

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 294
Committee Substitute Favorable 4/25/17

Short Title: Unclaimed Property Notice Requirements.-AB

(Public)

Sponsors:

Referred to:

March 9, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE CHANGES TO THE NOTICE REQUIREMENTS AND PENALTY
3 FOR THE DISPOSITION OF ABANDONED PROPERTY AND TO MAKE
4 TECHNICAL AND CLARIFYING CHANGES TO THE UNCLAIMED PROPERTY
5 STATUTES.

6 The General Assembly of North Carolina enacts:

7 SECTION 1.(a) Section 2 of S.L. 2015-68 is repealed.

8 SECTION 1.(b) This section is retroactively effective October 1, 2015.

9 SECTION 2.(a) G.S. 116B-59 reads as rewritten:

10 "§ 116B-59. Notice by holders to apparent owners.

11 (a) ~~A holder of property presumed abandoned shall make a good faith effort to locate an~~
12 ~~apparent owner.~~

13 (a1) A holder of property that is presumed abandoned and that is either (i) a security or
14 other equity interest in a business association, including a security entitlement under Article 8
15 of Chapter 25 of the General Statutes, that is valued at twenty-five dollars (\$25.00) or more or
16 (ii) property, other than a security or other equity interest in a business association, including a
17 security entitlement under Article 8 of Chapter 25 of the General Statutes, that is valued at fifty
18 dollars (\$50.00) or more shall send written notice by first-class mail to the apparent owner not
19 more than 120 days or less than 60 days before filing the report required by G.S. 116B-60. The
20 holder shall exercise reasonable care to ascertain that it is sending the written notice to the
21 apparent owner's correct address.

22 (b) ~~The holder shall send written notice, by first-class mail, to the apparent owner, not~~
23 ~~more than 120 days or less than 60 days before filing the report required by G.S. 116B-60, to~~
24 ~~the last known address of the apparent owner as reflected in the holder's records, if the value of~~
25 ~~the property is fifty dollars (\$50.00) or more.~~

26 (c) The written notice to apparent owners required under this section must
27 contain:contain all of the following:

- 28 (1) A statement that, according to the records of the holder, property is being
29 held to which the addressee appears entitled and the amount or description of
30 the ~~property;~~property.
- 31 (2) ~~The name and address~~name, address, and contact information of the person
32 holding the property and any necessary information regarding changes of
33 name and address of the ~~holder;~~holder.
- 34 (3) A statement that, if satisfactory proof of claim is not presented by the owner
35 to the holder by the following October 1 or, if the holder is an insurance



1 company, by the following April 1, the property will be placed in the
2 custody of the Treasurer, to whom all further claims shall be directed.

3 (4) A statement that, once property is placed in the custody of the Treasurer, all
4 interest, dividends, income, and gains earned on the property will remain
5 with the Treasurer, even if the owner subsequently reclaims the property
6 from the Treasurer."

7 **SECTION 2.(b)** G.S. 116B-77 reads as rewritten:

8 "**§ 116B-77. Interest and penalties; waiver.**

9 (a) A holder who fails to report, pay, or deliver property within the time prescribed by
10 this Chapter shall pay to the Treasurer interest at the rate established pursuant to this subsection
11 on the property or value of the property from the date the property should have been reported,
12 paid, or delivered. On or before June 1 and December 1 of each year, the Treasurer shall
13 establish the interest rate to be in effect during the six-month period beginning on the next
14 succeeding July 1 and January 1, respectively, after giving due consideration to current market
15 conditions. If no new rate is established, the rate in effect during the preceding six-month
16 period shall continue in effect. The rate established by the Treasurer may not be less than five
17 percent (5%) per year and may not exceed sixteen percent (16%) per year.

18 (b) A holder who willfully fails to report, pay, or deliver property within the time
19 prescribed by this Chapter, or willfully fails to perform other duties imposed by this Chapter,
20 including the duties imposed by G.S. 116B-59, shall pay to the Treasurer, in addition to interest
21 as provided in subsection (a) of this section, a civil penalty of one thousand dollars (\$1,000) for
22 each day the report, payment, or delivery is withheld, or the duty is not performed, up to a
23 maximum of twenty-five thousand dollars (\$25,000), plus twenty-five percent (25%) of the
24 value of any property that should have been but was not reported.

25 (c) A holder who makes a fraudulent report shall pay to the Treasurer, in addition to
26 interest as provided in subsection (a) of this section, a civil penalty of one thousand dollars
27 (\$1,000) for each day from the date a report under this Chapter was due, up to a maximum of
28 twenty-five thousand dollars (\$25,000), plus twenty-five percent (25%) of the value of any
29 property that should have been but was not reported.

30 (d) The Treasurer for good cause may waive, in whole or in part, interest under
31 subsection (a) of this section and penalties under subsection (b) and subsection (c1) of this
32 section."

33 **SECTION 2.(c)** This section becomes effective October 1, 2017, and applies to
34 property presumed abandoned on or after that date.

35 **SECTION 3.** G.S. 116B-52(11) reads as rewritten:

36 "(11) "Property" means (i) money or tangible personal property held by a holder
37 that is physically located in a safe deposit box or other safekeeping
38 depository held by a financial institution within this State or (ii) a fixed and
39 certain interest in intangible property or money that is held, issued, or owed
40 in the course of a holder's business, or by a government, governmental
41 subdivision, agency, or instrumentality, and all income or increments
42 therefrom. The term includes property that is referred to as or evidenced by:

- 43 a. Money, a check, draft, deposit, interest, or dividend;
- 44 b. Credit balance, customer's overpayment, gift certificate, security
45 deposit, refund, credit memorandum, unpaid wage, unused ticket,
46 mineral proceeds, or unidentified remittance;
- 47 c. ~~Stock~~-Security or other evidence of ownership of an interest in a
48 business association;
- 49 d. A bond, debenture, note, or other evidence of indebtedness;
- 50 e. Money deposited to redeem stocks, bonds, coupons, or other
51 securities, or to make distributions;

- 1 f. An amount due and payable under the terms of an annuity or
2 insurance policy, including policies providing life insurance,
3 property and casualty insurance, workers' compensation insurance, or
4 health and disability insurance; and
- 5 g. An amount distributable from a trust or custodial fund established
6 under a plan to provide health, welfare, pension, vacation, severance,
7 retirement, death, stock purchase, profit sharing, employee savings,
8 supplemental unemployment insurance, or similar benefits."

9 **SECTION 4.** G.S. 116B-53 reads as rewritten:

10 **"§ 116B-53. Presumptions of abandonment.**

11 (a) Property is unclaimed if the apparent owner has not communicated in writing or by
12 other means reflected in a contemporaneous record prepared by or on behalf of the holder, with
13 the holder concerning the property or the account in which the property is held, and has not
14 otherwise indicated an interest in the property. A communication with an owner by a person
15 (other than the holder or its representative) who has not, in writing, identified the property to
16 the owner is not an indication of interest in the property by the owner.

17 (b) An indication of an interest in property includes:

- 18 (1) The presentment of a check or other instrument of payment of a dividend or
19 other distribution made with respect to an account or underlying ~~stock~~
20 security or other interest in a business association or, in the case of a
21 distribution made by electronic or similar means, evidence that the
22 distribution has been received;
- 23 (2) The presentment of a check or other instrument of payment of interest made
24 with respect to debt of a business association or, in the case of an interest
25 payment made by electronic or similar means, evidence that the interest
26 payment has been received;
- 27 (3) Owner-directed activity in the account in which the property is held,
28 including a direction by the owner to increase, decrease, or change the
29 amount or type of property held in the account;
- 30 (4) The making of a deposit to or withdrawal from an account in a financial
31 organization;
- 32 (5) Owner activity in another account with the holder of a deposit described in
33 subdivisions (c)(2) and (c)(6) of this section; and
- 34 (6) The payment of a premium with respect to a property interest in an insurance
35 policy; but the application of an automatic premium loan provision or other
36 nonforfeiture provision contained in an insurance policy does not prevent a
37 policy from maturing or terminating if the insured has died or the insured or
38 the beneficiary of the policy has otherwise become entitled to the proceeds
39 before the depletion of the cash surrender value of a policy by the
40 application of those provisions.

41 (c) Property is presumed abandoned if it is unclaimed by the apparent owner during the
42 time set forth below for the particular property:

- 43 (1) Traveler's check, 15 years after issuance.
- 44 (2) Time deposit, including a deposit that is automatically renewable, 10 years
45 after the later of initial maturity or the date of the last indication by the
46 owner of interest in the property.
- 47 (3) Money order, cashier's check, teller's check, and certified check, seven years
48 after issuance.
- 49 (4) ~~Stock~~ A security or other equity interest in a business association, including
50 a security entitlement under Article 8 of the Uniform Commercial Code,
51 Chapter 25 of the General Statutes, three years after the earlier of:

- 1 a. The date of a cash dividend or other distribution unclaimed by the
2 apparent owner.
- 3 b. The date a second consecutive mailing, notification, or
4 communication from the holder to the apparent owner by first class
5 mail is returned to the holder as unclaimed by or undeliverable to the
6 apparent owner.
- 7 c. The date the holder discontinued mailings, notifications, or
8 communications to the apparent owner.

9 This subdivision applies to both the underlying ~~stock, security~~, share, or
10 other intangible ownership interest of an owner, and any ~~stock, security~~,
11 share, or other intangible interest of which the business association is in
12 possession of the certificate or other evidence or indicia of ownership, and to
13 the ~~stock, security~~, share, or other ownership interest of dividend and
14 nondividend paying business associations whether or not the interest is
15 represented by a certificate.

- 16 (5) Debt of a business association, including debt evidenced by a matured or
17 called bearer bond or an original issue discount bond, three years after the
18 date of an interest or principal payment unclaimed by the apparent owner.
- 19 (5a) Any dividend, profit, distribution, interest, redemption, payment on
20 principal, cash compensation (including amounts from a demutualized
21 insurance company), or other sum held or owing by a business association
22 for or to its shareholder, certificate holder, policyholder, member,
23 bondholder, or other security holder, who has not claimed it, or
24 corresponded in writing with the business association concerning it, within
25 three years after the date prescribed for payment or delivery.
- 26 (6) Demand or savings deposit, five years after the date of the last indication by
27 the owner of interest in the property.
- 28 (7) Money or credits owed to a customer as a result of a retail business
29 transaction, three years after the obligation accrued.
- 30 (8) Any gift certificate or electronic gift card bearing an expiration date and
31 remaining unredeemed or dormant for more than three years after the gift
32 certificate or electronic gift card was sold is deemed abandoned. The amount
33 abandoned is deemed to be sixty percent (60%) of the unredeemed portion of
34 the face value of the gift certificate or the electronic gift card.
- 35 (9) Amount owed by an insurer on a life or endowment insurance policy or an
36 annuity that has matured or terminated, three years after the obligation to
37 pay arose or, in the case of a policy or annuity payable upon proof of death,
38 three years after the insured has attained, or would have attained if living,
39 the limiting age under the mortality table on which the reserve is based.
- 40 (10) Property distributable by a business association in a course of dissolution,
41 one year after the property becomes distributable.
- 42 (11) Property received by a court as proceeds of a class action, and not distributed
43 pursuant to the judgment, one year after the distribution date.
- 44 (12) Property held by a court, government, governmental subdivision, agency, or
45 instrumentality, one year after the property becomes distributable.
- 46 (13) Wages or other compensation for personal services, one year after the
47 compensation becomes payable.
- 48 (14) Deposit or refund owed to a subscriber by a utility, one year after the deposit
49 or refund becomes payable.
- 50 (15) Property in an individual retirement account, defined benefit plan, or other
51 account or plan that is qualified for tax deferral under the income tax laws of

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

7 (16) All other property, five years after the owner's right to demand the property
8 or after the obligation to pay or distribute the property arises, whichever first
9 occurs.

10 (d) At the time that an interest in property is presumed abandoned under subsection (c)
11 of this section, any other property right accrued or accruing to the owner as a result of the
12 interest, and not previously presumed abandoned, is also presumed abandoned.

13 (e) Property is payable or distributable for purposes of this Chapter notwithstanding the
14 owner's failure to make demand or present an instrument or document otherwise required to
15 obtain payment or distribution, except as otherwise provided by the Uniform Commercial
16 Code."

17 **SECTION 5.** Except as otherwise provided, this act is effective when it becomes
18 law.