

## LEGISLATIVE BILL 1048

Approved by the Governor April 18, 1994

Introduced by Will, B

AN ACT relating to unclaimed property; to amend sections 69-1305, 69-1310, 69-1316, 69-1317, and 69-1329, Revised Statutes Supplement, 1993; to eliminate and change provisions relating to abandoned stock or other intangible ownership interests; to provide when certain property is deemed abandoned; to define terms; to provide for aggregate reporting of de minimis amounts to the State Treasurer; to change provisions relating to the sale of abandoned property by the State Treasurer as prescribed; to provide for confidentiality of records; to harmonize provisions; and to repeal the original sections.

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

Section 1. That section 69-1305, Revised Statutes Supplement, 1993, be amended to read as follows:

69-1305. (a) Any stock or other certificate of ownership, any other intangible ownership interest, or any dividend, profit, distribution, interest, payment on principal, or other sum held or owing by a business association for or to a shareholder, certificate holder, member, bondholder, or other security holder, or a participating patron of a cooperative, who has not claimed it, or corresponded in writing with the business association concerning it, within five years after the date prescribed for payment or delivery, is presumed abandoned if:

(1) It is held or owing by a business association organized under the laws of or created in this state; or

(2) It is held or owing by a business association doing business in this state, but not organized under the laws of or created in this state, and the records of the business association indicate that the last-known address of the person entitled thereto is in this state.

(b) Stock or other intangible ownership interest in a business association, the existence of which is evidenced by records available to the association, is presumed abandoned and, with respect to the interest, the association is the holder, if a dividend, distribution, or other sum payable as a result of the interest has remained unclaimed by the owner for five years as set forth in subsection (a) of this section: (a) Any stock, shareholding, or other intangible ownership interest in a business association, the existence of which is evidenced by records available to the association, is presumed abandoned and, with respect to the interest, the association is the holder, if:

(1) The interest in the association is owned by a person who for more than five years has not claimed a dividend, distribution, or other sum payable as a result of the interest or has not communicated with the association regarding the interest or a dividend, distribution, or other sum payable as a result of the interest, as evidenced by a memorandum or other record on file with the association prepared by an employee of the association; and

(2) The association does not know the location of the owner at the end of the five-year period.

(b) The return of official shareholder notifications or communications by the postal service as undeliverable shall be evidence that the association does not know the location of the owner.

(c) The Uniform Disposition of Unclaimed Property Act shall be applicable to both the underlying stock, shareholdings, or other intangible ownership interests of an owner, and any stock, shareholdings, or other intangible ownership interest of which the business association is in possession of the certificate or other evidence or indicia of ownership, and to the stock, shareholdings, or other intangible ownership interests of dividend- and non-dividend-paying business associations whether or not the interest is represented by a certificate.

Sec. 2. The Uniform Disposition of Unclaimed Property Act does not apply to any stock or other intangible ownership interest enrolled in a plan that provides for the automatic reinvestment of dividends, distributions, or other sums payable as a result of the interest unless:

(a) The records available to the administrator of the plan show, with respect to any intangible ownership interest not enrolled in the reinvestment plan, that the owner has not within five years communicated in any manner described in subdivision (a)(1) of section 69-1305; or

(b) Five years have elapsed since the location of the owner became unknown to the business association as evidenced by the return of official shareholder notifications or communications by the postal service as undeliverable and the owner has not within those five years communicated in any manner described in subdivision (a)(1) of section 69-1305. The five-year period from the return of official shareholder notifications or communications shall commence from the return of the notification or communication.

Sec. 3. (a) A gift certificate or a credit memo that remains unredeemed for more than three years after issuance is presumed abandoned.

(b) In the case of a gift certificate, the amount presumed abandoned is the face amount of the certificate itself. In the case of a credit memo, the amount presumed abandoned is the amount credited, as shown on the memo itself.

Sec. 4. All intangible property and any income or increment derived therefrom held in an individual retirement account, a retirement plan for self-employed individuals, or similar account or plan established pursuant to the internal revenue laws of the United States, which has not been paid or distributed for more than thirty days after the earliest of the following: (a) The actual date of distribution or attempted distribution; (b) the date contracted for distribution in the plan or trust agreement governing the account or plan; or (c) the date specified in the internal revenue law of the United States by which distribution must begin in order to avoid a tax penalty, is presumed abandoned unless the owner or beneficiary within the five years preceding any such date has made additional payments or transfers of property to the account or plan, was paid or received a distribution, communicated concerning the property, or otherwise indicated an interest as evidenced by a memorandum or other record on file with the account or plan fiduciary.

Sec. 5. (a) For purposes of this section, unless the context otherwise requires:

(1) Mineral means oil, gas, uranium, sulphur, lignite, coal, and any other substance that is ordinarily and naturally considered a mineral, regardless of the depth at which the oil, gas, uranium, sulphur, lignite, coal, or other substance is found; and

(2) Mineral proceeds includes:

(i) All obligations to pay resulting from the production and sale of minerals, including net revenue interest, royalties, overriding royalties, production payments, and joint operating agreements; and

(ii) All obligations for the acquisition and retention of a mineral lease including bonuses, delay rentals, shut-in royalties, and minimum royalties.

(b) Any sum payable as mineral proceeds and the underlying right to receive mineral proceeds are presumed abandoned if any sum payable as mineral rights has remained unclaimed by the owner for more than three years after it became payable or distributable. At the time an owner's underlying right to receive mineral proceeds is presumed abandoned, any mineral proceeds then owing to the owner and any proceeds accruing after that time are presumed abandoned.

(c) A holder may not deduct any amount from mineral proceeds unless:

(1) There is an enforceable written contract between the holder and the owner of the mineral proceeds pursuant to which the holder may impose a charge;

(2) For mineral proceeds in excess of five dollars, the holder, no more than three months before the initial imposition of those charges, has mailed written notice to the owner of the amount of those charges at the last-known address of the owner stating that those charges will be imposed, but the notice provided in this section need not be given with respect to charges imposed before the effective date of this act; and

(3) The holder regularly imposes such charges and in no instance reverses or otherwise cancels them.

(d) Charges imposed pursuant to subsection (c) of this section may be made and collected monthly, quarterly, or annually. However, beginning with the effective date of this act, the cumulative amount of charges shall not exceed twelve dollars per year, and shall only be charged for a maximum of two calendar years.

Sec. 6. That section 69-1310, Revised Statutes Supplement, 1993, be amended to read as follows:

69-1310. (a) Every person holding funds or other property, tangible or intangible, presumed abandoned under the Uniform Disposition of Unclaimed Property Act 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 presumed abandoned under the act;

(2) In case of unclaimed funds of life insurance corporations, the full name of the insured or annuitant and his or her 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, except that items of less than twenty-five dollars may be reported in the 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

(5) Other information which the State Treasurer may prescribe by rule as necessary for the administration of the act.

(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 or her name while holding the property, he or she shall file with his or her 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. A one-time supplemental report shall be filed before April 1, 1993, as of June 30, 1992, as if laws 1992, LB 26, Ninety-second Legislature, Third Special Session, had been in effect prior to July 1, 1992, but the report of life insurance corporations required by this subsection to be filed before May 1, 1993, shall be filed as if laws 1992, LB 26, Ninety-second Legislature, Third Special Session, had been in effect prior to January 1, 1993. 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 the act 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; if made by a limited liability company, by a member; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer.

Sec. 7. That section 69-1316, Revised Statutes Supplement, 1993, be amended to read as follows:

69-1316. (a) Except as provided in section 69-1321, all abandoned property other than money, securities, bonds, or similar property delivered to the State Treasurer under the Uniform Disposition of Unclaimed Property Act shall within one year after the delivery be sold by him or her to the highest bidder at public sale in whatever city in the state affords in his or her judgment the most favorable market for the property involved. The State Treasurer shall hold the sale whenever he or she decides, but a sale must be conducted at least once every five years. The State Treasurer may decline the highest bid and reoffer the property for sale if he or she considers the price bid insufficient. He or she need not offer any property for sale if, in his or her opinion, the probable cost of sale exceeds the value of the property.

(b) Any sale held under this section shall be preceded by a single publication of notice thereof, at least three weeks in advance of sale in an English language newspaper of general circulation in the county where the property is to be sold.

(c) The purchaser at any sale conducted by the State Treasurer pursuant to the act shall receive title to the property purchased, free from all claims of the owner or prior holder thereof and of all persons claiming through or under them. The State Treasurer shall execute all documents necessary to complete the transfer of title.

(d) Securities listed on an established stock exchange shall be sold at the prevailing prices on the exchange. Other securities may be sold over the counter at prevailing prices or by another commercially reasonable method. All securities presumed abandoned under the act and delivered to the State Treasurer shall be held for at least three years before he or she sells them. A person making a claim under this section is entitled to receive either the securities delivered to the State Treasurer by the holder, if they still remain in the hands of the State Treasurer, or the proceeds received from the

sale, but no person has any claim under this section against the state, the holder, any transfer agent, any registrar, or any other person acting for or on behalf of a holder for any appreciation in the value of the property occurring after delivery by the holder to the State Treasurer.

Sec. 8. That section 69-1317, Revised Statutes Supplement, 1993, be amended to read as follows:

69-1317. (a)(1) All funds received under the Uniform Disposition of Unclaimed Property Act, including the proceeds from the sale of abandoned property under section 69-1316, shall be deposited by the State Treasurer in a separate trust fund from which he or she shall make prompt payment of claims allowed pursuant to the act. Before making the deposit he or she shall record the name and last-known address of each person appearing from the holders' reports to be entitled to the abandoned property, 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 during 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 from the holders' reports have been published or officially disclosed.

A professional finders' fee shall be limited to ten percent 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.

(2) The unclaimed property records of the State Treasurer, the unclaimed property reports of holders, and the information derived by an unclaimed property examination or audit of the records of a person or otherwise obtained by or communicated to the State Treasurer may be withheld from the public. Any record or information that may be withheld under the laws of this state or of the United States when in the possession of such a person may be withheld when revealed or delivered to the State Treasurer. Any record or information that is withheld under any law of another state when in the possession of that other state may be withheld when revealed or delivered by the other state to the State Treasurer.

Information withheld from the general public concerning any aspect of unclaimed property shall only be disclosed to an apparent owner of the property, or to the escheat, unclaimed or abandoned property administrators or officials of another state if that other state accords substantially reciprocal privileges to the State Treasurer.

(b)(1) ~~On or before November 1 of each year prior to October 6, 1992, the State Treasurer shall transfer any balance in excess of fifty thousand dollars from the separate trust fund to the permanent school fund.~~

(2) (b)(1) On or after October 6, 1992, the State Treasurer shall periodically transfer any balance in excess of an amount not to exceed five hundred thousand dollars from the separate trust fund to the General Fund no less frequently than on or before November 1 and May 1 of each year, except that the total amount of all such transfers shall not exceed five million dollars.

(3)(1) (2)(i) On the next succeeding November 1 after five million dollars has been transferred to the General Fund in the manner described in subdivision (b)(2) (b)(1) of this section or (ii) on November 1, 1996, whichever occurs first, and on or before November 1 of each year thereafter, the State Treasurer shall transfer any balance in excess of an amount not to exceed five hundred thousand dollars from the separate trust fund to the permanent school fund.

(c) Before making any deposit to the credit of the permanent school fund or the General Fund, the State Treasurer may deduct: (1) Any 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. Any money in the Unclaimed Property Cash Fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1276.

Sec. 9. That section 69-1329, Revised Statutes Supplement, 1993, be amended to read as follows:

69-1329. Sections 69-1301 to 69-1329 and sections 2 to 5 of this act may be cited as the Uniform Disposition of Unclaimed Property Act.

Sec. 10. That original sections 69-1305, 69-1310, 69-1316, 69-1317, and 69-1329, Revised Statutes Supplement, 1993, are repealed.