

LEGISLATIVE BILL 305

Approved by the Governor April 14, 1977

Introduced by Maxey, 46

AN ACT to amend sections 69-1302, 69-1303, 69-1304, 69-1310, 69-1311, 69-1312, 69-1317, and 69-1324, Reissue Revised Statutes of Nebraska, 1943, relating to the Uniform Disposition of Unclaimed Property Act; to remove dollar limitations; to provide that property accompany reports; to change the contents of required notice; to provide for the deposit of funds in the Permanent School Fund; to restrict the availability of records; to regulate finders' fees; to increase penalties; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 69-1302, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

69-1302. The following property ~~in excess of fifty dollars~~ held or owing by a banking or financial organization or by a business association is presumed abandoned:

(a) Any demand, savings, or matured time deposit made in this state with a banking organization, together with any interest or dividend thereon, excluding any charges that may lawfully be withheld, unless the owner has, within seven years:

(1) Increased or decreased the amount of the deposit, or presented the passbook or other similar evidence of the deposit for the crediting of interest; or

(2) Corresponded in writing with the banking organization concerning the deposit; or

(3) Otherwise indicated an interest in the deposit as evidenced by a memorandum on file with the banking organization.

(b) Any funds paid in this state toward the purchase of shares or other interest in a financial organization or any deposit made therewith in this state, and any interest or dividends thereon, excluding any charges that may lawfully be withheld, unless the owner has within seven years:

(1) Increased or decreased the amount of the funds or deposit, or presented an appropriate record for the crediting of interest or dividends; or

(2) Corresponded in writing with the financial organization concerning the funds or deposit; or

(3) Otherwise indicated an interest in the funds or deposit as evidenced by a memorandum on file with the financial organization.

(c) Any sum payable on checks certified in this state or on written instruments issued in this state on which a banking or financial organization or business association is directly liable, including, by way of illustration but not of limitation, certificates of deposit, drafts, money orders, and traveler's checks, that, with the exception of traveler's checks, has been outstanding for more than seven years from the date it was payable, or from the date of its issuance if payable on demand, or, in the case of traveler's checks, that has been outstanding for more than fifteen years from the date of its issuance, unless the owner has within seven years, or within fifteen years in the case of traveler's checks, corresponded in writing with the banking or financial organization or business association concerning it, or otherwise indicated an interest as evidenced by a memorandum on file with the banking or financial organization or business association.

(d) Any funds or other personal property, tangible or intangible, removed from a safe deposit box or any other safekeeping repository or agency or collateral deposit box in this state on which the lease or rental period has expired due to nonpayment of rental charges or other reason, or any surplus amounts arising from the sale thereof pursuant to law, that have been unclaimed by the owner for more than seven years from the date on which the lease or rental period expired.

(e) For the purposes of this section failure of the United States mails to return a letter, duly deposited therein, first class postage prepaid, to the last-known address of an owner of tangible or intangible property shall be deemed correspondence in writing and shall be sufficient to overcome the presumption of abandonment created herein. A memorandum or writing on file with such bank or financial organization shall be sufficient to evidence such failure.

Sec. 2. That section 69-1303, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

69-1303. (a) Unclaimed funds, ~~in-excess-of-fifty dollars~~, as defined in this section, held and owing by a life insurance corporation shall be presumed abandoned if the last-known address, according to the records of the corporation, of the person entitled to the funds is within this state. If a person other than the insured or annuitant is entitled to the funds and no address of such person is known to the corporation or if it is not definite and certain from the records of the corporation what person is entitled to the funds, it is presumed that the last-known address of the person entitled to the funds is the same as the last-known address of the insured or annuitant according to the records of the corporation.

(b) Unclaimed funds, as used in this section, means all money held and owing by any life insurance corporation unclaimed and unpaid for more than seven years after the money became due and payable as established from the records of the corporation under any life or endowment insurance policy or annuity contract which has matured or terminated. A life insurance policy not matured by actual proof of the death of the insured is deemed to be matured and the proceeds thereof are deemed to be due and payable if such policy was in force when the insured attained the limiting age under the mortality table on which the reserve is based, unless the person appearing entitled thereto has within the preceding seven years, (1) assigned, readjusted, or paid premiums on the policy, or subjected the policy to loan, or (2) corresponded in writing with the life insurance corporation concerning the policy. Money otherwise payable according to the records of the corporation are deemed due and payable although the policy or contract has not been surrendered as required.

Sec. 3. That section 69-1304, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

69-1304. The following funds held or owing by any utility are presumed abandoned:

(a) Any deposit ~~in-excess-of-fifty--dollars~~ made by a subscriber with a utility to secure payment for, or any sum paid in advance for, utility services to be furnished in this state, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than seven years after the termination of the services for which the deposit or advance payment was made.

(b) Any sum ~~in-excess-of-fifty--dollars~~ which a utility has been ordered to refund and which was received for utility services rendered in this state, together with any interest thereon, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than seven years after the date it became payable in accordance with the final determination or order providing for the refund.

Sec. 4. That section 69-1310, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

69-1310. (a) Every person holding funds or other property, tangible or intangible, presumed abandoned under sections 69-1301 to 69-1329 shall report to the State Treasurer with respect to the property as hereinafter provided.

(b) The report shall be verified and shall include:

(1) Except with respect to traveler's checks and money orders, the name, if known, and last-known address, if any, of each person appearing from the records of the holder to be the owner of any property ~~of--the--value--of twenty-five-dollars--or--more~~ presumed abandoned under sections 69-1301 to 69-1329;

(2) In case of unclaimed funds of life insurance corporations, the full name of the insured or annuitant and his last-known address according to the life insurance corporation's records;

(3) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due; ~~7--except-that-items-of-value-under twenty-five-dollars--each--may--be--reported--in--aggregate;~~

(4) The date when the property became payable, demandable, or returnable, and the date of the last transaction with the owner with respect to the property; and

(b) Other information which the State Treasurer prescribes may prescribe by rule as necessary for the administration of sections 69-1301 to 69-1329.

(c) If the person holding property presumed abandoned is a successor to other persons who previously held the property for the owner, or if the holder has changed his name while holding the property, he shall

file with his report all prior known names and addresses of each holder of the property.

(d) The report shall be filed before November 1 of each year as of June 30 next preceding, but the report of life insurance corporations shall be filed before May 1 of each year as of December 31 next preceding. The property must accompany the report unless excused by the State Treasurer for good cause. The State Treasurer may postpone the reporting date upon written request by any person required to file a report.

(e) If the holder of property presumed abandoned under sections 69-1301 to 69-1329 knows the whereabouts of the owner and if the owner's claim has not been barred by the statute of limitations, the holder shall, before filing the annual report, communicate with the owner and take necessary steps to prevent abandonment from being presumed. The holder shall exercise due diligence to ascertain the whereabouts of the owner.

(f) Verification, if made by a partnership, shall be executed by a partner; and if made by an unincorporated association or private corporation, by an officer.

(g) The initial report filed under sections 69-1301 to 69-1329 shall include all items of property that would have been presumed abandoned if sections 69-1301 to 69-1329 had been in effect during the ten-year period preceding its effective date.

Sec. 5. That section 69-1311, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

69-1311. (a) Between March 1 and March 10 of each year the State Treasurer shall cause notice to be published once in an English language legal newspaper of general circulation in the county in this state in which is located the last-known address of any person to be named in the notice. If no address is listed or if the address is outside this state, the notice shall be published in the county in which the holder of the abandoned property has his principal place of business within this state and also in a legal newspaper having statewide circulation.

(b) The published notice shall be entitled Notice of Names of Persons Appearing to be Owners of Abandoned Property, and shall contain:

(1) The names in alphabetical order and last-known addresses, if any, of persons listed in the report and entitled to notice within the county as hereinbefore specified.

(2) A statement that information concerning the amount or description of the property and the name and address of the holder may be obtained by any person possessing an interest in the property by addressing an inquiry to the State Treasurer.

~~(3) A statement that if proof of claim is not presented by the owner to the holder and if the owner's right to receive the property is not established to the holder's satisfaction within sixty-five days from the date of the published notice, the abandoned property will be placed not later than eighty-five days after such publication date in the custody of the State Treasurer to whom all further claims must thereafter be directed.~~

(c) The State Treasurer is not required to publish in such notice any item of less than twenty-five dollars unless he deems such publication to be in the public interest.

(d) Within one hundred twenty days from the receipt of the report required by section 69-1310, the State Treasurer shall mail a notice to each person having an address listed therein who appears to be entitled to property of the value of twenty-five dollars or more presumed abandoned under sections 69-1301 to 69-1329.

(e) The mailed notice shall contain:

(1) A statement that, according to a report filed with the State Treasurer, property is being held to which the addressee appears entitled.

(2) The name and address of the person holding the property and any necessary information regarding changes of name and address of the holder.

(3) A statement that, if satisfactory proof of claim is not presented by the owner to the holder ~~by the date specified in the published notice, the property will be placed in the custody of the State Treasurer to whom all further claims must be directed~~ State Treasurer, arrangements will be made to transfer the property to the owner as provided by law.

(f) This section is not applicable to sums payable on traveler's checks or money orders presumed abandoned under section 69-1302.

Sec. 6. That section 69-1312, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

69-1312. Every person who has filed a report under section 69-1310, ~~within twenty days after the time specified in section 69-1311 for claiming the property from the holder;~~ or in the case of sums payable on traveler's checks or money orders presumed abandoned under section 69-1302, ~~within twenty days after the filing of the report;~~ shall pay or deliver to the State Treasurer all abandoned property specified in this report, except that, if the owner establishes his right to receive the abandoned property to the satisfaction of the holder within the time specified in section 69-1311, or if it appears that for some other reason the presumption of abandonment is erroneous, the holder need not pay or deliver the property, which will no longer be presumed abandoned, to the State Treasurer, but in lieu thereof shall file a verified written explanation of the proof of claim or of the error in the presumption of abandonment.

Sec. 7. That section 69-1317, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

69-1317. (a) All funds received under sections 69-1301 to 69-1329, including the proceeds from the sale of abandoned property under section 69-1316, shall forthwith be deposited by the State Treasurer in the General Permanent School Fund of the state, except that the State Treasurer shall retain in a separate trust fund an amount not exceeding twenty-five thousand dollars from which he shall make prompt payment of claims duly allowed by him as hereinafter provided. Before making the deposit he 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.

The record shall not be subject to public inspection or available for copying, reproduction, or scrutiny by commercial or professional locators of property presumed abandoned who charge any service or finders' fee until ninety days after the names of the people to whom property is owed have been published or officially disclosed.

A professional finders' fee shall be limited to ten per cent of the total amount of the property presumed abandoned if any claimant is contacted within nine months of the date the property was reported to the State Treasurer. To claim any such fee, the nature and location of the property must be disclosed to the claimant by the finder.

(b) Before making any deposit to the credit of the General Permanent School Fund, the State Treasurer may deduct: (1) Any costs in connection with sale of abandoned property, (2) any costs of mailing and publication in connection with any abandoned property, and (3) reasonable service charges and place such funds in the Unclaimed Property Cash Fund which is hereby created.

Sec. 8. That section 69-1324, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

69-1324. (a) Any person who willfully fails to render any report or perform other duties required under sections 69-1301 to 69-1329, shall be punished by a fine of twenty-five fifty dollars for each day such report is withheld, but not more than five--hundred one thousand dollars.

(b) Any person who willfully refuses to pay or deliver abandoned property to the State Treasurer as required under sections 69-1301 to 69-1329 shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or imprisonment for not more than six months, or both, in the discretion of the court.

Sec. 9. That original sections 69-1302, 69-1303, 69-1304, 69-1310, 69-1311, 69-1312, 69-1317, and 69-1324, Reissue Revised Statutes of Nebraska, 1943, are repealed.