

HOUSE BILL NO. 164

INTRODUCED BY K. WALSH, C. SPRUNGER, S. ESSMANN

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE UNIFORM UNCLAIMED PROPERTY ACT; DEFINING "PAYROLL CARD"; REVISING PRESUMPTIONS OF ABANDONMENT; PROVIDING FOR REPORTS BY ELECTRONIC MAIL DELIVERY OF PROPERTY PRESUMED ABANDONED; AND AMENDING SECTIONS 70-9-802, 70-9-803, AND 70-9-808, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 70-9-802, MCA, is amended to read:

"70-9-802. Definitions. In this part, unless the context requires otherwise, the following definitions apply:

(1) "Administrator" means the department of revenue provided for in 2-15-1301.

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

(3) "Business association" means a corporation, joint-stock company, investment company, partnership, unincorporated association, joint venture, limited liability company, business trust, trust company, land bank, safe deposit company, financial organization, insurance company, mutual fund, utility, or other business entity consisting of one or more persons, whether or not for profit.

(4) "Domicile" means the state of incorporation of a corporation and the state of the principal place of business of a holder other than a corporation.

(5) "Financial organization" means a savings and loan association, bank, banking organization, or credit union.

(6) "Gift certificate" has the meaning provided in 30-14-102.

(7) "Holder" means a person obligated to hold for the account of, or deliver or pay to, the owner property that is subject to this part.

(8) "Insurance company" means an association, corporation, or fraternal or mutual benefit

1 organization, whether or not for profit, engaged in the business of providing life endowments, annuities, or
2 insurance, including accident, burial, casualty, credit life, contract performance, dental, disability, fidelity, fire,
3 health, hospitalization, illness, life, malpractice, marine, mortgage, surety, wage protection, and workers'
4 compensation insurance.

5 (9) "Mineral" means gas; oil; coal; other gaseous, liquid, and solid hydrocarbons; oil shale; cement
6 material; sand and gravel; road material; building stone; chemical raw material; gemstone; fissionable and
7 nonfissionable ores; colloidal and other clay; steam and other geothermal resource; or any other substance
8 defined as a mineral by the law of this state.

9 (10) "Mineral proceeds" means amounts payable for the extraction, production, or sale of minerals
10 or, upon the abandonment of those payments, all payments that become payable after abandonment. The term
11 includes amounts payable:

12 (a) for the acquisition and retention of a mineral lease, including bonuses, royalties, compensatory
13 royalties, shut-in royalties, minimum royalties, and delay rentals;

14 (b) for the extraction, production, or sale of minerals, including net revenue interests, royalties,
15 overriding royalties, extraction payments, and production payments; and

16 (c) under an agreement or option, including a joint operating agreement, unit agreement, pooling
17 agreement, and farmout agreement.

18 (11) (a) "Money order" includes an express money order and a personal money order, on which the
19 remitter is the purchaser.

20 (b) The term does not include a bank money order or any other instrument sold by a financial
21 organization if the seller has obtained the name and address of the payee.

22 (12) "Owner" means a person who has a legal or equitable interest in property subject to this part or
23 the person's legal representative. The term includes a depositor in the case of a deposit, a beneficiary in the
24 case of a trust other than a deposit in trust, and a creditor, claimant, or payee in the case of other property.

25 (13) "Payroll card" means a record that evidences a payroll card account as defined in Regulation
26 E, 12 CFR, part 1005, as of April 19, 2023.

27 ~~(13)~~(14) "Person" means an individual, business association, financial organization, estate, trust,
28 government, governmental subdivision, agency, or instrumentality or any other legal or commercial entity.

1 ~~(14)~~(15)"Personal information" means:

2 (a) information that identifies or reasonably can be used to identify an individual, such as a first
3 and last name in combination with the individual's:

4 (i) social security number or other government-issued number or identifier;

5 (ii) date of birth;

6 (iii) home or physical address;

7 (iv) electronic mail address or other online contact information or internet provider address;

8 (v) financial account number or credit or debit card number;

9 (vi) biometric data, health or medical data, or insurance information; or

10 (vii) passwords or other credentials that permit access to an online account or other account; and

11 (b) personally identifiable financial or insurance information, including nonpublic personal
12 information defined by applicable federal law.

13 ~~(15)~~(16)(a) "Property" means tangible property described in 70-9-804 or a fixed and certain interest in
14 intangible property that is held, issued, or owed in the course of a holder's business or, except as provided in
15 subsection ~~(15)~~(16)(b), by a government, governmental subdivision, agency, or instrumentality and all income
16 or increments from the property. The term includes property that is referred to as or evidenced by:

17 (i) money, virtual currency, check, draft, deposit, interest, ~~or dividend~~, or payroll card;

18 (ii) credit balance, customer's overpayment, gift certificate, security deposit, refund, credit
19 memorandum, unpaid wage, unused ticket, mineral proceeds, or unidentified remittance;

20 (iii) stock or other evidence of ownership of an interest in a business association or financial
21 organization;

22 (iv) bond, debenture, note, or other evidence of indebtedness;

23 (v) money deposited to redeem stocks, bonds, coupons, or other securities or to make
24 distributions;

25 (vi) an amount due and payable under the terms of an annuity or insurance policy, including
26 policies providing life insurance, property and casualty insurance, workers' compensation insurance, or health
27 and disability insurance; and

28 (vii) an amount distributable from a trust or custodial fund that is established under a plan to provide

1 health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee
2 savings, supplemental unemployment insurance, or similar benefits.

3 (b) The term does not include:

4 (i) property that is held, issued, or owed by a local government entity, as defined in 2-7-501;

5 (ii) property held in state and local government sponsored retirement plans governed by Title 19;

6 (iii) property held in a plan as described in section 529A of the Internal Revenue Code, 26 U.S.C.
7 529A, as amended.

8 ~~(16)~~(17)"Record" means information that is inscribed on a tangible medium or that is stored in an
9 electronic or other medium and that is retrievable in perceivable form.

10 ~~(17)~~(18)"Security" means:

11 (a) a security as defined in 30-8-112;

12 (b) a security entitlement as defined in 30-8-112, including a customer security account held by a
13 registered broker-dealer, to the extent the financial assets held in the security account are not:

14 (i) registered on the books of the issuer in the name of the person for which the broker-dealer
15 holds the assets;

16 (ii) payable to the order of the person; or

17 (iii) specifically indorsed to the person; or

18 (c) an equity interest in a business association not included in subsection ~~(17)(a)~~ or ~~(17)(b)~~ (18)(a)
19 or (18)(b).

20 ~~(18)~~(19)"State" means a state of the United States, the District of Columbia, the Commonwealth of
21 Puerto Rico, or any territory or insular possession that is subject to the jurisdiction of the United States.

22 ~~(19)~~(20)"Utility" means a person who owns or operates for public use any plant, equipment, real
23 property, franchise, or license for the transmission of communications or the production, storage, transmission,
24 sale, delivery, or furnishing of electricity, water, steam, or gas.

25 ~~(20)~~(21)(a) "Virtual currency" means a digital representation of value used as a medium of exchange,
26 unit of account, or store of value that does not have legal tender status recognized by the United States.

27 (b) The term does not include:

28 (i) the software or protocols governing the transfer of the digital representation of value;

1 (ii) game-related digital content; or

2 (iii) a loyalty card.

3 ~~(24)~~(22)"Worthless security" means a security whose cost of liquidation and delivery to the
4 administrator would exceed the value of the security on the date a report is due under this part."

5

6 **Section 2.** Section 70-9-803, MCA, is amended to read:

7 **"70-9-803. Presumptions of abandonment.** (1) Except as provided in ~~subsection (6)~~ subsections (4)
8 and (9), property is presumed abandoned if it is unclaimed by the apparent owner during the time set forth
9 below for the particular property:

10 (a) traveler's check, 15 years after issuance;

11 (b) money order, 7 years after issuance;

12 (c) debt of a business association or financial organization, other than a bearer bond or an original
13 issue discount bond, 5 years after the date of the most recent interest payment that was unclaimed by the
14 apparent owner;

15 (d) a payroll card, or a demand, savings, or time deposit, including a deposit that is automatically
16 renewable, 5 years after the earlier of maturity or the date of the last indication by the owner of interest in the
17 property; however, a deposit that is automatically renewable is considered matured for purposes of this section
18 upon its initial date of maturity unless the ~~owner has~~ apparent owner consented to a renewal at or about the
19 time of the renewal and the consent is in writing or is evidenced by a memorandum or other record on file with
20 the holder in a record on file with the holder to renewal at or about the time of the renewal;

21 (e) money or credits owed to a customer as a result of a retail business transaction, 3 years after
22 the obligation accrued;

23 (f) gift certificate, 3 years after December 31 of the year in which the certificate was sold, but if
24 redeemable in merchandise only, the amount abandoned is considered to be 60% of the certificate's face value.
25 A gift certificate is not presumed abandoned if the gift certificate was sold by a person who in the past fiscal
26 year sold no more than \$200,000 in gift certificates, which amount must be adjusted by November of each year
27 by the inflation factor. The amount considered abandoned for a person who sells more than the amount that
28 triggers presumption of abandonment is the value of gift certificates greater than that trigger.

- 1 (g) amount that is owed by an insurer on a life or endowment insurance policy or an annuity that
2 has matured or terminated, 3 years after the obligation to pay arose or, in the case of a policy or annuity
3 payable on proof of death, 3 years after the insured has attained, or would have attained if living, the limiting
4 age under the mortality table on which the reserve is based;;
- 5 (h) property distributable by a business association or financial organization in a course of
6 dissolution, 1 year after the property becomes distributable;
- 7 (i) property received by a court as proceeds of a class action and not distributed pursuant to the
8 judgment, 1 year after the distribution date;
- 9 (j) property held by a court, government, governmental subdivision, agency, or instrumentality, 1
10 year after the property becomes distributable;
- 11 (k) wages or other compensation for personal services, 1 year after the compensation becomes
12 payable;
- 13 (l) deposit or refund owed to a subscriber by a utility, 1 year after the deposit or refund becomes
14 payable;
- 15 (m) property in an individual retirement account, defined benefit plan, or other account or plan that
16 is qualified for tax deferral under the income tax laws of the United States, 3 years after the earliest of the date
17 of the distribution or attempted distribution of the property, the date of the required distribution as stated in the
18 plan or trust agreement governing the plan, or the date, if determinable by the holder, specified in the income
19 tax laws of the United States by which distribution of the property must begin in order to avoid a tax penalty;
- 20 (n) a patronage refund owed to a member of a rural electric or telephone cooperative organized
21 under Title 35, chapter 18, that is not used by the cooperative for educational purposes, 5 years after the
22 distribution date;
- 23 (o) an unclaimed share in a cooperative that is not used for charitable or civic purposes in the
24 community in which the cooperative is located, 5 years after the distribution date;
- 25 (p) a security, as provided in 70-9-830; and
- 26 (q) all other property, 5 years after the owner's right to demand the property or after the obligation
27 to pay or distribute the property arises, whichever first occurs.
- 28 (2) At the time that an interest is presumed abandoned under subsection (1), any other property

1 right accrued or accruing to the owner as a result of the interest, and not previously presumed abandoned, is
2 also presumed abandoned.

3 ~~(3) Property is unclaimed if, for the applicable period set forth in subsection (1), the apparent~~
4 ~~owner has not communicated in writing or by other means reflected in a contemporaneous record prepared by~~
5 ~~or on behalf of the holder with the holder concerning the property or the account in which the property is held~~
6 ~~and has not otherwise indicated an interest in the property. A communication with an owner by a person other~~
7 ~~than the holder or its representative who has not in writing identified the property to the owner is not an~~
8 ~~indication of interest in the property by the owner.~~

9 (4) An indication of an owner's interest in property includes:

10 (a) the presentment of a check or other instrument of payment of a dividend or other distribution
11 made with respect to an account or underlying stock or other interest in a business association or financial
12 organization or, in the case of a distribution made by electronic or similar means, evidence that the distribution
13 has been received;

14 (b) owner-directed activity in the account in which the property is held, including a direction by the
15 owner to increase, decrease, or change the amount or type of property held in the account;

16 (c) the making of a deposit to or withdrawal from an account in a financial organization; and

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

22 ~~(5)(3)~~ Property is payable or distributable for purposes of this part notwithstanding the owner's failure
23 to make demand or present an instrument or document otherwise required to obtain payment.

24 (4) The period after which property is presumed abandoned is measured from the later of:

25 (a) the date the property is presumed abandoned under subsection (1); or

26 (b) the latest indication of interest by the apparent owner in the property.

27 (5) An indication of an apparent owner's interest in property includes:

28 (a) a record communicated by the apparent owner to the holder or agent of the holder concerning

1 the property or the account in which the property is held;

2 (b) an oral communication by the apparent owner to the holder or agent of the holder concerning
3 the property or the account in which the property is held, if the holder or agent contemporaneously makes and
4 preserves a record of the fact of the apparent owner's communication;

5 (c) presentment of a check or other instrument of payment of a dividend, interest payment, or other
6 distribution, or evidence of receipt of a distribution made by electronic or similar means, with respect to an
7 account, underlying security, or interest in a business association;

8 (d) activity directed by an apparent owner in the account in which the property is held, including
9 accessing the account or information concerning the account, or a direction by the apparent owner to increase,
10 decrease, or otherwise change the amount or type of property held in the account;

11 (e) a deposit in or withdrawal from an account at a financial organization, including an automatic
12 deposit or withdrawal previously authorized by the apparent owner other than an automatic reinvestment of
13 dividends or interest;

14 (f) subject to subsection (8), payment of a premium on an insurance policy;

15 (g) any other action by the apparent owner that reasonably demonstrates to the holder that the
16 apparent owner knows that the property exists.

17 (6) An action by an agent or other representative of an apparent owner, other than the holder
18 acting as the apparent owner's agent, is presumed to be an action on behalf of the apparent owner.

19 (7) A communication with an apparent owner by a person other than the holder or the holder's
20 representative is not an indication of interest in the property by the apparent owner unless a record of the
21 communication evidences the apparent owner's knowledge of a right to the property.

22 (8) If the insured dies or the insured or beneficiary of an insurance policy otherwise becomes
23 entitled to the proceeds before depletion of the cash surrender value of the policy by operation of an automatic
24 premium loan provision or other nonforfeiture provision contained in the policy, the operation does not prevent
25 the policy from maturing or terminating.

26 ~~(6)~~(9) The presumption provided in subsection (1) does not apply to:

27 (a) unclaimed patronage refunds of a rural electric or telephone cooperative if the cooperative
28 uses the refunds exclusively for educational purposes; or

1 (b) unclaimed shares in a nonutility cooperative if the cooperative uses the shares for charitable or
2 civic purposes in the community in which the cooperative is located.

3 ~~(7)(10) For the purposes of~~ As used in this section, "inflation factor" means a number determined for
4 each tax year by dividing the consumer price index for June of the previous tax year by the consumer price
5 index for June 2015."
6

7 **Section 3.** Section 70-9-808, MCA, is amended to read:

8 **"70-9-808. Report of abandoned property.** (1) A holder of property presumed abandoned shall
9 make a report to the administrator concerning the property.

10 (2) The report must be verified and must contain:

11 (a) a description of the property;

12 (b) except with respect to a traveler's check or money order, the name, if known, and last-known
13 address, if any, and the social security number or taxpayer identification number, if readily ascertainable, of the
14 apparent owner of property of the value of \$50 or more;

15 (c) an aggregated amount of items valued under \$50 each;

16 (d) in the case of an amount of \$50 or more held or owing under an annuity or a life or endowment
17 insurance policy, the full name and last-known address of the annuitant or insured and of the beneficiary;

18 (e) in the case of property held in a safe deposit box or other safekeeping depository, an indication
19 of the place where it is held and where it may be inspected by the administrator and any amounts owing to the
20 holder;

21 (f) the date, if any, on which the property became payable, demandable, or returnable and the
22 date of the last transaction with the apparent owner with respect to the property; and

23 (g) other information that the administrator by rule prescribes as necessary for the administration
24 of this part, including personal information as defined in 70-9-802 about the apparent owner or the apparent
25 owner's property to the extent not otherwise prohibited by federal law.

26 (3) If a holder of property presumed abandoned is a successor to another person that previously
27 held the property for the apparent owner or the holder has changed its name while holding the property, the
28 holder shall file with the report its former names, if any, and the known names and addresses of all previous

1 holders of the property.

2 (4) The report must be filed before November 1 of each year and cover the 12 months next
3 preceding July 1 of that year, but a report with respect to a life insurance company must be filed before May 1
4 of each year for the calendar year next preceding.

5 (5) The holder of property that is presumed abandoned shall send written notice to the apparent
6 owner, not more than 120 days or less than 60 days before filing the report, stating that the holder is in
7 possession of property subject to this part if:

8 (a) the holder has in its records an address for the apparent owner that the holder's records do not
9 disclose to be inaccurate;

10 (b) the claim of the apparent owner is not barred by a statute of limitations; and

11 (c) the value of the property is \$50 or more.

12 (6) If an apparent owner has consented to receive electronic mail delivery from the holder, the
13 holder shall send the notice described in this subsection (6) by either first-class United States mail to the
14 apparent owner's last-known mailing address or by electronic mail, unless the holder believes that the apparent
15 owner's electronic mail address is invalid.

16 (a) Notice under this subsection (6) must contain a heading that reads substantially as follows:
17 Notice. The State of Montana requires us to notify you that your property may be transferred to the custody of
18 the Unclaimed Property Program of the Montana Department of Revenue if you do not contact us within 30
19 days of this notice.

20 (b) The notice must additionally:

21 (i) identify the nature and, except for property that does not have a fixed value, the value of the
22 property that is the subject of the notice;

23 (ii) state that the property will be turned over to the administrator;

24 (iii) state that after the property is turned over to the administrator an apparent owner who seeks
25 return of the property must file a claim with the administrator;

26 (iv) state that property that is not legal tender of the United States may be sold by the
27 administrator; and

28 (v) provide instructions that the apparent owner shall follow to prevent the holder from reporting

