

# SENATE BILL No. 538

October 1, 2015, Introduced by Senators BRANDENBURG, SMITH, PROOS, MACGREGOR, MARLEAU and BIEDA and referred to the Committee on Finance.

A bill to amend 1995 PA 29, entitled "Uniform unclaimed property act," by amending sections 2, 30, and 31 (MCL 567.222, 567.250, and 567.251), section 2 as amended by 2008 PA 208, section 30 as amended by 2012 PA 292, and section 31 as amended by 2013 PA 148, and by adding sections 4a and 31b.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 2. As used in this act, unless the context otherwise  
2 requires:

3           (a) "Administrator" means the state treasurer.

4           (b) "Apparent owner" means the person whose name appears on  
5 the records of the holder as the person entitled to property held,  
6 issued, or owing by the holder.

7           (c) "Attorney general" means the department of attorney  
8 general.

1 (d) "Banking organization" means a bank, trust company,  
2 savings bank, industrial bank, land bank, safe deposit company,  
3 private banker, or any organization defined by law as a bank or  
4 banking organization.

5 (e) "Business association" means a nonpublic corporation,  
6 joint stock company, investment company, business trust,  
7 partnership, or association for business purposes of 2 or more  
8 individuals, whether or not for profit, including a banking  
9 organization, financial organization, insurance company, or  
10 utility.

11 (f) "Domicile" means the state of incorporation of a  
12 corporation and the state of the principal place of business of an  
13 unincorporated person.

14 **(G) "ELIGIBLE HOLDER" MEANS A HOLDER THAT MEETS 1 OR MORE OF**  
15 **THE FOLLOWING:**

16 **(i) IS A CORPORATION WHOSE PARENT CORPORATION IS INCORPORATED**  
17 **OR DOES BUSINESS IN THIS STATE.**

18 **(ii) IS A CORPORATION THAT HAS A SUBSIDIARY INCORPORATED OR**  
19 **DOES BUSINESS IN THIS STATE.**

20 **(iii) IS A CORPORATION THAT IS NOT INCORPORATED IN THIS STATE**  
21 **BUT IS WHOLLY OWNED BY A CORPORATION THAT IS INCORPORATED OR DOES**  
22 **BUSINESS IN THIS STATE.**

23 **(H) ~~(g)~~**"Financial organization" means a savings and loan  
24 association, cooperative bank, building and loan association,  
25 savings bank, or credit union.

26 **(I) ~~(h)~~**"Holder" means a person, wherever organized or  
27 domiciled, who is 1 or more of the following:

1 (i) In possession of property belonging to another.

2 (ii) A trustee.

3 (iii) Indebted to another on an obligation.

4 (J) ~~(i)~~—"Insurance company" means an individual, association,  
5 corporation, fraternal or mutual benefit organization, or any other  
6 legal entity, whether or not for profit, that is engaged or  
7 attempting to engage in the business of making insurance or surety  
8 contracts.

9 (K) ~~(j)~~—"Intangible property" includes all of the following:

10 (i) Money, checks, drafts, deposits, interest, dividends, and  
11 income.

12 (ii) Credit balances, customer overpayments, security  
13 deposits, refunds, credit memos, unpaid wages, unused airline  
14 tickets, and unidentified remittances.

15 (iii) Except as provided in sections 15(4) and 30(1), gift  
16 certificates and gift cards.

17 (iv) Stocks and other intangible ownership interests in  
18 business associations.

19 (v) Money deposited to redeem stocks, bonds, coupons, and  
20 other securities, or to make distributions.

21 (vi) Amounts due and payable under the terms of insurance  
22 policies.

23 (vii) Amounts distributable from a trust or custodial fund  
24 established under a plan to provide health, welfare, pension,  
25 vacation, severance, retirement, death, stock purchase, profit  
26 sharing, employee savings, supplemental unemployment insurance, or  
27 similar benefits.

1           (I) ~~(k)~~—"Last known address" means a description of the  
2 location of the apparent owner sufficient for the purpose of the  
3 delivery of mail.

4           (M) ~~(l)~~—"Owner" means a depositor, in the case of a deposit; a  
5 beneficiary, in case of a trust other than a deposit in trust; a  
6 creditor, claimant, or payee, in the case of other intangible  
7 property; or a person having a legal or equitable interest in  
8 property subject to this act. Owner includes the legal  
9 representative of the person defined as an owner in this  
10 subdivision.

11           (N) ~~(m)~~—"Person" means an individual, business association,  
12 state or other government, governmental subdivision or agency,  
13 public corporation, public authority, estate, trust, 2 or more  
14 persons having a joint or common interest, or any other legal or  
15 commercial entity.

16           (O) ~~(n)~~—"Property" means tangible or intangible personal  
17 property owned by a person.

18           (P) ~~(o)~~—"State" means any state, district, commonwealth,  
19 territory, insular possession, or any other area subject to the  
20 legislative authority of the United States.

21           (Q) ~~(p)~~—"Utility" means a person who owns or operates for  
22 public use any plant, equipment, property, franchise, or license  
23 for the transmission of communications or the production, storage,  
24 transmission, sale, delivery, or furnishing of electricity, water,  
25 steam, or gas.

26           **SEC. 4A. (1) EXCEPT AS PROVIDED IN SUBSECTION (2), PROPERTY IS**  
27 **NOT SUBJECT TO THE CUSTODY OF THIS STATE AS UNCLAIMED PROPERTY IF**

1 ITS VALUE IS \$50.00 OR LESS.

2 (2) SUBSECTION (1) DOES NOT APPLY TO PROPERTY DESCRIBED IN  
3 SECTION 11A OR DIVIDENDS.

4 Sec. 30. (1) The expiration, before or after the effective  
5 date of this act, of any period of time specified by contract,  
6 statute, or court order, during which a claim for money or property  
7 can be made or during which an action or proceeding may be  
8 commenced or enforced to obtain payment of a claim for money or to  
9 recover property, does not prevent the money or property from being  
10 presumed abandoned or affect any duty to file a report or to pay or  
11 deliver abandoned property to the administrator as required by this  
12 act. This subsection does not apply to gift cards or gift  
13 certificates.

14 (2) ~~An~~ EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3), AN  
15 action or proceeding shall not be commenced by the administrator  
16 with respect to any duty of a holder under this act more than 10  
17 years, or, for the holder of records of transactions between 2 or  
18 more associations as defined under section 37(a)(2), more than 5  
19 years, after the duty arose.

20 (3) FOR ELIGIBLE HOLDERS ELECTING TO PARTICIPATE IN THE  
21 STREAMLINED AUDIT PROCESS DESCRIBED IN SECTION 31B, AN ACTION OR  
22 PROCEEDING SHALL NOT BE COMMENCED BY THE ADMINISTRATOR WITH RESPECT  
23 TO ANY DUTY OF A HOLDER UNDER THIS ACT MORE THAN 4 YEARS AFTER THE  
24 DUTY AROSE.

25 Sec. 31. (1) The administrator may require a person who has  
26 not filed a report under this act or a person who the administrator  
27 believes has filed an inactive, incomplete, or false report, to

1 file a verified report in a form specified by the administrator.  
2 The report shall state whether the person is holding any unclaimed  
3 property reportable or deliverable under this act, describe  
4 unclaimed property not previously reported or as to which the  
5 administrator has made inquiry, and specifically identify and state  
6 the amounts of property that may be in issue.

7 (2) The administrator, at reasonable times and upon reasonable  
8 notice, may examine the records of a person to determine whether  
9 the person has complied with this act. The administrator may  
10 conduct the examination even if the person believes he or she is  
11 not in possession of any property reportable or deliverable under  
12 this act. The administrator may contract with any other person to  
13 conduct the examination on behalf of the administrator.

14 (3) If a person is treated under section 13 as the holder of  
15 the property only insofar as the interest of the business  
16 association in the property is concerned, the administrator,  
17 pursuant to subsection (2), may examine the records of the person  
18 if the administrator has given the notice required by subsection  
19 (2) to both the person and the business association at least 90  
20 days before the examination.

21 (4) Any examination performed by the administrator or his or  
22 her duly authorized agents must be performed in accordance with the  
23 generally accepted auditing standards to the extent applicable to  
24 unclaimed property examinations. A person who has been audited by  
25 the administrator or his or her duly authorized agents or a person  
26 whose books, records, and papers have been examined by the  
27 administrator or his or her duly authorized agents shall be

1 provided a complete copy in printed or electronic format of the  
2 audit report, which shall identify in detail the work performed,  
3 the property types reviewed, any estimation techniques employed,  
4 calculations showing the potential amount of property due, and a  
5 statement of findings as well as all other correspondence and  
6 documentation which formed a basis for the findings. Not later than  
7 6 months after the effective date of the amendatory act that added  
8 this subsection, the administrator shall electronically file a  
9 request for rule-making with the office of regulatory reinvention  
10 pursuant to the administrative procedures act of 1969, 1969 PA 306,  
11 MCL 24.201 to 24.328, to initiate rules on auditing standards.

12 (5) When the person being examined does not have substantially  
13 complete records, the administrator or his or her duly authorized  
14 agents may determine the amount of any abandoned or unclaimed  
15 property due and owing based upon a reasonable method of estimation  
16 consistent with the standards described in subsection (4). If the  
17 person being examined has filed all the required reports and has  
18 maintained substantially complete records, then all of the  
19 following apply to the examination:

20 (a) The examination shall include a review of the person's  
21 books and records.

22 (b) The examination shall not be based on an estimate.

23 (c) The administrator or his or her duly authorized agents  
24 shall consider all evidence presented by the holder to remediate  
25 the findings.

26 (6) If an examination of the records of a person results in  
27 the disclosure of property reportable and deliverable under this

1 act, the administrator may assess the cost of the examination  
2 against the holder at the rate of \$50.00 a day for each examiner;  
3 however, the charges shall not exceed the value of the property  
4 actually found to be reportable and deliverable. The cost of  
5 examination made pursuant to subsection (3) shall be imposed only  
6 against the business association.

7 (7) If a holder fails after the effective date of this act to  
8 maintain the records required by section 32 and the records of the  
9 holder available for the periods subject to this act are  
10 insufficient to permit the preparation of a report, the  
11 administrator may require the holder to report and pay an amount as  
12 may reasonably be estimated from any available records.

13 **(8) FOR AN ELIGIBLE HOLDER THAT HAS ELECTED TO FOLLOW THE**  
14 **STREAMLINED PROCESS DESCRIBED IN SECTION 31B, EXAMINATIONS SHALL**  
15 **NOT INCLUDE CHECKS VOIDED WITHIN 180 DAYS FROM THE DATE OF ISSUANCE**  
16 **OF THE CHECK.**

17 (9) ~~(8)~~—As used in this section, "substantially complete  
18 records" means at least 90% of the records necessary for unclaimed  
19 property examination purposes as defined under the principles of  
20 internal controls. The determination of substantially complete  
21 records shall not be made solely as a percentage of the total  
22 overall individual records to be examined, but also on a  
23 materiality level of value of the records. The lack of greater than  
24 10% of records in 1 particular property class to be examined does  
25 not result in the extrapolation of error in those areas in which a  
26 person has filed all the required reports and has maintained at  
27 least 90% of the overall records for that particular property



1 class. Substantially complete records are not meant to be an  
2 absolute measurement of all available records.

3       **SEC. 31B. (1) ELIGIBLE HOLDERS BEING EXAMINED BY THE**  
4 **ADMINISTRATOR UNDER SECTION 31(2) MAY ELECT TO FOLLOW THE**  
5 **STREAMLINED AUDIT PROCESS DESCRIBED IN THIS SECTION. ELIGIBLE**  
6 **HOLDERS MAY ELECT THE STREAMLINED AUDIT PROCESS BY EXECUTING A**  
7 **NONDISCLOSURE AGREEMENT ACCEPTABLE TO THE ADMINISTRATOR WITHIN 30**  
8 **DAYS FROM THE RECEIPT OF THE AUDIT NOTICE.**

9       **(2) AN AUDIT CONDUCTED UNDER THE STREAMLINED AUDIT PROCESS**  
10 **DESCRIBED IN THIS SECTION SHALL MEET BOTH OF THE FOLLOWING:**

11       **(A) BE COMPLETED WITHIN A TIME FRAME JOINTLY DEVELOPED BY THE**  
12 **HOLDER AND THE ADMINISTRATOR, WITH THE GOAL OF COMPLETING THE AUDIT**  
13 **WITHIN 18 MONTHS FROM THE RECEIPT OF THE AUDIT NOTICE.**

14       **(B) BE CONDUCTED ACCORDING TO STANDARDS SET FORTH IN RULES AND**  
15 **REGULATIONS PROMULGATED IN ACCORDANCE WITH SECTION 31(4).**

16       Enacting section 1. This amendatory act is retroactive and  
17 applies to audits in progress as of August 15, 2015, but does not  
18 retroactively apply to contested determinations in litigation  
19 before the date of enactment of this amendatory act.