

CHAPTER 95**(HB 211)**

AN ACT relating to unclaimed property.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 393.010 is amended to read as follows:

- (1) As used in this chapter, unless the context requires otherwise:
 - (a) "Banking organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, or a private banker engaged in business in this state;
 - (b) "Business association" means any corporation, joint stock company, business trust, partnership, or any association for business purposes of two (2) or more individuals;
 - (c) "Financial organization" means any savings and loan association, building and loan association, credit union, cooperative bank, or investment company, engaged in business in this state;
 - (d) "Life insurance corporation" means any corporation or association transacting within this state the business of insurance on the lives of persons or insurance appertaining thereto, including, but not by way of limitation, endowments and annuities;
 - (e) "Claim" means to demand payment or surrender of property from the person whose duty it is to pay the claimant, or surrender to him the property involved;
 - (f) "Treasurer" means the State Treasurer;
 - (g) "Department" means the Department of the Treasury;
 - (h) "Person" means any individual, state or national bank, partnership, joint stock company, business, trust, association, corporation, or other form of business enterprise, including a receiver, trustee, or liquidating agent; **and**
 - (i) ***"Abandoned property fund" means the fund in which moneys are placed that are paid to the department pursuant to this chapter.***
- (2) This chapter does not apply to money, funds, or any other property held by or owing to any nonprofit, Internal Revenue Code Section 501(c)(3), tax-exempt hospital, or to bonds of counties, cities, school districts, or other tax-levying subdivisions of this state or to any money, funds, or other intangible property at any time held or owing for any minerals or other raw materials capable of being used for fuel in the course of manufacturing, processing, production, or mining, ***or to wages or salaries of fifty dollars (\$50) or less that are not claimed by an employee within one (1) year of the date the wages or salaries were earned.*** The provisions of this subsection shall be effective retroactively to all such moneys, funds, or other intangible property held or owing by any person on June 1, 1960, or thereafter.

Section 2. KRS 393.110 is amended to read as follows:

- (1) A holder of property presumed abandoned shall make an annual report to the department concerning the property. The report shall be filed on or before November 1 of each year and shall cover the twelve (12) months ending on July 1 of that year. All property so reported shall be turned over by November 1 to the department. The report shall be verified and shall include:

- (a) Except with respect to travelers' 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 of value of one hundred dollars (\$100) or more presumed abandoned under this chapter and in the case of unclaimed funds of life insurance corporations, the full name of the insured or annuitant and his last known address according to the records of the life insurance corporation;
- (b) 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 value under one hundred dollars (\$100) each may be reported in the aggregate. The holder of abandoned property shall maintain its records for a period of five (5) years from the date of its report for items reported in the aggregate. If the owner of property reported in the aggregate makes a valid claim within five (5) years, the holder shall refund the property and deduct the amount refunded from the next report due to the department;
- (c) The date when the property became payable, demandable, or returnable, and the date of the last known transaction with the owner with respect to the property if readily available; and
- (d) Any other information which the department prescribes by administrative regulations necessary for the administration of this chapter.

The report shall be *retained by the department. The department shall publish, in accordance with KRS Chapter 424, an annual advertisement listing the names of persons included in the report*~~made in duplicate; the original shall be retained by the department, and the copy shall be mailed to the sheriff of the county where the property is located or held. It shall be the duty of the sheriff to post for not less than twenty (20) consecutive days this copy on the courthouse door or the courthouse bulletin board, and also to publish the copy pursuant to KRS Chapter 424; except the sheriff shall not be required to publish any item with a fair cash value of one hundred dollars (\$100) or less. The list shall be published within thirty (30) days of its receipt by the sheriff and this publication shall constitute compliance with the requirements of KRS Chapter 424].~~ The cost of the publication shall be paid by the state. ~~The sheriff shall immediately certify in writing to the department the dates when the list was posted and published.]~~ The list shall be ~~posted and~~ published as required on or before October 1 *following*~~of~~ the year when it is made, and the ~~posting and~~ publishing shall be constructive notice to all interested parties.

- (2) The holder of property presumed abandoned shall send written notice to the apparent owner, not more than one hundred twenty (120) days or less than sixty (60) days before filing the report, stating that the holder is in possession of the property subject to this section; except the holder shall not be required to mail a notice to any apparent owner where the fair cash value of the property is one hundred dollars (\$100) or less. The notice shall contain:
 - (a) A statement that according to a report filed with the department properties are being held to which the addressee appears entitled;
 - (b) The name and address of the person holding the property and any necessary information regarding changes of name and address of the holder; and
 - (c) A statement that, if satisfactory proof of claim is not presented by the owner to the holder by the date specified in the published notice, the property will be placed in the custody of the department to whom all further claims must be directed.

- (3) Any person who has made a report of any estate or property presumed abandoned, as required by this chapter, shall, by November 1 of each year, turn over to the department all property so reported; but if the person making the report or the owner of the property shall certify to the department that any or all of the statutory conditions necessary to create a presumption of abandonment no longer exist or never did exist, or shall report the existence of any fact or circumstance which has a substantial tendency to rebut the presumption, then, the person reporting or holding the property shall not be required to turn the property over to the department except on order of court. If a person files an action in court claiming any property which has been reported under the provisions of this chapter, the person reporting or holding the property shall be under no duty while the action is pending to turn the property over to the department, but shall have the duty of notifying the department of the pendency of the action.
- (4) The person reporting or holding the property or any claimant of it shall always have the right to a judicial determination of his rights under this chapter, and nothing in this chapter shall be construed otherwise. The Commonwealth may institute an action to recover the property presumed abandoned, whether it has been reported or not, and may include in one (1) petition all the property within the jurisdiction of the court in which the action is brought if the property of different persons is set out in separate paragraphs.

Section 3. KRS 393.160 is amended to read as follows:

Any person dissatisfied with the decision of the State Treasurer *or whose claim has not been acted upon within ninety (90) days after its filing may request in writing an administrative hearing that shall be conducted in accordance with the provisions of KRS Chapter 13B*~~may, within sixty (60) days, appeal from it to the Franklin Circuit Court or file an action in that court to vacate the decision. In either event the proceedings shall be de novo, and no transcript of the record before the State Treasurer shall be required to be kept unless requested by the claimant. In the proceeding the State Treasurer shall be made a party defendant, and all other persons required by law to be made parties in actions in rem or quasi in rem shall be made parties. Any party adversely affected by the decision of the Franklin Circuit Court may appeal to the Court of Appeals in accordance with the Rules of Civil Procedure. Upon an appeal the state shall not be required to make a supersedeas bond. The provisions of this section relating to the decision of the State Treasurer and appeals therefrom shall also apply to a decision of the State Treasurer rendered under authority of KRS 393.110}.~~

Section 4. KRS 393.250 is amended to read as follows:

- (1) Any necessary expense required to be paid by the state in administering and enforcing this chapter shall be paid out of the abandoned property *fund*~~receipts}.~~
- (2) The county attorney shall act as agent of the department for the collection of all judgments recovered in actions prosecuted by him under this chapter. He shall promptly remit the judgment recovered to the department with the information relating thereto as the department requires.

Section 5. KRS 393.280 is amended to read as follows:

- (1) The department, through its employees, may at reasonable times and upon reasonable notice examine all relevant records of any person except any banking organization or financial organization where there is reason to believe that there has been or is a failure to report property that should be reported under this chapter during the preceding reporting period. Records shall be considered relevant to the examination of the preceding reporting period if

they document the period necessary, for that type of property, to establish presumed abandonment.

- (2) The Department of Financial Institutions may at reasonable times and upon reasonable notice examine all relevant records of any banking organization or financial organization if there is reason to believe that there has been or is a failure to report property that should be reported under this chapter during the preceding reporting period.
- (3) Documents and working papers obtained or compiled by the department or the Department of Financial Institutions in the course of conducting an examination are confidential and are not open records under KRS 61.870 to 61.884.
- (4) The State Treasurer may promulgate *administrative regulations pursuant to KRS Chapter 13A and* any reasonable and necessary rules for the enforcement of this chapter, and govern hearings held before him. He may delegate in writing to any ~~regular~~ employee of the department authority to perform any of the duties imposed on him by this chapter, except the promulgation of rules.

SECTION 6. A NEW SECTION OF KRS CHAPTER 393 IS CREATED TO READ AS FOLLOWS:

Unclaimed property payable or distributable in the course of a demutalization of an insurance company is presumed abandoned three (3) years after the earlier of the date of the last contact with the policyholder or the date the property became payable or distributable.

Section 7. KRS 393.020 is amended to read as follows:

If any property having a situs in this state has been devised or bequeathed to any person and is not claimed by that person or by his heirs, distributees, or devisees within **three (3)**~~seven (7)~~ years after the death of the testator, or if the owner of any property having a situs in this state dies without heirs or distributees entitled to it and without disposing of it by will, it shall vest in the state, subject to all legal and equitable demands. Any property abandoned by the owner, except a perfect title to a corporeal hereditament, shall vest in the state, subject to all legal and equitable demands. Any property that vests in the state under this section shall be liquidated, and the proceeds, less costs, fees, and expenses incidental to all legal proceedings of the liquidation shall be paid to the department.

Section 8. KRS 393.062 is amended to read as follows:

- (1) "Unclaimed funds," as used in this section, means all moneys held and owing by any life insurance corporation unclaimed and unpaid for more than **three (3)**~~seven (7)~~ years after the moneys became due and payable as established from the records of the corporation under any contract which has matured or terminated. A life insurance policy not matured by actual proof of the death of the insured is deemed to be matured and the proceeds thereof are deemed to be due and payable if such policy was in force when the insured attained the limiting age under the mortality table on which the reserve is based, unless the person appearing entitled thereto has within the preceding **three (3)**~~seven (7)~~ years, (a) assigned, readjusted, or paid premiums on the policy, or subjected the policy to loan, or (b) corresponded in writing with the life insurance corporation concerning the policy. Moneys otherwise payable according to the records of the corporation are deemed due and payable although the policy or contract has not been surrendered as required.
- (2) Unclaimed funds, as defined in this section, held and owing by a life insurance corporation shall be presumed abandoned if the last known address, according to the records of the

corporation, of the person entitled to the funds is within this state. If a person other than the insured or annuitant is entitled to the funds and no address of such person is known to the corporation or if it is not definite and certain from the records of the corporation what person is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of corporation.

Section 9. KRS 393.064 is amended to read as follows:

Except as provided in KRS 272.291, any stock or other certificate of ownership, or any dividend, profit, distribution, interest, payment, or 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 *three (3)*~~seven (7)~~ 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.

Section 10. KRS 393.066 is amended to read as follows:

All intangible personal property and any income or increment thereon, held in a fiduciary capacity for the benefit of another person is presumed abandoned unless the owner has, within *three (3)*~~seven (7)~~ years after it becomes payable or distributable, increased or decreased the principal, accepted payment of principal or income, corresponded in writing concerning the property, or otherwise indicated an interest as evidenced by a memorandum on file with the fiduciary:

- (1) If the property is held by a banking organization or a financial organization, or by a business association organized under the laws of or created in this state; or
- (2) If it is held by a business association doing business in this state, or any agent or fiduciary acting for or under contract with 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; or
- (3) If it is held in this state by any other person.

Section 11. KRS 393.080 is amended to read as follows:

The following funds held or owing are presumed abandoned:

- (1) Any deposit of money, stocks, bonds, or other credits made to secure payment for services rendered or to be rendered, or to guarantee the performance of services or duties, or to protect against damage or harm, and the increments thereof, unless claimed by the person entitled thereto within *three (3)*~~seven (7)~~ years after the occurrence of the event that would obligate the holder or depository to return it or its equivalent.
- (2) Except as provided in KRS 272.291, any sum which a public utility has been ordered to refund and which was received for utility services rendered in this state, together with any interest thereon, less any lawful deductions, that has remained unclaimed by the person

appearing on the records of the utility entitled thereto for more than **three (3)**~~seven (7)~~ years after the date it became payable in accordance with the final determination or order providing for the refund.

- (3) If there remains a total of one million dollars (\$1,000,000) or more in unclaimed sums one (1) year after a public utility refund became payable in accordance with the final determination or order providing for the refund, excepting sums that may eventually be claimed pursuant to KRS 272.291, and less any lawful deductions, the Finance and Administration Cabinet shall enter into an agreement or agreements with the public utility that will allow the public utility to pay the unclaimed sums, minus the exceptions noted above, to the Kentucky State Treasurer immediately if the Attorney General determines by written opinion that a reasonable relationship exists between the source of and reason for the refund, and the workers' compensation liability of a bankrupt employer who purportedly was self-insured, either individually or through a self-insurance group, under KRS Chapter 342. Payment of the unclaimed sums to the Kentucky State Treasurer shall constitute a complete release of the public utility from any further responsibility for the sums so paid, and from liability to any person who may have a claim to any of such sums.
- (4) The Kentucky Workers' Compensation Funding Commission shall preserve the rights of persons or ratepayers entitled to claim a refund under this section, and may utilize any funds available to the agency for the purpose of preserving those rights.

Section 12. KRS 393.090 is amended to read as follows:

Except as otherwise provided in KRS 393.010, all intangible property, not otherwise covered by this chapter, including any income or increment thereon and deducting any lawful charges, that is held or owing in this state by any person and has remained unclaimed by the owner for more than **three (3)**~~seven (7)~~ years after it became payable or distributable is presumed abandoned.

Approved March 18, 2003