

SENATE BILL REPORT

ESSB 5531

As Amended by House, March 9, 2022

Title: An act relating to the revised uniform unclaimed property act.

Brief Description: Concerning the revised uniform unclaimed property act.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Pedersen, Wilson, L. and Mullet; by request of Uniform Law Commission).

Brief History:

Committee Activity: Ways & Means: 1/17/22, 1/20/22 [DPS].

Floor Activity: Passed Senate: 2/9/22, 49-0.

Passed House: 3/9/22, 60-37.

<p style="text-align: center;">Brief Summary of Engrossed First Substitute Bill</p> <ul style="list-style-type: none">• Revises and updates the Uniform Unclaimed Property Act.
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SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 5531 be substituted therefor, and the substitute bill do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Capital; Robinson, Vice Chair, Operating & Revenue; Wilson, L., Ranking Member; Brown, Assistant Ranking Member, Operating; Schoesler, Assistant Ranking Member, Capital; Honeyford, Ranking Minority Member, Capital; Billig, Braun, Carlyle, Conway, Dhingra, Gildon, Hasegawa, Hunt, Keiser, Mullet, Muzzall, Pedersen, Rivers, Van De Wege, Wagoner, Warnick and Wellman.

Staff: Jeffrey Mitchell (786-7438)

Background: Uniform Law Commission. Established in 1892, the Uniform Law Commission (ULC) is a state-supported, nonpartisan nonprofit organization. It comprises

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

state commissions on uniform laws from each state, the District of Columbia, the Commonwealth of Puerto Rico, and the United States Virgin Islands. The ULC studies and reviews the laws of the states to determine which areas should be uniform. The ULC drafts and proposes specific statutory language that may be adopted by states.

The Uniform Unclaimed Property Act (Act) was adopted in 1983. The law has been updated several times, including after the ULC's revisions in 1995.

Unclaimed Property. Unclaimed property is money or intangible property owed to an individual or business. Property is considered unclaimed after it has been held for a period of time with no owner contact, and a good faith effort has been made to locate the owner. Certain entities are required to report unclaimed property to the Department of Revenue (DOR), including banking and financial institutions, utilities, businesses, and governments. Typical unclaimed property includes bank accounts, insurance proceeds, securities, safe deposit box contents, utility deposits, and uncashed checks. Since 1955, over \$1 billion in unclaimed property has been turned over to DOR. DOR will convert some items into cash by public sale or auction, such as the contents of a safe deposit box.

Specific provisions cover:

- the presumption of abandonment of traveler's checks and money orders;
- bank deposits and funds in financial institutions;
- checks and drafts;
- funds owing under insurance policies;
- deposits held by utilities;
- refunds held by a business;
- property of a business subject to dissolution;
- property held by a landlord;
- property held by agents and fiduciaries;
- property held by courts;
- property held by government;
- gift certificates and credit memos;
- wages;
- property in self-storage facilities; and
- property in safe deposit boxes.

The provisions include the events triggering the measurement for the presumption of abandonment and the applicable required time period for presumption of abandonment.

Between May 1st and August 1st of each year, a holder of abandoned property must send a written notice to the apparent owner of the property if the holder has an address for the apparent owner that has not proven inaccurate. The notice must state that the claim of the apparent owner is not barred by the statute of limitations and that the property has a value of more than \$75.

No later than September 1st of each year, DOR must mail a notice to an apparent owner of abandoned property in state custody if DOR has an address that has not proven inaccurate and the value of the property is more than \$75.

A person claiming an interest in any property paid or delivered to DOR may file a claim with DOR. DOR has 90 days to notify the claimant if the claim is denied in whole or in part. If the claim is granted, DOR must pay or deliver to the claimant the amount actually received from the holder, or the net proceeds if the property has been sold to DOR. If DOR fails to act upon a claim within 90 days of filing, a claimant may bring action in Thurston County Superior Court naming DOR as the defendant. The action must be brought within 90 days after the decision of DOR, or within 180 days after the filing of a claim that DOR has failed to take action on.

A holder must remit abandoned property by electronic funds transfer; however, DOR may relieve any holder or class of holders from the electronic payment requirements for good cause. DOR must promptly deposit abandoned property proceeds into the state general fund. DOR must also maintain a separate trust fund of at least \$250,000 from which prompt payment of claims is made.

A holder of abandoned property must make reports to DOR. The report must include the name, if known, and the last known address, if any, of each person in the holder's records believed to be the owner of property with a value of more than \$50 that is presumed to be abandoned. The nature and identifying number, if any, or a description of the property and the amount appearing in the records to be due, must be listed in the report; however, items with a value of less than \$50 may be reported in the aggregate. The report is due by November 1st of each year and must include all unclaimed property in the holder's possession as of the preceding June 30th. The reports must be filed electronically. DOR may relieve any holder or class of holders from the electronic filing requirements for good cause.

Summary of Engrossed First Substitute Bill: Makes changes to address programmatic coverage, dormancy, and other specifics for new types of intangible property, including new types of investment vehicles, as well as changes in technology are updated in the Act.

General. The following definitions are updated, removed, and added:

- "Administrator" and "administrator's agent" supplant "department" when referring to DOR;
- updated definitions include "business association," "domicile," "insurance company," "person," "state," and "utility";
- new definitions include "confidential information," "electronic," "e-mail," "game-related digital content," "holder," "loyalty card," "mineral," "mineral proceeds," "money order," "municipal bond," "net value card," "non-freely transferable security," "owner," "payroll card," "property," "putative holder," "record," "stored value card," "virtual currency," and "worthless security"; and

- removed definitions include "Attorney General," "holder," "intangible property," "last known address," and "third-party bank check."

The balance requirement for DOR to maintain a trust fund with at least \$250,000 to pay claims on demand is increased to \$750,000.

Abandonment. Property excluded from custodial taking under the Act includes unused tickets without obligation for refunds; worthless securities; nonfreely transferrable securities; game-related digital content; loyalty cards; and section 529A accounts—Achieving a Better Life Experience Act or ABLER; gift certificates; and premiums paid by an agricultural fair by check .

Property specifically identified that is subject to custodial taking includes virtual currency, payroll cards, stored-value cards, municipal bonds, health savings accounts, commissions, employee reimbursements, and custodial accounts for minors.

Events Triggering Abandonment Presumption. Depending on the type of property, different types of events can trigger a presumption of abandonment.

Securities. Presumed abandonment is measured from the date a second communication sent by the holder is returned to the holder as undeliverable by the United States Postal Service (USPS). If the second communication is made later than 30 days after the first communication, then the presumption of abandonment is measured from the date the first communication is returned to the holder as undeliverable by the USPS. If the holder does not send a communication to the owner via first-class mail, the holder must attempt to contact the owner in an electronic mail (e-mail) communication no later than two years after the owner's last indication of interest in the security. If the holder receives notification that the e-mail was not received, or does not receive a response from the owner within 30 days, the holder must send the communication by first-class mail. If any communications sent via first-class mail are returned by the USPS as undeliverable, then the security shall be presumed to be abandoned three years after the date the mail is returned.

Tax-Deferred Retirement Accounts. Presumed abandonment is measured from the date a second communication sent by the holder is returned to the holder as undeliverable by the USPS. If the second communication is made later than 30 days after the first communication, then the presumption of abandonment is measured from the date the first communication is returned to the holder as undeliverable by the USPS. It will also be presumed to be abandoned on the earlier of the date the apparent owner becomes 70 and one-half years old or distributions are required by federal tax law, or the holder receives confirmation of the death of the apparent owner. If the holder does not send a communication to the owner via first-class mail, the holder must attempt to contact the owner in an e-mail communication no later than two years after the owner's last indication of interest in the account. If the holder receives notification that the e-mail was not received or does not receive a response from the owner within 30 days, the holder must send a

communication by first-class mail.

Other Tax-Deferred Accounts. Presumed abandonment is measured from the earlier date of when distributions are required by federal law to avoid tax penalties, or 30 years after the account was opened.

Custodial Account for a Minor. Presumed abandonment is measured from the later of the date the second communication sent to the custodian by first-class mail is returned by the USPS as undeliverable, or the date that the minor beneficiary of the account reaches the statutory age of majority. If the holder does not send a communication to the custodian via first-class mail, the holder must attempt to contact the custodian in an e-mail communication no later than two years after the custodian's last indication of interest in the account. If the holder receives notification that the e-mail was not received or does not receive a response from the custodian within 30 days, the holder must send a communication by first-class mail.

Life Insurance and Annuities. Presumed abandonment for life insurance policies and annuity contracts not matured by proof of death is measured from the earlier of the date the insurance company has knowledge of the death of the insured or annuitant, or the insured or annuitant has attained, or would have attained if living, the limiting age under the mortality table on which the policy or contract reserves are based.

Stored-value Cards. Presumed abandonment is measured from the later of December 31st of the year the card was issued or additional funds were added to the card; the date of the most recent indication of interest by the apparent owner; or the date a verification or balance check was made by the apparent owner.

Municipal Bonds, Bearer Bonds, or Original-Issue Bearer Bonds. Presumed abandonment is measured from the earlier of the date the bond matures or is called, or the date the obligation to pay the principal arises.

Time of Abandonment Requirements. Generally speaking, property is presumed abandoned after three years from the event triggering the presumption of abandonment, which is usually the earlier of three years after the owner first has a right to demand the property or the obligation to pay or distribute the property first arises. The time required for the presumption of abandonment is changed for debt obligations and miscellaneous types of intangible property.

Time periods for a presumption of abandonment for specific types of property include:

- traveler's checks—15 years;
- money orders—five years;
- money or credit owed to a customer as a result of a retail business transaction—three years;
- demand, savings, or time deposits—three years;

- municipal bonds, bearer bonds, and original-issues bearer bonds—three years;
- municipal bond interest and unredeemed principal under the administration of a paying agent or indenture trustee—one year;
- employee wages, commissions and reimbursements—one year;
- health savings accounts—three years;
- tax-deferred accounts other than retirement, health savings, or pension accounts—three years;
- custodial accounts for minors—three years;
- payroll cards—three years; and
- stored-value cards—three years.

Activities That Indicate Interest by Apparent Owner. Certain actions by an apparent owner that can prevent the presumption of abandonment are added. A documented communication by the apparent owner to the holder concerning the property, or the account in which the property is held, will prevent the presumption of abandonment. Any activity by the apparent owner to access an account, or information concerning an account, can prevent the presumption of abandonment. If an apparent owner authorizes automatic deposits or withdrawals from an account, other than the automatic reinvestment of dividends and interest, the owner may not be presumed to have abandoned the property. The presumption of abandonment is prevented by any action by an apparent owner of property, or an owner's agent or representative, which reasonably demonstrates to the holder that the apparent owner is aware that the property exists.

Rebutting a Presumption of Abandonment. The conditions under which a presumption of abandonment can be overcome by a preponderance of the evidence demonstrating that a check, draft, or similar instrument appears to reflect the evidence of a debt or obligation is expanded to cover additional circumstances.

If the check, draft, or obligation was:

- issued as an unaccepted offer in settlement of an unliquidated amount;
- issued but was later replaced due to error or loss;
- issued to a party affiliated with the issuer;
- issued in error;
- issued without consideration; or
- issued but not delivered to a third-party payee for a sufficient reason recorded within a reasonable time after issuance.

Additional circumstances also include if the debt was paid, satisfied, or discharged, or the draft was voided within 90 days or a reasonable time after issuance for a valid business reason.

Refinement of State Priority Rules. The rules governing how to prioritize claims to custody of abandoned property among multiple states is revised.

When determining the first priority state based on last known address of an apparent owner, the last known address is any description, code, or other indication of the location of the apparent owner that identifies the state, regardless of whether the information is sufficient for first-class mailing purposes. If the information is a zip code that is located in more than one state, a state may take custody over the property based on the location of the post office, unless there is other information that identifies the physical address in another state. If the records indicate more than one address of the apparent owner, the temporary address shall be disregarded.

The provisions are refined that govern the corporate domicile of the holder in order to determine the second priority state when there is no record of an address of the apparent owner, or the address is in a state without abandonment laws. For any business association whose formation requires a filing with a state, the domicile of the holder is the state in which the formation of the holder is filed. In the case of a federally chartered entity or an investment company registered under the Investment Company Act of 1940, the domicile of the holder is defined as the state of the home office of the holder. If the address of the apparent owner is in a state or foreign country that exempts the taking of abandoned property, the property cannot be subject to the taking by the state of the domicile of the holder.

When determining the third priority state based on the location where a transaction occurred, the state may not take custody of abandoned property if the last known address of the apparent owner is in a state or foreign country that specifically exempts the property from custodial taking.

In the case of traveler's checks, money orders, and similar instruments, federal custody laws apply.

Holder's Duties and Responsibilities. Holders are required to give an apparent owner notification that property may be presumed to be abandoned and may be transferred to DOR. The provisions governing these notifications are revised. Holders may use electronic notices to fulfill the statutory requirements. The notification exemption if the owner's claim to property is barred by a statute of limitations is eliminated. The notice must: identify the property and its value; advise the owner that the property may be sold by the state; provide instructions for how to prevent the property from being delivered to the state; and set forth a deadline for when action must be taken by the owner to prevent the delivery of the property to the state. The holder is not required to include any confidential information in the notice that can be used to verify the identity of an individual.

The provisions regarding the filing of required reports by the holder with the state are modified. DOR is prohibited from requiring the unclaimed property reports to be submitted in paper form. Any reports filed electronically must be in a secure format approved by DOR and may not include confidential information prohibited from disclosure under federal law. Holders are authorized to contract with third parties to report unclaimed property to

the state, but the holder will remain liable for the failure of the third party to submit complete, accurate, and timely reports and to deliver the unclaimed property to the state. If the holder determines that a security is nonfreely transferable, the holder is not required to deliver the security to the state unless a determination is made that the security is no longer nonfreely transferrable. Records concerning each report must be retained by a holder for five years from the date the report was filed or was required to be filed.

Updates are made to the provisions relieving a holder from liability upon delivery of abandoned property to the state in good faith. The definition of good faith is modified to include the payment or delivery of property made in response to a demand by DOR. The requirement that delivery or payment of the property meet the reasonable commercial standards of practice and not breach any fiduciary obligation is eliminated. DOR is required to defend and indemnify a holder against a claim resulting from the payment or delivery of the property to the administrator made in good faith. To qualify for indemnification, a holder must substantially comply with the apparent owner notice requirements prior to delivery or payment of the property to the state.

Unclaimed Property Administrator. References to the department are replaced with administrator, which has the same meaning.

Changes are made to the requirements imposed on DOR to notify property owners that their assets have been delivered to the state and may be reclaimed upon proof of ownership. DOR is no longer required to list the names of each apparent owner of property valued at \$50 or more in the newspaper notices. The requirement to publish in each county is also eliminated.

Newspaper notices must be published every six months and must report the total value of property received by DOR and total value of property returned by DOR to property owners. The notice must also include an Internet website address searchable by property owners and that Internet access to the database may be available at public libraries. A phone number must be provided so that property owners can contact DOR's unclaimed property office. DOR must send, by first-class mail or by e-mail, a notice to each apparent owner of property now in the custody of the state for which DOR has a physical or electronic address. The notice must include the information that the owner has property in the custody of DOR and it may be reclaimed by the owner.

The rules for the sale or disposal of certain unclaimed property in the custody of DOR are modified. DOR may not sell most unclaimed property within three years of its receipt.

DOR may conduct the sales of property in whatever location or forum will provide the most favorable market, including electronic or Internet sales, and publish a notice of sale in a print or online newspaper. DOR must not sell military medals or decorations, but may give them to a military veterans' organization or a government entity.

Owners Claiming Abandoned Property. DOR may waive the requirements for the filing of a claim by an owner to recover property with a value of less than \$250 if the person receiving the property is the same person as the apparent owner listed on the unclaimed property report filed by the holder and DOR reasonably believes the person is entitled to the property.

DOR is authorized to deduct debts owed in the state for child support; civil or criminal fines or penalties; court costs; surcharges; restitution; and delinquent taxes from the amount paid to the owner. If the property being recovered is a security, the owner may request that DOR sell the security and pay the owner the net proceeds of the sale.

When applying the deadlines to approve or deny a claim, an amended claim is treated the same as an initial claim. If a claim is denied, DOR must inform the claimant of the reason for the denial and specify what additional evidence, if any, is required for approval.

If an owner retains a finder to locate property, there must be a signed record designating the finder as an agent of an owner.

The burden of proof is codified. DOR has the burden to prove the existence and value of the property when asserting a right to custody of the unclaimed property. DOR also has the burden to prove that the property was presumed abandoned and that the property is subject to the custody of the state.

Confidentiality Provisions. The specificity of the confidentiality requirement is expanded. Types of personal information subject to confidentiality are listed, including personal identifying information and personally identifiable financial or insurance information. Exemptions from public disclosure include DOR records related to the administration of the Act; reports and records of a holder in possession of DOR; and personal information received from an audit. Disclosure of confidential information is allowed to an apparent owner, the personal or legal representative of a deceased apparent owner, another governmental entity, the unclaimed property administrator of another state, and a person subject to an audit.

Requirements for the security of information in possession of DOR are set forth as well as the duties of notification following a security breach.

Examinations and Appeals. At the completion of an examination of a holder, DOR must provide a complete and unredacted examination report. The report must include the work performed, the property types reviewed, any methodology used, each calculation showing the value of property determined to be due, and the findings of the review.

If a person subject to an examination believes the person conducting the examination has made unreasonable and unauthorized requests or is not proceeding expeditiously, the person may ask DOR to intervene and take appropriate action. If the person requests a conference

with DOR, the conference must be held within 30 days of the receipt of the request. A putative holder may also seek administrative or judicial review.

DOR is authorized to contract with a person to conduct an audit and the requirements to engage a contract auditor are outlined.

A two-year ban on a contract auditor or affiliate employing any person from DOR who made decisions to contract with outside auditors is instituted.

Transitional Provision. An initial report filed under the revised law for property that was not required to be reported before the effective date of the bill, but is now required to be reported, must include all items of property that would have been presumed abandoned during the six-year period preceding the effective date of the bill.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill takes effect on January 1, 2023.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: This is a long and complicated bill. The world has changed dramatically from the time when the law was put in place that we have now. There is a whole set of intangible that did not exist. The bill provides clarity regarding this property. This bill generally conforms with the revised uniform law except where it would conflict with current practice and there would be a negative fiscal impact from changing it. Uniform laws are particularly helpful in the area of commercial law. This act is an improvement. It provides specificity and clarity on new types of property. The bill also provides specific dormancy period so businesses better understand their obligations. There are increased remedies for holders. The bill also improves confidentiality.

CON: We are opposed to this legislation mainly due to the fact that there is not a business-to-business credit balance exemption. This type of exemption would recognize that a business is the best position to recognize and correct a concern within the scope of their own bookkeeping. Businesses do not need the assistance of the state in making such determinations.

OTHER: We have concerns with only one subsection of the legislation. Twelve states have enacted the revised uniform law. Of those 12 states, six have removed the subsection of concern. The subsection allows the department to make demands based on alleged matches between the social security administration's death master file and life insurance companies'

records. Almost all life insurance is paid through an ordinary claims process. Less than three-one hundredths of the remainder is paid to the state as unclaimed property. Removal of this provision will not impact revenue to the state.

Persons Testifying: PRO: Senator Jamie Pedersen, Prime Sponsor; Michele Radosevich, Uniform Law Commission.

CON: Tommy Gantz, Association of Washington Business.

OTHER: Mel Sorensen, American Council of Life Insurers.

Persons Signed In To Testify But Not Testifying: No one.

EFFECT OF HOUSE AMENDMENT(S):

- Provides an option for determining the presumption of abandonment for a demand, savings, or time deposit, of either: from the later of maturity, if applicable, of the deposit; or the owner's last indication of interest in the deposit.
- Changes the age of the apparent owner from 70.5 years to 72 years to align with the age for mandatory withdrawals when calculating the presumption of abandonment for tax deferred retirement accounts.
- Removes the \$250 limit on the Department of Revenue's (DOR) authority to return unclaimed property in the absence of a claim when DOR reasonably believes the apparent owner, as identified in a holder report filed with DOR, is entitled to receive the property.
- Modifies the provisions for a timely petition for administrative review.