

HOUSE BILL REPORT

HB 1179

As Reported by House Committee On:
Finance

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

Brief Description: Concerning the revised uniform unclaimed property act.

Sponsors: Representative Tarleton; by request of Uniform Law Commission.

Brief History:

Committee Activity:

Finance: 1/31/19, 2/14/19 [DPS].

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| <p>Brief Summary of Substitute Bill</p> <ul style="list-style-type: none">• Revises and updates the Uniform Unclaimed Property Act. |
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HOUSE COMMITTEE ON FINANCE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Tarleton, Chair; Walen, Vice Chair; Chapman, Frame, Macri, Orwall, Springer and Wylie.

Minority Report: Without recommendation. Signed by 2 members: Representatives Orcutt, Ranking Minority Member; Vick.

Minority Report: Do not pass. Signed by 1 member: Representative Stokesbary.

Staff: Tracey O'Brien (786-7152).

Background:

Uniform Law Commission.

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

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

be uniform. The ULC drafts and proposes specific statutory language that may be adopted by states.

The Uniform Unclaimed Property Act (Act) in chapter 63.29 RCW 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 the DOR. The 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 1 and August 1 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 1 of each year, the DOR must mail a notice to an apparent owner of abandoned property in state custody if the 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 the DOR may file a claim with the DOR. The DOR has 90 days to notify the claimant if the claim is denied in whole or in part. If the claim is granted, the 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 the DOR. If the DOR fails to act upon a claim within 90 days of filing, a claimant may bring action in Thurston County Superior Court naming the DOR as the defendant. The action must be brought within 90 days after the decision of the DOR, or within 180 days after the filing of a claim that the DOR has failed to take action on.

A holder must remit abandoned property by electronic funds transfer; however, the DOR may relieve any holder or class of holders from the electronic payment requirements for good cause. The DOR must promptly deposit abandoned property proceeds into the State General

Fund. The 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 the 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 1 of each year and must include all unclaimed property in the holder's possession as of the preceding June 30. The reports must be filed electronically. The DOR may relieve any holder or class of holders from the electronic filing requirements for good cause.

Summary of Substitute Bill:

The Act is updated. The changes include new types of intangible property and reflect developments in technology.

General.

Definitions are updated, removed, and added:

- "Administrator" and "administrator's agent" supplant "department" when referring to the 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."
- Removed definitions include: "Attorney General," "holder," "intangible property," "last known address," and "third-party bank check."

The balance requirement for the 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 "ABLE").

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 70-½ 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.

Gift Certificates. Presumed abandonment is measured from the date of purchase or most recent use.

Stored-value Cards. Presumed abandonment is measured from the later of December 31 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.

The time required for the presumption of abandonment is changed for debt obligations and miscellaneous types of intangible property.

Specific time periods are added for other types of property:

- 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 commissions and reimbursements: one year;
- health savings accounts: one year;
- 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. Finally, 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.

Death of an Insured or Annuitant.

The presumption of abandonment of a life insurance policy or annuity is measured from the date the insurance company has knowledge of the death of the insured or annuitant. Additional methods of determining the date the insurance company has knowledge of the death are added. The date of knowledge of death additions include: by receipt of death certificate or court order; due diligence required under state law or regulations to maintain contact with insureds or annuitants or to determine their death; validated matches between the names of the insured or annuitants and the names of persons reported as deceased in a

death master file, such as the file maintained by the Social Security Administration; or the receipt of notice of death by the insurance company from a state unclaimed property administrator, beneficiary, policy owner, relative, trustee, or legal representative of the estate of the insured and the annuitant.

An insurance company has 90 days after the receipt of the notice of the possible death of an insured or annuitant to make a good faith effort to validate that the death has occurred. If validation fails to occur, the presumed abandonment will not occur until validation of death or the date on which the insured or annuitant, if alive, would have attained the limiting age for the purposes of determining policy or contract reserves.

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.

In 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 the 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. The 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 the 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 the 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. The 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. In order 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 the DOR to notify property owners that their assets have been delivered to the state and may be reclaimed upon proof of ownership. The 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 the DOR and total value of property returned by the 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 also be provided so that property owners can contact the DOR's unclaimed property office. In addition, the 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 the DOR has a physical or electronic address. The notice must include the information that the owner has property in the custody of the DOR and it may be reclaimed by the owner.

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

The 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. The DOR must not sell military medals or decorations, but may give them to military veterans' organization or a government entity.

Owners Claiming Abandoned Property.

The 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 the DOR reasonably believes the person is entitled to the property.

The 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 the DOR sell the security and pay the owner the net proceeds of the sale.

In 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, the 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. The DOR has the burden to prove the existence and value of the property when asserting a right to custody of the unclaimed property. The 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: records of the DOR related to the administration of the Act; reports and records of a holder in possession of the 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 the 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, the 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 the DOR to intervene and take appropriate action. If the person requests a conference with the 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.

The 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 the DOR who made decisions to contract with outside auditors is instituted.

Substitute Bill Compared to Original Bill:

The exemption for premiums paid by an agricultural fair by check in current law is restored. References to "gift card" are changed to "gift certificate." The transitional period for this act is reduced to five years. Sections regarding the applicability of interest and penalties are combined. The liquidation of securities is extended to three years after the administrator takes custody. The dormancy period for payroll cards is increased to three years. Sales of unclaimed property require publication in print or online newspapers.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect on January 1, 2020.

Staff Summary of Public Testimony:

(In support) There are 350 members of the ULC that focus on redrafting laws to provide certainty among the states. It is a cumbersome, but intense process that focuses on the language and has a high bar for integrity. The first Act was drafted in 1953. The version Washington has in current law is primarily from the 1983 ULC revisions. There have been significant changes in the types and nature of intangible property in those 25 years. There is a shocking amount of unclaimed property in the custody of the state, and this bill would take a substantial step forward in addressing dormancy issues and addressing the concerns of businesses.

(Opposed) The concept of revising and updating the Act is fine; however, there is a small exception in current law for premiums paid by an agricultural fair by check that needs to be restored. The amounts of these checks are extremely small and are often not cashed by the recipients. The changes to gift cards, the increased records retention policies, and duplicative penalties sections are of concern. In addition, the transitional period should be reduced. Payroll cards should have a longer dormancy period. There should also be a public notice requirement for the public sale of unclaimed property that includes publication in a printed or online newspaper.

(Other) The proposed grant of authority to the Administrator to utilize the death master file conflicts with the functional regulation of the business of life insurance by the Office of the Insurance Commissioner and gives free reign to the Administrator's contingent fee auditors to persistently and repetitively demand payments from life insurers to settle alleged liabilities based upon death master file comparisons that cannot be validated. At the same time, this bill will require the insurer to invalidate each of the contingent fee auditor's alleged death master file matches regardless of their repetition and frivolity.

Persons Testifying: (In support) Representative Tarleton, prime sponsor; and Senator Pedersen, Washington Uniform Law Commission.

(Opposed) Heather Hansen, Washington State Fairs Association; and Clay Hill, Association of Washington Business.

(Other) Mel Sorensen, American Council of Life Insurers; Abby Moore, Mastercard; Rowland Thompson, Allied Daily Newspapers of Washington; and Trent House, Washington Bankers Association.

Persons Signed In To Testify But Not Testifying: None.