

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

ENGROSSED

A BILL

TO BE ENTITLED

AN ACT

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

"§35-12-72.

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

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

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

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

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

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

26 "(6) Property in an individual retirement account,
27 defined benefit plan, or other account or plan that is

1 qualified for tax deferral under the income tax laws of the
2 United States, three years after the earlier of a. the date of
3 the distribution or attempted distribution of the property; b.
4 the date of the required distribution as stated in the plan or
5 trust agreement governing the plan; or c. the date, if
6 determinable by the holder, specified in the income tax laws
7 of the United States by which distribution of the property
8 must begin in order to avoid a tax penalty.

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

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

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

"(10) 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.

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

"a. Any funds, two years after the date of the demutualization or reorganization, if the funds remain unclaimed, and the owner has not 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.

"b. Any stock or other equity interest, 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 the owner has not 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. Property not subject to paragraphs a. or b. within two years of the distribution shall remain reportable under other sections of this article.

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

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

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

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

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

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

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

"(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 its 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 or apparent owner's interest in property includes any of the following:

"(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.

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

13 "(4) The payment of a premium with respect to a
14 property interest in an insurance policy; but the application
15 of an automatic premium loan provision or other nonforfeiture
16 provision contained in an insurance policy does not prevent a
17 policy from maturing or terminating if the insured has died or
18 the insured or the beneficiary of the policy has otherwise
19 become entitled to the proceeds before the depletion of the
20 cash surrender value of a policy by the application of those
21 provisions.

22 "(e) Property is payable or distributable for
23 purposes of this article notwithstanding the failure of the
24 owner or apparent owner to make demand or present an
25 instrument or document otherwise required to obtain payment.

26 "§35-12-76.

1 "(a) A holder of property presumed abandoned shall
2 make a report to the Treasurer concerning the property. The
3 report shall be filed electronically and the monies remitted
4 electronically. The Treasurer may grant an exception upon
5 written request as established by rule. A report should
6 contain only tangible property or intangible property. If a
7 holder possesses both property types, two reports shall be
8 filed.

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

11 "(1) A description of the property.

12 "(2) The date, if any, on which the property became
13 payable, demandable, or returnable, and the date of the last
14 transaction with the apparent owner with respect to the
15 property.

16 "(3) Other information that the Treasurer by rule
17 prescribes as necessary for the administration of this
18 article.

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

26 "(5) In the case of property held or owing under an
27 annuity or a life or endowment insurance policy, the policy

number, the full name, Social Security number, if known, date of birth, if known, and last known address, of the annuitant or insured and of the beneficiary.

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

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

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

"(b) 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.

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

"(d) 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

1 that the holder is in possession of property subject to this
2 article, if all of the following requirements are met:

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

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

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

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

15 "(f) Before the date for filing the report, the
16 holder ~~of property presumed abandoned~~ may request the
17 Treasurer to extend the time for filing the report. The
18 Treasurer may grant the extension for good cause. The holder,
19 upon receipt of the extension, may make an interim payment on
20 the amount the holder estimates will ultimately be due, which
21 terminates the accrual of penalties, if any, on the amount
22 paid.

23 "§35-12-77.

24 "(a) Except for property held in a safe deposit box
25 or other safekeeping depository, upon filing the report
26 required in Section 35-12-76, the holder of property presumed
27 abandoned shall pay, deliver, or cause to be paid or delivered

1 to the Treasurer the property described in the report as
2 unclaimed, but if the property is an automatically renewable
3 deposit, and a penalty or forfeiture in the payment of
4 interest would result, the time for compliance is extended
5 until a penalty or forfeiture would no longer result.

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

10 "(c) If the property reported to the Treasurer is a
11 security or security entitlement under Article 8 of Title 7,
12 the Uniform Commercial Code, the Treasurer is an appropriate
13 person to make an indorsement, instruction, or entitlement
14 order on behalf of the apparent owner to invoke the duty of
15 the issuer or its transfer agent or the securities
16 intermediary to transfer or dispose of the security or the
17 security entitlement in accordance with Article 8 of Title 7,
18 the Uniform Commercial Code.

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

24 "(e) ~~An issuer, the holder, and any transfer agent~~
25 ~~or other person acting pursuant to the instructions of and on~~
26 ~~behalf of the issuer or holder in accordance with this section~~
27 ~~is not liable to the apparent owner and must be indemnified~~

1 against claims of any person in accordance with Section
2 35-12-79.

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

7 "§35-12-79.

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

10 "(b) Upon payment or delivery of property to the
11 Treasurer, the state assumes custody and responsibility for
12 the safekeeping of the property. A holder who pays or delivers
13 property to the Treasurer in good faith is relieved of all
14 liability arising thereafter with respect to the property. The
15 payment or delivery of property to the Treasurer shall operate
16 as a full, absolute and unconditional release and discharge of
17 the holder from any and all claims or demands of or liability
18 to any person entitled thereto, or to any other claimant or
19 state, and the payment or delivery may be pleaded as an
20 absolute bar to any action brought against the holder by any
21 other person entitled thereto, or by any other claimant or
22 state. The Once properly pleaded, the holder shall immediately
23 and thereafter be relieved of and held harmless ~~by the State~~
24 ~~of Alabama~~ from any and all liabilities for any claim or
25 claims which exist at the time with reference to the property
26 or which may thereafter be made or may come into existence on
27 account of or in respect to any such property. This section

1 does not relieve the holder from any fine or civil penalty
2 imposed pursuant to Section 35-12-92.

3 "(c) A holder who has paid money to the Treasurer
4 pursuant to this article may ~~but is not required to~~
5 subsequently reestablish an account or make payment to a
6 person reasonably appearing to the holder to be entitled to
7 payment. Upon a filing by the holder of that the property was
8 remitted in error or upon proof of payment and proof that the
9 payee was entitled to the payment, the Treasurer shall
10 promptly reimburse the holder, unless the Treasurer already
11 has paid a claim for the property, for the payment without
12 imposing a fee or other charge. If reimbursement is sought for
13 a payment made on a negotiable instrument, including a
14 traveler's check or money order, the holder shall be
15 reimbursed upon filing proof that the instrument was duly
16 presented and that payment was made to a person who reasonably
17 appeared to be entitled to payment. The holder must be
18 reimbursed for payment made even if the payment was made to a
19 person whose claim was barred under Section 35-12-88.

20 "(d) A holder who has delivered property other than
21 money to the Treasurer pursuant to this article may reclaim
22 the property if it is still in the possession of the
23 Treasurer, without paying any fee or other charge, upon filing
24 proof that the apparent owner has claimed the property from
25 the holder.

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

"(f) If a holder pays or delivers property to the Treasurer in good faith and thereafter another person claims the property from the holder or another state claims the property under its laws relating to escheat or abandoned or unclaimed property, the payment or delivery may be pleaded as an absolute bar to any action brought against the holder by any other person entitled thereto or by any other claimant or state. Once properly pleaded, the holder is relieved of and held harmless against any and all liabilities on the claim resulting from payment or delivery of the property to the Treasurer.

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

"(h) A record of the issuance of a check, draft, or similar negotiable instrument is prima facie evidence of an obligation. In claiming property from a holder who is also the issuer, the Treasurer's burden of proof as to the existence and amount of the property and its abandonment is satisfied by showing issuance of the instrument and passage of the

1 requisite period of abandonment. Defenses of payment,
2 satisfaction, discharge, want of consideration, statute of
3 limitations, and other similar defenses are affirmative
4 defenses that must be established by the holder.

5 ~~"(i) The Treasurer is not civilly or criminally~~
6 ~~liable for any property or funds delivered pursuant to this~~
7 ~~article.~~

8 "(i) When property or funds are delivered to the
9 Treasurer pursuant to this article, the Treasurer shall not be
10 civilly or criminally liable for the receiving, holding, or
11 returning of the property.

12 "§35-12-84.

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

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

22 " (2) The claim need not be accompanied by an order
23 of a probate court if the claimant files documentation
24 established in the rules, including, but not limited to, a. a
25 written confirmation by the probate court that no estate has
26 been opened or filed; b. an affidavit, signed by all
27 beneficiaries ~~(defined as spouse and children), as applicable,~~

1 stating that all beneficiaries have amicably agreed among
2 themselves upon a division of the property; c. supporting
3 documentation showing heir rights; and d. authorization to
4 release the name and address of the claimant to subsequent
5 claimants.

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

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

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

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

21 "(d) Any person to whom payment, delivery, transfer,
22 or issuance is made under this section shall be answerable and
23 accountable therefor to any heir of the decedent, to any
24 person having a superior right to the decedent's property, or
25 to the surviving spouse, or minor children, or parents of the
26 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
26 unenforceable if it was entered into during the period
27 commencing on the date the property was presumed abandoned and

1 extending to a time that is 24 months after the date the
2 property is paid or delivered to the Treasurer. This
3 subsection does not apply to an owner's agreement with an
4 attorney to file a claim as to identified property or contest
5 the Treasurer's denial of a claim.

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

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

22 "(d) ~~An Total compensation in an~~ agreement covered
23 by this section ~~which provides for compensation that is~~
24 ~~unconscionable is unenforceable except by the owner. An owner~~
25 ~~who has agreed to pay compensation that is unconscionable, may~~
26 ~~maintain an action to reduce the compensation to a~~
27 ~~conscionable amount. The court may award reasonable attorney's~~

1 fees to an owner who prevails in the action may not exceed 10
2 percent of the value of the amount claimed.

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

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

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House of Representatives

4 Read for the first time and re-
5 ferred to the House of Representa-
6 tives committee on Financial Ser-
7 vices..... 05-FEB-13

8

9 Read for the second time and placed
10 on the calendar..... 06-FEB-13

11

12 Read for the third time and passed
13 as amended..... 26-FEB-13

14

Yea 95, Nays 0, Abstains 0

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Jeff Woodard
Clerk