

ENROLLED SENATE
BILL NO. 1483

By: Fisher of the Senate

and

Askins of the House

An Act relating to unclaimed property; providing for distribution of property upon demutualization or reorganization of an insurance company; amending 60 O.S. 2001, Sections 656, as amended by Section 4, Chapter 224, O.S.L. 2003, 658, as amended by Section 5, Chapter 224, O.S.L. 2003, 663, as amended by Section 8, Chapter 224, O.S.L. 2003, 667, as amended by Section 9, Chapter 224, O.S.L. 2003, 668, as last amended by Section 10, Chapter 224, O.S.L. 2003, 668.1, 677 and 680 (60 O.S. Supp. 2003, Sections 656, 658, 663, 667 and 668), which relate to unclaimed property; providing for presumption of abandonment of certain property relating to demutualization of an insurance company; requiring certain report; limiting time requirement for reporting or remitting mineral interest; removing deduction for certain bond relating to abandoned property; removing optional payment on certain abandoned property; removing requirement and procedures for State Treasurer to hold certain securities for certain time period; modifying certain deductions from the Unclaimed Property Fund; limiting certain claims; removing requirement for certain notification relating to unclaimed property; providing for certain penalties to be permissive; authorizing the State Treasurer to expend monies for certain purposes from Unclaimed Property Clearinghouse Fund; requiring the State Treasurer to promulgate certain rules; providing for codification; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 653.1 of Title 60, unless there is created a duplication in numbering, reads as follows:

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

1. Any funds, two (2) years after the date of the demutualization or reorganization, if there is no memorandum or other record on file with the holder or its agent evidencing the owner's communication with the holder or its agent within two (2) years following the date of the demutualization or reorganization, and:

- a. a check is mailed to the last-known address of the owner by the holder or its agent and the funds remain unclaimed by the owner,
- b. a check is mailed to the last-known address of the owner by the holder or its agent and returned by the post office as undeliverable, or
- c. a check is not mailed to the owner because the last-known address on the books and records of the holder is known to be invalid;

2. Any stock or equity interest, two (2) years after the date of the demutualization or reorganization, if there is no memorandum or other record on file with the holder or its agent evidencing the owner's communication with the holder or its agent within two (2) years following the date of the demutualization or reorganization, and instruments or statements reflecting the distribution are:

- a. mailed to the last-known address of the owner by the holder or its agent and returned by the post office as undeliverable, or
- b. not mailed to the owner because the last-known address on the books and records of the holder is known to be invalid;

3. Property distributable in the course of demutualization or related reorganization not subject to paragraphs 1 or 2 of this section within two (2) years of the distribution shall remain reportable under other sections of this chapter;

4. A report of property presumed abandoned pursuant to this section must be filed in accordance with Section 661 of Title 60 of the Oklahoma Statutes. The initial report for property distributable in the course of demutualization, rehabilitation, or related reorganization of an insurance company shall be filed on or before November 1, 2004, with respect to conditions in effect on December 31, 2003, and all property shall be determined to be reportable under this section as if this section were in effect on the date of the demutualization, rehabilitation, or related reorganization of an insurance company.

SECTION 2. AMENDATORY 60 O.S. 2001, Section 656, as amended by Section 4, Chapter 224, O.S.L. 2003 (60 O.S. Supp. 2003, Section 656), is amended to read as follows:

Section 656. A. Intangible property and any income or increment derived therefrom held in a fiduciary capacity for the benefit of another person is presumed abandoned unless the owner,

within seven (7) years after it has become payable or distributable, 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 on file with the fiduciary.

B. Holders of presumed abandoned intangible property shall annually report and remit all proceeds accrued to date, including the current balance held by the holder. When and if any part of the proceeds has been held for the statutory abandonment period or longer, the holder must report and remit all interest, additions, and increments accrued to the account of the owner. Any additional amounts accruing to an owner of the same intangible property presumed abandoned previously reported will be reported and remitted on an annual basis, including the additional amounts from the "as of date" of the previous report year through the "as of date" of the current report year.

~~Holders of~~ In no event shall mineral interest proceeds ~~are not be required to report or remit current balances that have not been held for the statutory abandonment period be reported or remitted sooner than six (6) months after the date of first sale from the applicable well.~~

C. Funds in an individual retirement account or a retirement plan for self-employed individuals or similar account or plan established under the Internal Revenue laws of the United States are not payable or distributable within the meaning of subsection ~~(a)~~ A of this section unless, under the terms of the account or plan, distribution of all or part of the funds would then be mandatory.

D. 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 person and the business association provides otherwise.

E. 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.

SECTION 3. AMENDATORY 60 O.S. 2001, Section 658, as amended by Section 5, Chapter 224, O.S.L. 2003 (60 O.S. Supp. 2003, Section 658), is amended to read as follows:

Section 658. A. Except as otherwise provided ~~by this act in the Uniform Unclaimed Property Act,~~ all intangible personal property, including income or increment derived from the property, less any lawful charges, that is held, issued, or owing in the ordinary course of a holder's business and has remained unclaimed by the owner for more than five (5) years after becoming payable or distributable is presumed abandoned.

B. Holders of presumed abandoned intangible property shall report annually and remit all proceeds accrued to date, including the current balance held by the holder. When and if any part of the proceeds has been held for the statutory abandonment period or longer, the holder must report and remit all interest, additions, and increments accrued to the account of the owner. Any additional amounts accruing to an owner of the same intangible property presumed abandoned previously reported will be reported and remitted on an annual basis, including additional amounts from the "as of date" of the previous report year through the "as of date" of the current report year. ~~Holders of mineral interest proceeds are not required to report or remit current balances that have not been held for the statutory abandonment period.~~

C. In no event shall mineral interest proceeds be required to be reported or remitted sooner than six (6) months after the date of first sale from the applicable well.

D. Property is payable or distributable for the purposes of this act notwithstanding the owner's failure to demand the property or to present an instrument or document required to receive payment of the property.

SECTION 4. AMENDATORY 60 O.S. 2001, Section 663, as amended by Section 8, Chapter 224, O.S.L. 2003 (60 O.S. Supp. 2003, Section 663), is amended to read as follows:

Section 663. A. Except as otherwise provided in subsection B of this section, a person who is required to file a report under Section 661 of this title shall at the same time pay or deliver to the State Treasurer all abandoned property required to be reported after first deducting therefrom expenses incurred in the mailing of notices required by subsection E of Section 661 of this title and any offsets as provided by law. ~~Any person who, pursuant to a statutory requirement, filed a bond or bonds pertaining to abandoned property with the State Treasurer may also deduct an amount equivalent to that part of the bond premium attributable to abandoned property.~~ Any funds or property subject to aggregate reporting shall be delivered at the same time as the report.

~~B. Abandoned property that consists of any stock or other intangible ownership interest enrolled in a plan that provides for the automatic reinvestment of dividends, distributions, or other sums payable as a result of the interest, may be retained by the holder or paid or delivered to the State Treasurer at the option of the holder.~~

~~C.~~ A holder may file a written explanation of an error in the presumption of abandonment of any previously reported and paid or delivered property. If the property has not been claimed by the owner and the State Treasurer is satisfied an error has been made, a refund of the payment or delivery of the property shall be made to the holder.

~~D.~~ C. The holder of an ownership interest under Section 655 of this title shall deliver a duplicate certificate or other evidence of ownership if the holder does not issue certificates of ownership

to the State Treasurer. Upon delivery of a duplicate certificate to the State Treasurer, the holder and any transfer agent, registrar, or other person acting for or on behalf of a holder in executing or delivering the duplicate certificate is relieved of liability as provided in Section 664 of this title to every person, including any person acquiring the original certificate or the duplicate of the certificate issued to the State Treasurer, for losses or damages resulting to any person by the issuance and delivery to the State Treasurer of the duplicate certificate.

SECTION 5. AMENDATORY 60 O.S. 2001, Section 667, as amended by Section 9, Chapter 224, O.S.L. 2003 (60 O.S. Supp. 2003, Section 667), is amended to read as follows:

Section 667. A. Except as provided in subsections B and C of this section, the State Treasurer, within three (3) years after the receipt of abandoned property, shall sell it to the highest bidder at public sale in whatever city in the state affords in the judgment of the State Treasurer the most favorable market for the property involved. The State Treasurer may decline the highest bid and reoffer the property for sale if in the judgment of the State Treasurer the bid is insufficient. If in the judgment of the State Treasurer the probable cost of sale exceeds the value of the property, it need not be offered for sale. Any sale held under this section must be preceded by a single publication of notice, at least three (3) weeks in advance of sale in a legal newspaper of general circulation in the county where the property is to be sold, the county of residence of the holder and the county of the last-known address of the owner.

B. Securities listed on an established stock exchange must be sold at prices prevailing at the time of sale on the exchange. Other securities may be sold over the counter at prices prevailing at the time of sale or by another method the State Treasurer considers advisable.

C. Unless the State Treasurer considers it to be in the best interest of the state to do otherwise, all securities, other than those presumed abandoned under Section 655 of this title, delivered to the State Treasurer must be held for at least one (1) year before the State Treasurer may sell them.

~~D. Unless the State Treasurer considers it to be in the best interest of the state to do otherwise, all securities presumed abandoned under Section 655 of this title and delivered to the State Treasurer must be held for at least one (1) year before the State Treasurer may sell them. If the State Treasurer sells any securities delivered pursuant to Section 655 of this title before the expiration of the one-year period, any person making a claim pursuant to the Uniform Unclaimed Property Act is entitled to either the proceeds of the sale of the securities or other market value of the securities at the time the claim is made, whichever amount is greater, less any deduction for fees pursuant to Section 668 of this title. A person making a claim under the Uniform Unclaimed Property Act after the expiration of this period is entitled to receive either the securities delivered to the State Treasurer by the holder, if they still remain in the hands of the State Treasurer, or~~

~~the proceeds received from sale, less any amounts deducted pursuant to Section 668 of this title, but no person has any claim under this section against the state, the holder, any transfer agent, registrar, or other person acting for or on behalf of a holder for any appreciation in the value of the property occurring after delivery by the holder to the State Treasurer.~~

~~E.~~ The purchaser at any sale conducted by the State Treasurer pursuant to the Uniform Unclaimed Property Act takes the property, free of all claims of the owner or prior holder thereof and of all persons claiming through or under them. The State Treasurer shall execute all documents necessary to complete the transfer of ownership.

SECTION 6. AMENDATORY 60 O.S. 2001, Section 668, as last amended by Section 10, Chapter 224, O.S.L. 2003 (60 O.S. Supp. 2003, Section 668), is amended to read as follows:

Section 668. A. There is hereby created in the State Treasury the "Unclaimed Property Fund", the principal of which shall constitute a trust fund for persons claiming any interest in any property delivered to the state under the Uniform Unclaimed Property Act and may be invested as hereinafter provided and shall not be expended except as provided in the Uniform Unclaimed Property Act. All funds received under the Uniform Unclaimed Property Act, including the proceeds from the sale of abandoned property under Section 667 of this title, shall forthwith be deposited by the State Treasurer in the Unclaimed Property Fund, herein created, except that the State Treasurer may before making any deposit to the fund deduct:

1. All costs in connection with the sale of abandoned property;
2. All costs of mailing and publication in connection with any abandoned property including the cost of custody services for unclaimed securities;
3. Reasonable service charges not to exceed four percent (4%) of the monies accruing to the state under the Uniform Unclaimed Property Act, which may be used to defray the administrative costs of the unclaimed property program or to acquire computer hardware and software to be used exclusively to help administer the unclaimed property program; and
4. An amount equal to fifteen percent (15%) of the funds accruing to the state pursuant to a contract with the State Treasurer providing information leading to the delivery of unclaimed property held by ~~an out-of-state~~ a holder to the State Treasurer to be deposited in the Unclaimed Property Clearinghouse Fund.

B. Before making a deposit to the Unclaimed Property Fund, the State Treasurer shall record the name and last-known address of each person appearing from the holders' reports to be entitled to the abandoned property and of the name and last-known address of each insured person or annuitant, and with respect to each policy or contract listed in the report of a life insurance corporation, its number, the name of the corporation, and the amount due. The record

shall be available for public inspection at all reasonable business hours.

SECTION 7. AMENDATORY 60 O.S. 2001, Section 668.1, is amended to read as follows:

Section 668.1 A. There is hereby created in the State Treasury a revolving fund for the State Treasurer to be designated the "Unclaimed Property Clearinghouse Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of monies deposited to the fund pursuant to Section 668 of this title. All monies accruing to the credit of the fund are appropriated to the State Treasurer. The State Treasurer may budget and expend monies from the fund for the purpose of making payment for the mailing, publication and sale costs associated with abandoned property, and to persons, firms, or corporations who are regularly engaged in the business of notifying states about property which may be subject to the provisions of unclaimed property statutes of those states. The State Treasurer may enter into contracts with these persons, firms or corporations performing these services, which services may include the examination of any party subject to examination under the Uniform Unclaimed Property Act. The State Treasurer may delegate all necessary authority to act in the State Treasurer's behalf to such persons, firms or corporations to enforce the provisions of the Uniform Unclaimed Property Act.

B. The State Treasurer shall be authorized to expend monies from the Unclaimed Property Clearinghouse Fund in payment of a reasonable fee not to exceed fifteen percent (15%) of the delivered funds to a person, firm, or corporation contracting with the State Treasurer providing information leading to the delivery of unclaimed property held by ~~an out-of-state~~ a holder to the State Treasurer. Such payment shall not be made until the funds have been deposited with the State Treasurer.

SECTION 8. AMENDATORY 60 O.S. 2001, Section 677, is amended to read as follows:

Section 677. A. The State Treasurer may decline to receive any property reported under the Uniform Unclaimed Property Act which the State Treasurer considers to have a value less than the expense of giving notice and of sale. ~~If the State Treasurer elects not to receive custody of the property, the holder shall be notified before the date specified in Section 663 of this title for payment or delivery of the property to the State Treasurer.~~

B. A holder, with the written consent of the State Treasurer and upon conditions and terms prescribed by the State Treasurer, may report and deliver property before the property is presumed abandoned. Property delivered under this subsection must be held by the State Treasurer and is not presumed abandoned until such time as it otherwise would be presumed abandoned under the Uniform Unclaimed Property Act.

SECTION 9. AMENDATORY 60 O.S. 2001, Section 680, is amended to read as follows:

Section 680. A. A person who fails to pay or deliver property within the time prescribed by the Uniform Unclaimed Property Act ~~shall~~ may be required to pay interest at the annual rate of ten percent (10%) on the property or value thereof from the date the property should have been paid or delivered.

B. In addition to the penalty imposed in subsection A of this section, a person who willfully fails to render any report or deliver property or perform any other duties required under the Uniform Unclaimed Property Act ~~shall~~ may be required to pay a civil penalty of One Hundred Dollars (\$100.00) for each day the report is withheld or the duty is not performed, but not more than Five Thousand Dollars (\$5,000.00).

C. A person who willfully fails to pay or deliver property to the State Treasurer as required under the Uniform Unclaimed Property Act ~~shall~~ may be required to pay a civil penalty equal to twenty-five percent (25%) of the value of the property that should have been paid or delivered.

D. A person who willfully refuses after written demand by the State Treasurer to pay or deliver property to the State Treasurer as required under the Uniform Unclaimed Property Act is guilty of a misdemeanor and upon conviction may be punished by a fine of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00), or imprisonment for not more than six (6) months, or both.

E. The interest or penalty or any portion thereof, as imposed by subsection A, B or C of this section, may be waived or remitted by the State Treasurer if the person's failure to pay abandoned funds or deliver property is satisfactorily explained to the State Treasurer or if such failure has resulted from a mistake by the person of either the law or the facts subjecting that person to pay abandoned funds or deliver property subject to the Uniform Unclaimed Property Act, or inability to pay such interest or penalty resulting from insolvency. The State Treasurer shall promulgate rules in accordance with the Administrative Procedures Act requiring the identification and recording of those circumstances under which interest or penalty, as imposed by subsection A, B, or C of this section, may be waived. The State Treasurer may also authorize amnesty programs to promote voluntary compliance with the Uniform Unclaimed Property Act, and may participate and cooperate with other state administrators of abandoned or unclaimed property programs in nationwide amnesty programs. For purposes of this section, amnesty programs are programs in which potential holders of unclaimed property are granted waivers of interest and civil penalties if they voluntarily begin to comply with the reporting requirements of the state's unclaimed property laws.

SECTION 10. This act shall become effective July 1, 2004.

SECTION 11. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 12th day of May, 2004.

Presiding Officer of the Senate

Passed the House of Representatives the 13th day of April, 2004.

Presiding Officer of the House
of Representatives