

1 HB438
2 138097-1
3 By Representative Clouse
4 RFD: Financial Services
5 First Read: 28-FEB-12

2
3
4
5
6
7
8 SYNOPSIS: Under existing law, the Uniform Disposition
9 of Unclaimed Property Act of 2004 concerns the
10 receipt and disposition by the State Treasurer of
11 various unclaimed property.

12 This bill would allow banks to treat all
13 deposit products equally regarding abandonment and
14 would allow all payment instruments issued by the
15 state to be remitted to unclaimed property for the
16 benefit of the payee at expiration.

17 This bill would require a holder to
18 electronically report with certain exceptions.

19 This bill would clarify the delivery of and
20 the receipt of property from another state.

21 This bill would allow a surviving parent to
22 claim abandoned property from a child who died
23 intestate.

24 This bill would clarify property received by
25 early reporting.

1 This bill would also provide protection to
2 consumers who claim their property through a
3 third-party source.

4
5 A BILL
6 TO BE ENTITLED
7 AN ACT

8
9 To amend Sections 35-12-72, 35-12-76, 35-12-79,
10 35-12-82, 35-12-84, 35-12-86, and 35-12-93, Code of Alabama
11 1975, relating to the Uniform Disposition of Unclaimed
12 Property Act of 2004; to allow banks to treat all deposit
13 products equally regarding abandonment, and allow all payment
14 instruments issued by the state to be remitted to unclaimed
15 property for the benefit of the payee upon expiration; to
16 clarify reporting guidelines; to protect the state when
17 receiving property, and the holder when remitting property; to
18 clarify state-to-state delivery of property; to allow a
19 surviving parent to claim abandoned property from a child who
20 died intestate; to clarify property received by early
21 reporting; and to protect consumers when claiming their
22 property through a third-party source.

23 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

24 Section 1. Sections 35-12-72, 35-12-76, 35-12-79,
25 35-12-82, 35-12-84, 35-12-86, and 35-12-93, Code of Alabama
26 1975, are amended to read as follows:

27 "§35-12-72.

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

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

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

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

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

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

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

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

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

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

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

1 "(10) Amount owed by an insurer on a life or
2 endowment insurance policy or an annuity that has matured or
3 terminated, three years after the obligation to pay arose or,
4 in the case of a policy or annuity payable upon proof of
5 death, three years after the insured has attained, or would
6 have attained if living, the limiting age under the mortality
7 table on which the reserve is based.

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

11 "a. Any funds, two years after the date of the
12 demutualization or reorganization, if the funds remain
13 unclaimed, and the owner has not otherwise communicated with
14 the holder or its agent regarding the property as evidenced by
15 a memorandum or other record on file with the holder or its
16 agent.

17 "b. Any stock or other equity interest, two years
18 after the date of the demutualization or reorganization if
19 instruments or statements reflecting the distribution are
20 either mailed to the owner and returned by the post office as
21 undeliverable, or not mailed to the owner because of an
22 address on the books and records of the holder that is known
23 to be incorrect and the owner has not otherwise communicated
24 with the holder or its agent regarding the property as
25 evidenced by a memorandum or other record on file with the
26 holder or its agent.

1 "c. Property not subject to paragraphs a. or b.
2 within two years of the distribution shall remain reportable
3 under other sections of this article.

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

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

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

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

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

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

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

1 "(b) At the time that an interest is presumed
2 abandoned under subsection (a), any other property right
3 accrued or accruing to the owner as a result of the interest,
4 and not previously presumed abandoned, is also presumed
5 abandoned.

6 "(c) Property is unclaimed if, for the applicable
7 period set forth in subsection (a), the apparent owner has not
8 communicated in writing, or by other means reflected in a
9 contemporaneous record prepared by or on behalf of the holder,
10 with the holder concerning the property or the account in
11 which the property is held, and has not otherwise indicated an
12 interest in the property. A communication with an owner by a
13 person other than the holder or its representative who has not
14 in writing identified the property to the owner is not an
15 indication of interest in the property by the owner.

16 "(d) An indication of an owner's or apparent owner's
17 interest in property includes any of the following:

18 "(1) The presentment of a check or other instrument
19 of payment of a dividend or other distribution made with
20 respect to an account or underlying stock or other interest in
21 a business association or financial organization or, in the
22 case of a distribution made by electronic or similar means,
23 evidence that the distribution has been received.

24 "(2) Owner-directed activity in the account in which
25 the property is held, including a direction by the owner to
26 increase, decrease, or change the amount or type of property
27 held in the account.

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

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

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

26 "§35-12-76.

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

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

11 "(1) A description of the property.

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

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

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

1 "(5) In the case of property held or owing under an
2 annuity or a life or endowment insurance policy, the policy
3 number, the full name, Social Security number, if known, date
4 of birth, if known, and last known address, of the annuitant
5 or insured and of the beneficiary.

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

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

14 "(8) In the case of individual items valued under
15 fifty dollars (\$50), or a greater amount as established in the
16 rules, an aggregated amount.

17 ~~"(b) If a holder of property presumed abandoned is a~~
18 ~~successor to another person who previously held the property~~
19 ~~for the apparent owner or the holder has changed its name~~
20 ~~while holding the property, the holder shall file with the~~
21 ~~report its former names, if any, and the known names and~~
22 ~~addresses of all previous holders of the property.~~

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

26 ~~"(d) The holder of property presumed abandoned shall~~
27 ~~send written notice to the apparent owner, not more than 120~~

1 ~~days or~~ less than 60 days before filing the report, stating
2 that the holder is in possession of property subject to this
3 article, if all of the following requirements are met:

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

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

9 "(3) The value of the property is at least fifty
10 dollars (\$50) or ~~more~~ a greater amount as established in the
11 rules.

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

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

24 "§35-12-79.

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

1 "(b) Upon payment or delivery of property to the
2 Treasurer, the state assumes custody and responsibility for
3 the safekeeping of the property. A holder who pays or delivers
4 property to the Treasurer in good faith is relieved of all
5 liability arising thereafter with respect to the property. The
6 payment or delivery of property to the Treasurer shall operate
7 as a full, absolute and unconditional release and discharge of
8 the holder from any and all claims or demands of or liability
9 to any person entitled thereto, or to any other claimant or
10 state, and the payment or delivery may be pleaded as an
11 absolute ~~bar~~ defense to any action brought against the holder
12 by any other person entitled thereto, or by any other claimant
13 or state. ~~The~~ When the holder pleads payment or delivery as a
14 defense, the holder shall immediately and thereafter be
15 relieved of and held harmless ~~by the State of Alabama~~ from any
16 and all liabilities for any claim or claims which exist at the
17 time with reference to the property or which may thereafter be
18 made or may come into existence on account of or in respect to
19 any such property. This section does not relieve the holder
20 from any fine or civil penalty imposed pursuant to Section
21 35-12-92.

22 "(c) A holder who has paid money to the Treasurer
23 pursuant to this article may but is not required to
24 subsequently make payment to a person reasonably appearing to
25 the holder to be entitled to payment. Upon a filing by the
26 holder of proof of payment and proof that the payee was
27 entitled to the payment, the Treasurer shall promptly

1 reimburse the holder, unless the Treasurer already has paid a
2 claim for the property, for the payment without imposing a fee
3 or other charge. If reimbursement is sought for a payment made
4 on a negotiable instrument, including a traveler's check or
5 money order, the holder shall be reimbursed upon filing proof
6 that the instrument was duly presented and that payment was
7 made to a person who reasonably appeared to be entitled to
8 payment. The holder must be reimbursed for payment made even
9 if the payment was made to a person whose claim was barred
10 under Section 35-12-88.

11 "(d) A holder who has delivered property other than
12 money to the Treasurer pursuant to this article may reclaim
13 the property if it is still in the possession of the
14 Treasurer, without paying any fee or other charge, upon filing
15 proof that the apparent owner has claimed the property from
16 the holder.

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

20 "(f) If a holder pays or delivers property to the
21 Treasurer in good faith and thereafter another person claims
22 the property from the holder or another state claims the
23 property under its laws relating to escheat or abandoned or
24 unclaimed property, ~~the holder is relieved of and held~~
25 harmless the payment or delivery may be pleaded as an absolute
26 defense against any and all liabilities on the claim resulting
27 from payment or delivery of the property to the Treasurer.

1 "(g) Property removed from a safe deposit box or
2 other safekeeping depository is received by the Treasurer
3 subject to the holder's right to be reimbursed for the cost of
4 the opening. The Treasurer ~~shall~~ may reimburse the holder out
5 of the proceeds remaining after deducting the expense incurred
6 by the Treasurer in selling the property.

7 "(h) A record of the issuance of a check, draft, or
8 similar negotiable instrument is prima facie evidence of an
9 obligation. In claiming property from a holder who is also the
10 issuer, the Treasurer's burden of proof as to the existence
11 and amount of the property and its abandonment is satisfied by
12 showing issuance of the instrument and passage of the
13 requisite period of abandonment. Defenses of payment,
14 satisfaction, discharge, want of consideration, statute of
15 limitations, and other similar defenses are affirmative
16 defenses that must be established by the holder.

17 "§35-12-82.

18 "(a) After property has been paid or delivered to
19 the Treasurer under this article, another state may recover
20 the property if any of the following apply:

21 "(1) The property was paid or delivered to the
22 custody of this state because the records of the holder did
23 not reflect a last known location of the apparent owner within
24 the borders of the other state and the other state establishes
25 that the apparent owner or other person entitled to the
26 property was last known to be located within the borders of
27 that state and under the laws of that state the property has

1 escheated or become subject to a claim of abandonment by that
2 state.

3 "(2) The property was paid or delivered to the
4 custody of this state because the laws of the other state did
5 not provide for the escheat or custodial taking of the
6 property, and under the laws of that state subsequently
7 enacted the property has escheated or become subject to a
8 claim of abandonment by that state.

9 "(3) The records of the holder were erroneous in
10 that they did not accurately identify the owner of the
11 property and the last known location of the owner within the
12 borders of another state and under the laws of that state the
13 property has escheated or become subject to a claim of
14 abandonment by that state.

15 "(4) The property was subjected to custody by this
16 state under subdivision (6) of Section 35-12-74, and under the
17 laws of the state of domicile of the holder the property has
18 escheated or become subject to a claim of abandonment by that
19 state.

20 "(5) The property is a sum payable on a traveler's
21 check, money order, or similar instrument that was purchased
22 in the other state and delivered into the custody of this
23 state under subdivision (7) of Section 35-12-74, and under the
24 laws of the other state the property has escheated or become
25 subject to a claim of abandonment by that state.

26 "(b) A claim of another state to recover escheated
27 or abandoned property must be presented in a form prescribed

1 by the Treasurer, who shall decide the claim within 120 days
2 after it is presented. The Treasurer shall allow the claim
3 upon determining that the other state is entitled to the
4 abandoned property under subsection (a).

5 ~~"(c) The Treasurer shall require another state,~~
6 ~~before recovering property under this section, to agree to~~
7 ~~indemnify this state and its officers and employees against~~
8 ~~any liability on a claim to the property. Upon delivery of~~
9 ~~property to another state or upon receipt of property from~~
10 ~~another state, the Treasurer, State of Alabama, and its~~
11 ~~employees shall be relieved of and held harmless from any and~~
12 ~~all liabilities for any claim or claims in respect to the~~
13 ~~property delivered to or received from the other state.~~
14 ~~Reciprocally, upon delivery of property to the State of~~
15 ~~Alabama, the other states' employees shall be relieved of and~~
16 ~~held harmless from any and all liabilities for any claim or~~
17 ~~claims in respect to the property delivered to the State of~~
18 ~~Alabama.~~

19 "§35-12-84.

20 "(a) The surviving spouse, the surviving child or
21 children of an abandoned property owner who has died intestate
22 may claim the abandoned property under this section, and will
23 have a defeasible right to the property, if all of the
24 following conditions exist:

25 "(1) The aggregate value of the abandoned property
26 held on behalf of the owner must not exceed the amount allowed
27 in Section 43-2-692.

1 "(2) The claim need not be accompanied by an order
2 of a probate court if the claimant files documentation
3 established in the rules, including, but not limited to, a. a
4 written confirmation by the probate court that no estate has
5 been opened or filed; b. an affidavit, signed by all
6 beneficiaries (defined as spouse and children) stating that
7 all beneficiaries have amicably agreed among themselves upon a
8 division of the property; c. supporting documentation showing
9 heir rights; and d. authorization to release the name and
10 address of the claimant to subsequent claimants.

11 "(3) If no spouse, child, or children are surviving,
12 the surviving parents shall have a defeasible right to the
13 property and may file a claim and documentation as established
14 in the rules.

15 "(b) Nothing in this section shall be construed to
16 remove the jurisdiction of the probate court in matters of
17 estates.

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

21 "(1) The aggregate amount value of the abandoned
22 property held on behalf of the owner is equal to or less than
23 two hundred dollars (\$200), or a greater amount if established
24 in the rules.

25 "(2) The claim is accompanied by an affidavit
26 swearing to the authenticity of a claim and lack of matching

1 documentation, and authorization to release the name and
2 address of the claimant to subsequent claimants.

3 "(d) Any person to whom payment, delivery, transfer,
4 or issuance is made under this section shall be answerable and
5 accountable therefor to any heir of the decedent, to any
6 person having a superior right to the decedent's property, or
7 to the surviving spouse or minor children of the decedent who
8 shall proceed against such person. This liability shall only
9 be to the extent of the value of the property received by each
10 person under this section.

11 "(e) Any person who was lawfully entitled to share
12 in the property but did not receive his or her share of the
13 property, may enforce his or her rights in appropriate legal
14 proceedings against those who received the property.

15 "§35-12-86.

16 "(a) The Treasurer may decline to receive property
17 reported under this article which the Treasurer considers to
18 have a value less than the expenses of notice and sale.

19 "(b) A holder, with the written consent of the
20 Treasurer and upon conditions and terms prescribed by the
21 Treasurer, may report and deliver property before the property
22 is presumed abandoned. A holder exempt from reporting, upon
23 conditions and terms prescribed by the Treasurer, may
24 voluntarily report. ~~Property so delivered must be held by the~~
25 ~~Treasurer and is not presumed abandoned until it otherwise~~
26 ~~would be presumed abandoned under this article. Property~~
27 ~~delivered under this section is deemed abandoned upon receipt~~

1 by the Treasurer and shall be handled in the same manner as
2 other abandoned property in this article.

3 "§35-12-93.

4 "(a) An agreement by an owner, the primary purpose
5 of which is to locate, deliver, recover, or assist in the
6 recovery of property that is presumed abandoned is void and
7 unenforceable if it was entered into during the period
8 commencing on the date the property was presumed abandoned and
9 extending to a time that is 24 months after the date the
10 property is paid or delivered to the Treasurer. This
11 subsection does not apply to an owner's agreement with an
12 attorney to file a claim as to identified property or contest
13 the Treasurer's denial of a claim.

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

23 "(c) If an agreement covered by this section applies
24 to mineral proceeds and the agreement contains a provision to
25 pay compensation that includes a portion of the underlying
26 minerals or any mineral proceeds not then presumed abandoned,
27 the provision is void and unenforceable.

1 "~~(d) An Total compensation in an agreement covered~~
2 ~~by this section which provides for compensation that is~~
3 ~~unconscionable is unenforceable except by the owner. An owner~~
4 ~~who has agreed to pay compensation that is unconscionable, may~~
5 ~~maintain an action to reduce the compensation to a~~
6 ~~conscionable amount. The court may award reasonable attorney's~~
7 ~~fees to an owner who prevails in the action may not exceed 10~~
8 ~~percent of the value of the amount claimed.~~

9 "~~(e) This section does not preclude an owner from~~
10 ~~asserting that an agreement covered by this section is invalid~~
11 ~~on grounds other than unconscionable compensation. It is the~~
12 ~~sole responsibility of the owner to enforce this section."~~

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