth below for the particular property:

- (1) Traveler's check, 15 years after its issuance;
- (2) money order, seven years after issuance;
- (3) except as provided in K.S.A. 58-3943, and amendments thereto, stock or other equity interest in a business association or financial organization, including a security entitlement under article 8 of the uniform commercial code, five years after the earlier of:
 - (A) The date of the most recent dividend, stock split or other distribution unclaimed by the apparent owner; or
 - (B) the date of the second mailing of a statement of account or other notification or communication that was returned as undeliverable or after the holder discontinued mailings, notifications or communications to the apparent owner;
- (4) debt of a business association or financial organization, other than a bearer bond or an original issue discount bond, five years after the date of the most recent interest payment unclaimed by the apparent owner;
- (5) a demand, savings or time deposit, including a deposit that is automatically renewable, five years after the earlier of maturity or the date of the last indication by the owner of interest in the property, except that a deposit that is automatically renewable is deemed matured for purposes of this section upon its initial date of maturity, unless the owner has consented to a renewal at or about the time of the renewal and the consent is in writing or is evidenced by a memorandum or other record on file with the holder;
- (6) money or credits owed to a customer as a result of a retail business transaction, five years after the obligation accrued;
- (7) amount owed by an insurer on a life or endowment insurance policy or an annuity that has matured or terminated, three years after the obligation to pay arose or, in the case of a policy or annuity payable upon proof of death, three years after the insured has attained, or would have attained if living, the limiting age under the mortality table on which the reserve is based;

(8) property distributable by a business association or financial organization in a course of dissolution, one year after the property becomes distributable;

(9) property received by a court as proceeds of a class action, and not distributed pursuant to the judgment, one year after the distribution date;

(10) property held by a court, state or other government, governmental subdivision, agency or instrumentality, one year after the property becomes distributable;

(11) wages or other compensation for personal services, one year after the compensation becomes payable;

(12) deposit or refund owed to a subscriber by a utility, one year after the deposit or refund becomes payable;

(13) property held by agents and fiduciaries in a fiduciary capacity for the benefit of another person, five years after it has become payable or distributable, unless the owner has increased or decreased the principal, accepted payment of principal or income, communicated concerning the property or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by the fiduciary;

(14) property in an individual retirement account, defined benefit plan or other account or plan that is qualified for tax deferral under the income tax laws of the United States, three years after the earliest of the date of the distribution or attempted distribution of the property, the date of the required distribution as stated in the plan or trust agreement governing the plan, or the date, if determinable by the holder, specified in the income tax laws of the United States by which distribution of the property must begin in order to avoid a tax penalty;

(15) property distributable in the course of a demutualization, rehabilitation or related reorganization of an insurance company shall be deemed abandoned as follows:

(A) Any check or draft, two years after the date of the demutualization or reorganization, if the check or draft has not been presented for payment and the owner has not otherwise communicated with the holder or its agent regarding the property;

(B) (i) any other property, two years after the date of the demutualization or reorganization if instruments or statements reflecting the distribution are either mailed to the owner and returned by the post office as undeliverable, or not mailed to the owner because of an address on the books and records of the holder that is known to be incorrect; and

(ii) the owner has not:

(a) Communicated in writing with the holder or its agent regarding the property; or

(b) otherwise communicated with the holder or its agent regarding the property as evidenced by a memorandum or other record on file with the holder or its agent.

(c) For any time more than two years after the date of demutualization or reorganization, any property which is not subject to subparagraph (A) or (B) of this paragraph (15) shall be treated under other provisions of this chapter for the specific type of property;

(16) all other property, five years after the owner's right to demand the property or after the obligation to pay or distribute the property arises, whichever first occurs; and

(17) any proceeds of a sale pursuant to K.S.A. 58-817, and amendments thereto, which remain after satisfaction of the lien provided by K.S.A. 58-816, and amendments thereto, that have been unclaimed by the owner for one year from receipt of the proceeds of the sale and satisfaction of the lien.

(b) At the time that an interest is presumed abandoned under subsection (a) any other property right accrued or accruing to the owner as a result of the interest, and not previously presumed abandoned, is also presumed abandoned.

(c) Property is unclaimed if, for the applicable period set forth in subsection (a), the apparent owner has not communicated in writing or by other means reflected in a contemporaneous record prepared by or on behalf of the holder, with the holder concerning the property or the account in which the property is held, and has not otherwise indicated an interest in the property. A communication ~~with~~ *by* an owner ~~by~~ *with* a person other than the holder or the holder's representative who has not

in writing identified the property to the owner is not an indication of interest in the property by the owner.

(d) An indication of an owner's interest in property includes:

(1) The presentment of a check or other instrument of payment of a dividend or other distribution made with respect to an account or underlying stock or other interest in a business association or financial organization or, in the case of a distribution made by electronic or similar means, evidence that the distribution has been received;

(2) owner-directed activity in the account in which the property is held, including a direction by the owner to increase, decrease or change the amount or type of property held in the account;

(3) the making of a deposit to or withdrawal from a bank account; and

(4) the payment of a premium with respect to a property interest in an insurance policy, except that the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent a policy from maturing or terminating if the insured has died or the insured or the beneficiary of the policy has otherwise become entitled to the proceeds before the depletion of the cash surrender value of a policy by the application of those provisions.

(e) Property is payable or distributable for the purpose of this act notwithstanding the owner's failure to make demand or to present any instrument or document otherwise required to obtain payment.

(f) Any demand or savings account or matured timed deposit with a financial organization shall not be presumed abandoned if regular correspondence to an owner of the account has not been returned to the sender.

(g) Any outstanding check, draft, credit balance, customer's overpayment or unidentified remittance issued to a sole proprietorship or business association as part of a commercial transaction in the ordinary course of a holder's business shall not be presumed abandoned.

(h) A holder may not impose with respect to any property payable or distributable for the purpose of this act, including any income or increment derived therefrom, any fee or charge due to dormancy or inactivity or cease payment of interest unless:

(1) There is an enforceable written contract between the holder and the owner of the property pursuant to which the holder may impose a charge or cease payment of interest;

(2) for property in excess of \$100, the holder, no more than three months before the initial imposition of those charges or cessation of interest, has mailed written notice to the owner of the amount of those charges at the last known address of the owner stating that those charges will be imposed or that interest will cease, but the notice provided in this section need not be given with respect to charges imposed or interest ceased before the effective date of this act, or for property described in K.S.A. 58-3937 and 58-3938, and amendments thereto; and

(3) the holder regularly imposes such charges or ceases payment of interest and in no instance reverses or otherwise cancels them or retroactively credits interest with respect to the property. Charges imposed because of dormancy or inactivity may be made and collected monthly, quarterly or annually except that beginning with the effective date of this act, such charges may only be imposed for a maximum of five calendar years.

(i) For the purpose of this section, a person who holds property as an agent for a business association is deemed to hold the property in a fiduciary capacity for that business association alone unless the agreement between the agent and the business association provides otherwise.

(j) For the purposes of this act, a person who is deemed to hold property in a fiduciary capacity for a business association alone is the holder of the property only insofar as the interest of the business association in the property is concerned, and the business association is the holder of the property insofar as the interest of any other person in the property is concerned.

(k) Any property held by a financial organization that would otherwise be presumed abandoned under this section shall not be presumed abandoned if the apparent owner:

(1) Owns other property which is not presumed abandoned and if the financial organization communicates in writing with the owner with

regard to the property that would otherwise be presumed abandoned under this section at the address to which communications regarding the other property regularly are sent; or

(2) had another relationship with the financial organization concerning which the owner has:

(A) Communicated in writing with the financial organization; or

(B) otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the financial organization and if the financial organization communicates in writing with the owner with regard to the property that would otherwise be abandoned under this section at the address to which communications regarding the other relationship regularly are sent.

Sec. 3. K.S.A. 58-3954 is hereby amended to read as follows: 58-3954. (a) Whenever property other than money is paid or delivered to the administrator under this act, the owner is entitled to receive from the administrator any dividends, interest or other increments realized or accruing on the property at or before liquidation or conversion thereof into money if the amount of dividends, interest or other increments is \$5 or more.

(b) *When interest bearing property is paid or delivered to the administrator, the owner shall be entitled to receive interest accruing thereafter. At the time a valid claim is approved by the administrator, simple interest without compounding shall be computed and paid based upon the average of the monthly net earnings rates of the pooled money investment portfolio for the time period that the administrator has held the property. If the administrator has held the property for more than five years, the five year average of the monthly net earnings rates of the pooled money investment portfolio shall be used.*

Sec. 4. K.S.A. 58-3934, 58-3935 and 58-3954 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.