

1 HB112
2 147520-5
3 By Representative Long
4 RFD: Financial Services
5 First Read: 05-FEB-13
6 PFD: 02/01/2013

1
2 ENROLLED, An Act,

3 To amend Sections 35-12-72, 35-12-76, 35-12-77,
4 35-12-79, 35-12-84, 35-12-86, and 35-12-93, Code of Alabama
5 1975, relating to the Uniform Disposition of Unclaimed
6 Property Act of 2004; to allow banks to treat all deposit
7 products equally regarding abandonment; to allow all payment
8 instruments issued by the state to be remitted to unclaimed
9 property for the benefit of the payee upon expiration; to
10 clarify reporting guidelines to protect the state when
11 receiving property and the holder when remitting property; to
12 allow a surviving parent to claim abandoned property from a
13 child who died intestate; to clarify property received by
14 early reporting; and to protect consumers when claiming their
15 property through a third-party source.

16 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

17 Section 1. Sections 35-12-72, 35-12-76, 35-12-77,
18 35-12-79, 35-12-84, 35-12-86, and 35-12-93, Code of Alabama
19 1975, are amended to read as follows:

20 "§35-12-72.

21 "(a) Property is presumed abandoned if it is
22 unclaimed by the apparent owner during the time set forth
23 below for the particular property:

24 "(1) Traveler's checks, 15 years after issuance.

25 "(2) Money order, five years after issuance.

1 "(3) A demand, savings, or time deposit including a
2 deposit that is automatically renewable, three years after the
3 earlier of maturity, as extended from time to time, or the
4 date of the last indication by the apparent owner of interest
5 in the property, ~~but a deposit that is automatically renewable~~
6 ~~is deemed matured for purposes of this section upon its~~
7 ~~initial date of maturity, unless the apparent owner has~~
8 ~~consented to a renewal at or about the time of the renewal and~~
9 ~~the consent is in writing or is evidenced by a memorandum or~~
10 ~~other record on file with the holder, or the apparent owner~~
11 ~~has indicated an interest in the deposit.~~

12 "(4) Tangible and intangible property held in a safe
13 deposit box or other safekeeping depository in this state in
14 the ordinary course of the holder's business and proceeds
15 resulting from the sale of the property permitted by other
16 law, three years after expiration of the lease or rental
17 period on the box or other depository.

18 "(5) Money or credits owed to a customer as a result
19 of a retail business transaction, one year after the
20 obligation accrued.

21 "(6) Property in an individual retirement account,
22 defined benefit plan, or other account or plan that is
23 qualified for tax deferral under the income tax laws of the
24 United States, three years after the earlier of a. the date of
25 the distribution or attempted distribution of the property; b.

1 the date of the required distribution as stated in the plan or
2 trust agreement governing the plan; or c. the date, if
3 determinable by the holder, specified in the income tax laws
4 of the United States by which distribution of the property
5 must begin in order to avoid a tax penalty.

6 "(7) Stock or other equity interest in a business
7 association or financial organization, including a security
8 entitlement under Article 8 of Title 7, the Uniform Commercial
9 Code, three years after the earlier of a. the date of the most
10 recent dividend, stock split, or other distribution unclaimed
11 by the apparent owner; or b. the date of the second mailing of
12 a statement of account or other notification or communication
13 that was returned as undeliverable or after the holder
14 discontinued mailings, notifications, or communications to the
15 apparent owner.

16 "(8) Debt of a business association or financial
17 organization, other than a bearer bond or an original issue
18 discount bond covered under subdivision (18), three years
19 after the date of the most recent interest payment unclaimed
20 by the apparent owner.

21 "(9) Property distributable by a business
22 association or financial organization in a course of
23 dissolution, one year after the property becomes
24 distributable.

1 "(10) Amount owed by an insurer on a life or
2 endowment insurance policy or an annuity that has matured or
3 terminated, three years after the obligation to pay arose or,
4 in the case of a policy or annuity payable upon proof of
5 death, three years after the insured has attained, or would
6 have attained if living, the limiting age under the mortality
7 table on which the reserve is based.

8 "(11) Property distributable in the course of a
9 demutualization or related reorganization of an insurance
10 company shall be deemed abandoned as follows:

11 "a. Any funds, two years after the date of the
12 demutualization or reorganization, if the funds remain
13 unclaimed, and the owner has not otherwise communicated with
14 the holder or its agent regarding the property as evidenced by
15 a memorandum or other record on file with the holder or its
16 agent.

17 "b. Any stock or other equity interest, two years
18 after the date of the demutualization or reorganization if
19 instruments or statements reflecting the distribution are
20 either mailed to the owner and returned by the post office as
21 undeliverable, or not mailed to the owner because of an
22 address on the books and records of the holder that is known
23 to be incorrect and the owner has not otherwise communicated
24 with the holder or its agent regarding the property as

1 evidenced by a memorandum or other record on file with the
2 holder or its agent.

3 "c. Property not subject to paragraphs a. or b.
4 within two years of the distribution shall remain reportable
5 under other sections of this article.

6 "(12) Property received by a court as proceeds of a
7 class action, and not distributed pursuant to the judgment,
8 one year after the distribution date.

9 "(13) Property held by a court, government,
10 governmental subdivision, agency, or instrumentality, one year
11 after the property becomes distributable.

12 "(14) Wages or other compensation for personal
13 services, one year after the compensation becomes payable.

14 "(15) Deposit or refund owed to a subscriber by a
15 utility, one year after the deposit or refund becomes payable.

16 "(16) Any check, ~~or warrant, debit card, or other~~
17 payment instrument drawn on or issued by the State of Alabama
18 ~~Treasury~~, outstanding and unpaid ~~one year from the date of~~
19 ~~issue~~ within the time frame allowed under Section 41-4-60.

20 "(17) Gift certificate, other than those exempt
21 under Section 35-12-73, three years after June 30 of the year
22 in which the certificate was sold, but if redeemable in
23 merchandise only, the amount abandoned is deemed to be 60
24 percent of the certificate's face value.

1 "(18) All other property, three years after the
2 owner's right to demand the property or after the obligation
3 to pay or distribute the property arises, whichever first
4 occurs.

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

10 "(c) Property is unclaimed if, for the applicable
11 period set forth in subsection (a), the apparent owner has not
12 communicated in writing, or by other means reflected in a
13 contemporaneous record prepared by or on behalf of the holder,
14 with the holder concerning the property or the account in
15 which the property is held, and has not otherwise indicated an
16 interest in the property. A communication with an owner by a
17 person other than the holder or its representative who has not
18 in writing identified the property to the owner is not an
19 indication of interest in the property by the owner.

20 "(d) An indication of an owner's or apparent owner's
21 interest in property includes any of the following:

22 "(1) The presentment of a check or other instrument
23 of payment of a dividend or other distribution made with
24 respect to an account or underlying stock or other interest in
25 a business association or financial organization or, in the

1 case of a distribution made by electronic or similar means,
2 evidence that the distribution has been received.

3 "(2) Owner-directed activity in the account in which
4 the property is held, including a direction by the owner to
5 increase, decrease, or change the amount or type of property
6 held in the account.

7 "(3) The making of a deposit to or withdrawal from a
8 bank account. Any correspondence in writing from the holder to
9 the apparent owner, such as the mailing of a statement, report
10 of interest paid or credited, renewal of a deposit or other
11 written information relating to the deposit shall be construed
12 to mean that the apparent owner has indicated an interest in
13 the deposit if the correspondence in writing is not returned
14 to the holder for nondelivery thereof. Any activity or
15 indication of interest by an apparent owner in the deposit or
16 in any other deposits in a holder shall be construed to be
17 activity and indication of interest in all other deposits of
18 the apparent owner in the holder.

19 "(4) The payment of a premium with respect to a
20 property interest in an insurance policy; but the application
21 of an automatic premium loan provision or other nonforfeiture
22 provision contained in an insurance policy does not prevent a
23 policy from maturing or terminating if the insured has died or
24 the insured or the beneficiary of the policy has otherwise
25 become entitled to the proceeds before the depletion of the

1 cash surrender value of a policy by the application of those
2 provisions.

3 "(e) Property is payable or distributable for
4 purposes of this article notwithstanding the failure of the
5 owner or apparent owner to make demand or present an
6 instrument or document otherwise required to obtain payment.

7 "§35-12-76.

8 "(a) A holder of property presumed abandoned shall
9 make a report to the Treasurer concerning the property. The
10 report shall be filed electronically and the monies remitted
11 electronically. The Treasurer may grant an exception upon
12 written request as established by rule. A report should
13 contain only tangible property or intangible property. If a
14 holder possesses both property types, two reports shall be
15 filed.

16 "(b) The report must be verified, balanced, and must
17 contain, at a minimum, all of the following:

18 "(1) A description of the property.

19 "(2) The date, if any, on which the property became
20 payable, demandable, or returnable, and the date of the last
21 transaction with the apparent owner with respect to the
22 property.

23 "(3) Other information that the Treasurer by rule
24 prescribes as necessary for the administration of this
25 article.

1 "(4) Except with respect to a traveler's check,
2 money order, or State of Alabama issued ~~warrants~~ payment
3 instruments, the name, if known, the last known address, if
4 any, and the Social Security number or taxpayer identification
5 number, if readily ascertainable, of the apparent owner of
6 property ~~of the value of fifty dollars (\$50) or more~~ in an
7 amount greater than the aggregate amount established by rule.

8 "(5) In the case of property held or owing under an
9 annuity or a life or endowment insurance policy, the policy
10 number, the full name, Social Security number, if known, date
11 of birth, if known, and last known address, of the annuitant
12 or insured and of the beneficiary.

13 "(6) In the case of expired State of Alabama issued
14 warrants or other payment instruments, the full name of the
15 owner/payee, warrant or account number, date of issuance,
16 owner address, and Social Security number, if known.

17 "(7) In the case of property held in a safe deposit
18 box or other safekeeping depository, an indication of the
19 place where it was held, the full name and last known address
20 of the apparent owner, and any amounts owing to the holder.

21 "(8) In the case of individual items valued under
22 fifty dollars (\$50), or a greater amount if established by
23 rule, an aggregated amount.

24 "~~(b) If a holder of property presumed abandoned is a~~
25 ~~successor to another person who previously held the property~~

1 ~~for the apparent owner or the holder has changed its name~~
2 ~~while holding the property, the holder shall file with the~~
3 ~~report its former names, if any, and the known names and~~
4 ~~addresses of all previous holders of the property.~~

5 "(c) The report shall be filed before November 1 of
6 each year and cover the 12 months next preceding July 1 of
7 that year.

8 "(d) The holder ~~of property presumed abandoned~~ shall
9 send written notice to the apparent owner, not ~~more than 120~~
10 ~~days or~~ less than 60 days before filing the report, stating
11 that the holder is in possession of property subject to this
12 article, if all of the following requirements are met:

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

16 "(2) The claim of the apparent owner is not barred
17 by a statute of limitations.

18 "(3) The value of the property is fifty dollars
19 (\$50) or ~~more~~ a greater amount as established by rule.

20 "(e) State of Alabama issued warrants or other
21 payment instruments outstanding and unpaid ~~one year after~~
22 ~~issuance~~ are void and transferred to the Unclaimed Property
23 Reserve Fund pursuant to Section 41-4-60. Therefore,
24 subsection (d) does not apply.

1 "(f) Before the date for filing the report, the
2 holder of ~~property presumed abandoned~~ may request the
3 Treasurer to extend the time for filing the report. The
4 Treasurer may grant the extension for good cause. The holder,
5 upon receipt of the extension, may make an interim payment on
6 the amount the holder estimates will ultimately be due, which
7 terminates the accrual of penalties, if any, on the amount
8 paid.

9 "§35-12-77.

10 "(a) Except for property held in a safe deposit box
11 or other safekeeping depository, upon filing the report
12 required in Section 35-12-76, the holder of property presumed
13 abandoned shall pay, deliver, or cause to be paid or delivered
14 to the Treasurer the property described in the report as
15 unclaimed, but if the property is an automatically renewable
16 deposit, and a penalty or forfeiture in the payment of
17 interest would result, the time for compliance is extended
18 until a penalty or forfeiture would no longer result.

19 "(b) Tangible property held in a safe deposit box or
20 other safekeeping depository shall be delivered to the
21 Treasurer within 120 days after filing the report required in
22 Section 35-12-76.

23 "(c) If the property reported to the Treasurer is a
24 security or security entitlement under Article 8 of Title 7,
25 the Uniform Commercial Code, the Treasurer is an appropriate

1 person to make an indorsement, instruction, or entitlement
2 order on behalf of the apparent owner to invoke the duty of
3 the issuer or its transfer agent or the securities
4 intermediary to transfer or dispose of the security or the
5 security entitlement in accordance with Article 8 of Title 7,
6 the Uniform Commercial Code.

7 "(d) If the holder of property reported to the
8 Treasurer is the issuer of a certificated security, the
9 Treasurer has the right to obtain a replacement certificate
10 pursuant to Section 7-8-405 of the Uniform Commercial Code,
11 but an indemnity bond is not required.

12 ~~"(e) An issuer, the holder, and any transfer agent~~
13 ~~or other person acting pursuant to the instructions of and on~~
14 ~~behalf of the issuer or holder in accordance with this section~~
15 ~~is not liable to the apparent owner and must be indemnified~~
16 ~~against claims of any person in accordance with Section~~
17 ~~35-12-79.~~

18 ~~"(f)~~ (e) Remittance to the state shall occur annually
19 on or before November 1 of each year and shall accompany the
20 report provided for in subsection (c) of Section 35-12-76 and
21 shall cover the same time period as the report.

22 "§35-12-79.

23 "(a) In this article, "good faith" means honesty in
24 fact in the conduct or transaction concerned.

1 "(b) Upon payment or delivery of property to the
2 Treasurer, the state assumes custody and responsibility for
3 the safekeeping of the property. A holder who pays or delivers
4 property to the Treasurer in good faith is relieved of all
5 liability arising thereafter with respect to the property. The
6 payment or delivery of property to the Treasurer shall operate
7 as a full, absolute and unconditional release and discharge of
8 the holder from any and all claims or demands of or liability
9 to any person entitled thereto, or to any other claimant or
10 state, and the payment or delivery may be pleaded as an
11 absolute bar to any action brought against the holder by any
12 other person entitled thereto, or by any other claimant or
13 state. ~~The~~ Once properly pleaded, the holder shall immediately
14 and thereafter be relieved of and held harmless ~~by the State~~
15 ~~of Alabama~~ from any and all liabilities for any claim or
16 claims which exist at the time with reference to the property
17 or which may thereafter be made or may come into existence on
18 account of or in respect to any such property. This section
19 does not relieve the holder from any fine or civil penalty
20 imposed pursuant to Section 35-12-92.

21 "(c) A holder who has paid money to the Treasurer
22 pursuant to this article may ~~but is not required to~~
23 subsequently reestablish an account or make payment to a
24 person reasonably appearing to the holder to be entitled to
25 payment. Upon a filing by the holder ~~of~~ that the property was

1 remitted in error or upon proof of payment and proof that the
2 payee was entitled to the payment, the Treasurer shall
3 promptly reimburse the holder, unless the Treasurer already
4 has paid a claim for the property, for the payment without
5 imposing a fee or other charge. If reimbursement is sought for
6 a payment made on a negotiable instrument, including a
7 traveler's check or money order, the holder shall be
8 reimbursed upon filing proof that the instrument was duly
9 presented and that payment was made to a person who reasonably
10 appeared to be entitled to payment. The holder must be
11 reimbursed for payment made even if the payment was made to a
12 person whose claim was barred under Section 35-12-88.

13 "(d) A holder who has delivered property other than
14 money to the Treasurer pursuant to this article may reclaim
15 the property if it is still in the possession of the
16 Treasurer, without paying any fee or other charge, upon filing
17 proof that the apparent owner has claimed the property from
18 the holder.

19 "(e) The Treasurer may accept a holder's affidavit
20 as sufficient proof of the holder's right to recover money and
21 property under this section.

22 "(f) If a holder pays or delivers property to the
23 Treasurer in good faith and thereafter another person claims
24 the property from the holder or another state claims the
25 property under its laws relating to escheat or abandoned or

1 unclaimed property, the payment or delivery may be pleaded as
2 an absolute bar to any action brought against the holder by
3 any other person entitled thereto or by any other claimant or
4 state. Once properly pleaded, the holder is relieved of and
5 held harmless against any and all liabilities on the claim
6 resulting from payment or delivery of the property to the
7 Treasurer.

8 "(g) Property removed from a safe deposit box or
9 other safekeeping depository is received by the Treasurer
10 subject to the holder's right to be reimbursed for the cost of
11 the opening if the holder includes the amount in its report of
12 abandoned property. The Treasurer shall reimburse the holder
13 out of the proceeds remaining after deducting the expense
14 incurred by the Treasurer in selling the property.

15 "(h) A record of the issuance of a check, draft, or
16 similar negotiable instrument is prima facie evidence of an
17 obligation. In claiming property from a holder who is also the
18 issuer, the Treasurer's burden of proof as to the existence
19 and amount of the property and its abandonment is satisfied by
20 showing issuance of the instrument and passage of the
21 requisite period of abandonment. Defenses of payment,
22 satisfaction, discharge, want of consideration, statute of
23 limitations, and other similar defenses are affirmative
24 defenses that must be established by the holder.

1 ~~"(i) The Treasurer is not civilly or criminally~~
 2 ~~liable for any property or funds delivered pursuant to this~~
 3 ~~article.~~

4 "(i) When property or funds are delivered to the
 5 Treasurer pursuant to this article, the Treasurer shall not be
 6 civilly or criminally liable for the receiving, holding, or
 7 returning of the property.

8 "\$35-12-84.

9 "(a) The surviving spouse, or, if none, the
 10 surviving child or children or, if none, the surviving parent
 11 or parents of an abandoned property owner who has died
 12 intestate may claim the abandoned property under this section,
 13 and will have a defeasible right to the property, if all of
 14 the following conditions exist:

15 "(1) The aggregate value of the abandoned property
 16 held on behalf of the owner, as established by rule, must not
 17 exceed the amount allowed in Section 43-2-692.

18 "(2) The claim need not be accompanied by an order
 19 of a probate court if the claimant files documentation
 20 established in the rules, including, but not limited to, a. a
 21 written confirmation by the probate court that no estate has
 22 been opened or filed; b. an affidavit, signed by all
 23 beneficiaries ~~(defined as spouse and children)~~, as applicable,
 24 stating that all beneficiaries have amicably agreed among
 25 themselves upon a division of the property; c. supporting

1 documentation showing heir rights; and d. authorization to
2 release the name and address of the claimant to subsequent
3 claimants.

4 "(b) Nothing in this section shall be construed to
5 remove the jurisdiction of the probate court in matters of
6 estates.

7 "(c) A person may claim abandoned property in his or
8 her name under this section and will have a defeasible right
9 to the property, if all of the following conditions exist:

10 "(1) The aggregate amount value of the abandoned
11 property held on behalf of the owner is equal to or less than
12 two hundred dollars (\$200), or a greater amount if established
13 by rule.

14 "(2) The claim is accompanied by an affidavit
15 swearing to the authenticity of a claim and lack of matching
16 documentation, ~~and an~~ authorization to release the name and
17 address of the claimant to subsequent claimants, and any other
18 required documentation if established by rule.

19 "(d) Any person to whom payment, delivery, transfer,
20 or issuance is made under this section shall be answerable and
21 accountable therefor to any heir of the decedent, to any
22 person having a superior right to the decedent's property, or
23 to the surviving spouse, ~~or minor~~ children, or parents of the
24 decedent who shall proceed against such person. This liability

1 shall only be to the extent of the value of the property
2 received by each person under this section.

3 "(e) Any person who was lawfully entitled to share
4 in the property but did not receive his or her share of the
5 property, may enforce his or her rights in appropriate legal
6 proceedings against those who received the property.

7 "§35-12-86.

8 "(a) The Treasurer may decline to receive property
9 reported under this article which the Treasurer considers to
10 have a value less than the expenses of notice and sale.

11 "(b) A holder, with the written consent of the
12 Treasurer and upon conditions and terms prescribed by the
13 Treasurer, may report and deliver property before the property
14 is presumed abandoned. A holder exempt from reporting, upon
15 conditions and terms prescribed by the Treasurer, may
16 voluntarily report. ~~Property so delivered must be held by the~~
17 ~~Treasurer and is not presumed abandoned until it otherwise~~
18 ~~would be presumed abandoned under this article. Property~~
19 delivered under this section is deemed abandoned upon receipt
20 by the Treasurer and shall be handled in the same manner as
21 other abandoned property under this article.

22 "§35-12-93.

23 "(a) An agreement by an owner, the primary purpose
24 of which is to locate, deliver, recover, or assist in the
25 recovery of property that is presumed abandoned, is void and

1 unenforceable if it was entered into during the period
2 commencing on the date the property was presumed abandoned and
3 extending to a time that is 24 months after the date the
4 property is paid or delivered to the Treasurer. This
5 subsection does not apply to an owner's agreement with an
6 attorney to file a claim as to identified property or contest
7 the Treasurer's denial of a claim.

8 "(b) An agreement by an owner, the primary purpose
9 of which is to locate, deliver, recover, or assist in the
10 recovery of property, is enforceable only if the agreement is
11 in writing, clearly sets forth the nature of the property and
12 the services to be rendered, states that the property is in
13 custody of the State of Alabama Treasurer's Office, is signed
14 by the apparent owner, ~~and states the value of the property~~
15 ~~before and after the fee or other compensation has been~~
16 ~~deducted~~ states the compensation fee percentage of the value
17 of the amount to be claimed, and states any other compensation
18 to be deducted.

19 "(c) If an agreement covered by this section applies
20 to mineral proceeds and the agreement contains a provision to
21 pay compensation that includes a portion of the underlying
22 minerals or any mineral proceeds not then presumed abandoned,
23 the provision is void and unenforceable.

24 "(d) ~~An~~ Total compensation in an agreement covered
25 by this section ~~which provides for compensation that is~~

1 ~~unconscionable is unenforceable except by the owner. An owner~~
2 ~~who has agreed to pay compensation that is unconscionable, may~~
3 ~~maintain an action to reduce the compensation to a~~
4 ~~conscionable amount. The court may award reasonable attorney's~~
5 ~~fees to an owner who prevails in the action may not exceed 10~~
6 ~~percent of the value of the amount claimed.~~

7 "(e) This section does not preclude an owner from
8 asserting that an agreement covered by this section is invalid
9 on grounds other than unconscionable compensation. It is the
10 sole responsibility of the owner to enforce this section."

11 Section 2. This act shall become effective on the
12 first day of the third month following its passage and
13 approval by the Governor, or its otherwise becoming law.

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Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 26-FEB-13, as amended.

Jeff Woodard
Clerk

Senate

10-APR-13

Passed