

CHAPTER 52
SENATE BILL No. 399

AN ACT concerning unclaimed property; relating to demutualization of insurance companies; amending K.S.A. 2003 Supp. 58-3935 and 58-3950 and repealing the existing sections.

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

Section 1. K.S.A. 2003 Supp. 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*

~~(16)~~ (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 an owner by 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. 2. K.S.A. 2003 Supp. 58-3950 is hereby amended to read as follows: 58-3950. (a) Except as provided in subsection (i), a holder of property presumed abandoned shall make a report to the administrator concerning the property.

(b) The report must be verified and must contain:

(1) A description of the property;

(2) except with respect to a traveler's check or money order, the name, if known, and last known address, if any, and social security number or taxpayer identification number, if readily ascertainable, of the apparent owner of property of the value of \$100 or more;

(3) an aggregated amount of items valued under \$100 each;

(4) in the case of an amount of \$100 or more held or owing under an annuity or a life or endowment insurance policy, the full name and last known address of the insured or annuitant and of the beneficiary;

(5) in the case of property held in a safe deposit box or other safe-keeping depository, a description of the property and any amounts owing

to the holder;

(6) the date, if any, on which the property became payable, demandable or returnable and the date of the last transaction with the apparent owner with respect to the property; and

(7) other information that the administrator prescribes by rules and regulations as necessary for the administration of this act.

(c) If a holder of property presumed abandoned is a successor to another person who previously held the property for the apparent owner or the holder has changed its name while holding the property, the holder shall file with the report its former names, if any, and the known names and addresses of all previous holders of the property.

(d) The report must be filed before November 1 of each year and cover the 12 months next preceding July 1 of that year, but a report with respect to a life insurance company must be filed before May 1 of each year for the calendar year next preceding. *The initial report of property distributable in the course of a demutualization, rehabilitation or related reorganization of an insurance company as of December 31, 2003, shall be due by November 1, 2004.*

(e) The holder of property presumed abandoned shall send written notice to the apparent owner, not more than 120 days or less than 60 days before filing the report, stating that the holder is in possession of property subject to this act if:

(1) The holder has in its records an address for the apparent owner which the holder's records do not disclose to be inaccurate;

(2) the claim of the apparent owner is not barred by a statute of limitations; and

(3) the value of the property is \$100 or more, or is reported under K.S.A. 58-3943 or 58-3949 and amendments thereto.

(f) The written notice shall also contain the following:

(1) Nature and identifying number, if any, or description of the funds or other property; and

(2) the amount appearing on the records of the holder to be due the apparent owner.

(g) If the holder is not a life insurance company, the written notice shall set forth an additional statement that the funds or other property will be reported as unclaimed property to the state treasurer of Kansas no later than November 1 of the current year.

(h) If the holder is a life insurance company, the written notice shall set forth an additional statement that the funds or other property will be reported as unclaimed property to the state treasurer of Kansas no later than May 1 of the current year.

(i) The holder of property presumed abandoned does not need to file a report under the provisions of this section if such holder has no individual property valued over \$100 and the total value of such holder's aggregated property is under \$250, unless required to do so by the provisions of subsection (k).

(j) Before the date for filing the report, the holder of property presumed abandoned may request the administrator to extend the time for filing the report. The administrator may grant the extension for good cause. The holder, upon receipt of the extension, may make an interim payment on the amount the holder estimates will ultimately be due which terminates the accrual of additional interest on the amount paid.

(k) The administrator, in the administrator's discretion, may require that any holder of property presumed abandoned, file a report as required by this section.

Sec. 3. K.S.A. 2003 Supp. 58-3935 and 58-3950 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 12, 2004.
