

1 HOUSE BILL NO. 136
2 INTRODUCED BY M. BERTOGLIO
3 BY REQUEST OF THE DEPARTMENT OF REVENUE
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO UNCLAIMED PROPERTY;
6 PROVIDING DEFINITIONS; PROVIDING WHEN ADDITIONAL CATEGORIES OF PROPERTY ARE
7 PRESUMED ABANDONED; REQUIRING THE HOLDER OF CERTAIN ABANDONED PROPERTY TO
8 LIQUIDATE THE PROPERTY AND REMIT THE PROCEEDS TO THE DEPARTMENT OF REVENUE;
9 PROVIDING FOR AN UNCLAIMED PROPERTY WEBSITE TO BE RUN BY THE DEPARTMENT OF
10 REVENUE; PROVIDING FOR THE CONFIDENTIALITY OF PERSONAL INFORMATION; AND AMENDING
11 SECTIONS 70-9-801, 70-9-802, 70-9-803, 70-9-808, 70-9-809, 70-9-810, 70-9-812, 70-9-815, 70-9-820, 70-9-
12 827, AND 70-9-829, MCA."

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15
16 **Section 1.** Section 70-9-801, MCA, is amended to read:

17 **"70-9-801. Short title.** This part may be cited as the "Uniform Montana Revised Unclaimed Property
18 Act"."

19
20 **Section 2.** Section 70-9-802, MCA, is amended to read:

21 **"70-9-802. Definitions.** In this part, unless the context requires otherwise, the following definitions
22 apply:

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

24 (2) "Administrator's agent" means a person with which the administrator contracts to conduct an
25 examination under 70-9-820 on behalf of the administrator. The term includes an independent contractor
26 working for the person and each individual participating in the examination on behalf of the person or
27 contractor.

28 (2)(3) "Apparent owner" means a person whose name appears on the records of a holder as the

1 person entitled to property held, issued, or owing by the holder.

2 ~~(3)~~(4) "Business association" means a corporation, joint-stock company, investment company, other
3 than an investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 through
4 80a-64, as amended, partnership, unincorporated association, joint venture, limited liability company, business
5 trust, trust company, land bank, safe deposit company, safekeeping repository, financial organization, federally
6 chartered entity, insurance company, mutual fund, utility, sole proprietorship, or other business entity consisting
7 of one or more persons, whether or not for profit.

8 ~~(4)~~(5) "Domicile" means the state of incorporation of a corporation and the state of the principal place
9 of business of a holder other than a corporation.

10 ~~(6)~~ "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical,
11 electromagnetic, or similar capabilities.

12 ~~(7)~~ "Electronic mail" means a communication by electronic means that is automatically retained
13 and stored and may be readily accessed or retrieved.

14 ~~(5)~~(8) "Financial organization" means a savings and loan association, bank, banking organization, or
15 credit union.

16 ~~(9)~~ "Game-related digital content" means digital content that exists only in an electronic game or
17 an electronic game platform. The term includes:

18 ~~(a)~~ game-play currency, such as a virtual wallet, even if it is denominated in United States
19 currency; and

20 ~~(b)~~ the following, if for use or redemption only within the electronic game or the electronic game
21 platform or another electronic game or electronic game platform:

22 ~~(i)~~ points, sometimes referred to as gems, tokens, gold, or similar names; and

23 ~~(ii)~~ digital codes.

24 ~~(c)~~ The term does not include an item that the issuer permits to be redeemed for use outside of an
25 electronic game or an electronic game platform for money or goods or services that have more than minimal
26 value or otherwise monetizes for use outside of an electronic game or an electronic game platform.

27 ~~(6)~~(10) "Gift certificate" has the meaning provided in 30-14-102.

28 ~~(7)~~(11) "Holder" means a person obligated to hold for the account of, or deliver or pay to, the owner

1 property that is subject to this part.

2 ~~(8)~~(12) "Insurance company" means an association, corporation, or fraternal or mutual benefit
3 organization, whether or not for profit, engaged in the business of providing life endowments, annuities, or
4 insurance, including accident, burial, casualty, credit life, contract performance, dental, disability, fidelity, fire,
5 health, hospitalization, illness, life, malpractice, marine, mortgage, surety, wage protection, and workers'
6 compensation insurance.

7 (13) (a) "Loyalty card" means a record given without direct monetary consideration under an award,
8 reward, benefit, loyalty, incentive, rebate, or promotional program that may be used or redeemed only to obtain
9 goods or services or a discount on goods or services.

10 (b) The term does not include a record that may be redeemed for money or otherwise monetized
11 by the issuer.

12 ~~(9)~~(14) "Mineral" means gas; oil; coal; other gaseous, liquid, and solid hydrocarbons; oil shale; cement
13 material; sand and gravel; road material; building stone; chemical raw material; gemstone; fissionable and
14 nonfissionable ores; colloidal and other clay; steam and other geothermal resource; or any other substance
15 defined as a mineral by the law of this state.

16 ~~(40)~~(15) "Mineral proceeds" means amounts payable for the extraction, production, or sale of minerals
17 or, upon the abandonment of those payments, all payments that become payable after abandonment. The term
18 includes amounts payable:

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

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

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

25 ~~(14)~~(16) (a)"Money order" means a payment order for a specified amount of money. The term includes
26 an express money order and a personal money order, on which the remitter is the purchaser.

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

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1 (17) "Municipal bond" means a bond or evidence of indebtedness issued by a municipality or other
2 political subdivision of a state.

3 ~~(12)~~(18) "Owner" means a person who has a legal or equitable interest in property subject to this part
4 or the person's legal representative. The term includes a depositor in the case of a deposit, a beneficiary in the
5 case of a trust other than a deposit in trust, and a creditor, claimant, or payee in the case of other property, and
6 the lawful bearer of a record that may be used to obtain money, a reward, or a thing of value.

7 ~~(13)~~(19) "Person" means an individual, business association, financial organization, estate, trust,
8 government, governmental subdivision, agency, or instrumentality or any other legal or commercial entity,
9 whether or not for profit.

10 (20) "Personal information" means:

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

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

14 (ii) date of birth;

15 (iii) home or physical address;

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

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

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

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

20 (b) personally identifiable financial or insurance information, including nonpublic personal

21 information defined by applicable federal law.

22 ~~(14)~~(21) (a) "Property" means tangible property described in 70-9-804 or a fixed and certain interest in
23 intangible property that is held, issued, or owed in the course of a holder's business or, except as provided in
24 subsection ~~(14)(b)~~ (21)(b), by a government, governmental subdivision, agency, or instrumentality and all
25 income or increments from the property. The term includes property that is referred to as or evidenced by:

26 (i) money, virtual currency, check, draft, deposit, interest, or dividend;

27 (ii) credit balance, customer's overpayment, gift certificate, security deposit, refund, credit

28 memorandum, unpaid wage, unused ticket for which the issuer has an obligation to provide a refund, mineral

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1 proceeds, or unidentified remittance;

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

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

5 (v) money deposited to redeem stocks, bonds, coupons, or other securities or to make
6 distributions, except for a worthless security or a security that is subject to a lien, legal hold, or restriction
7 evidenced on the records of the holder or imposed by operation of law, if the lien, legal hold, or restriction
8 restricts the holder's or owner's ability to receive, transfer, sell, or otherwise negotiate the security;

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

12 (vii) an amount distributable from a trust or custodial fund that is established under a plan to provide
13 health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee
14 savings, supplemental unemployment insurance, or similar benefits.

15 (b) The term does not include:

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

17 (ii) property that is held by a state government entity or a political subdivision of state government;

18 (iii) property held in state and local government-sponsored retirement plans governed by Title 19;

19 (ii)(iv) property held in a plan as described in section 529A of the Internal Revenue Code, 26 U.S.C.

20 529A, as amended;

21 (iii)(v) game-related digital content;

22 (iv)(vi) a loyalty card; or

23 (v)(vii) an in-store credit for returned merchandise.

24 ~~(15)(22)~~ "Record" means information that is inscribed on a tangible medium or that is stored in an
25 electronic or other medium and that is retrievable in perceivable form.

26 (23) "Security" means:

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

28 (b) a security entitlement as defined in 30-8-112, including a customer security account held by a

- 1 registered broker-dealer, to the extent the financial assets held in the security account are not:
2 (i) registered on the books of the issuer in the name of the person for which the broker-dealer
3 holds the assets;
4 (ii) payable to the order of the person; or
5 (iii) specifically indorsed to the person; or
6 (c) an equity interest in a business association not included in subsection (23)(a) or (23)(b).

7 (24) "Sign" means, with present intent to authenticate or adopt a record:

- 8 (a) to execute or adopt a tangible symbol; or
9 (b) to attach to or logically associate with the record an electronic symbol, sound, or process.

10 ~~(16)~~(25) "State" means a state of the United States, the District of Columbia, the Commonwealth of
11 Puerto Rico, or any territory or insular possession that is subject to the jurisdiction of the United States.

12 ~~(17)~~(26) "Utility" means a person who owns or operates for public use any plant, equipment, real
13 property, franchise, or license for the transmission of communications or the production, storage, transmission,
14 sale, delivery, or furnishing of electricity, water, steam, or gas.

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

17 (b) The term does not include:

- 18 (i) the software or protocols governing the transfer of the digital representation of value;
19 (ii) game-related digital content; or
20 (iii) a loyalty card.

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

23

24 **Section 3.** Section 70-9-803, MCA, is amended to read:

25 **"70-9-803. Presumptions of abandonment.** (1) Except as provided in subsection (6), property is
26 presumed abandoned if it is unclaimed by the apparent owner during the time set forth below for the particular
27 property:

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

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

2 ~~(c) stock or other equity interest in a business association or financial organization, including a~~
3 ~~security entitlement under Title 30, chapter 8, 5 years after the earlier of:~~

4 ~~(i) the date of the most recent dividend, stock split, or other distribution that was unclaimed by the~~
5 ~~apparent owner; or~~

6 ~~(ii) the date of the second mailing of a statement of account or other notification or communication~~
7 ~~that was returned as undeliverable or after the holder discontinued mailings, notifications, or communications to~~
8 ~~the apparent owner;~~

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

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

17 ~~(f)(e)~~ money or credits owed to a customer as a result of a retail business transaction, other than in-
18 store credit for returned merchandise, 3 years after the obligation accrued;

19 ~~(g)(f)~~ gift certificate, 3 years after December 31 of the year in which the certificate was sold, but if
20 redeemable in merchandise only, the amount abandoned is considered to be 60% of the certificate's face value.

21 A gift certificate is not presumed abandoned if the gift certificate was sold by a person who in the past fiscal
22 year sold no more than \$200,000 in gift certificates, which amount must be adjusted by November of each year
23 by the inflation factor. The amount considered abandoned for a person who sells more than the amount that
24 triggers presumption of abandonment is the value of gift certificates greater than that trigger. However, an
25 issuer that has reported and remitted to the administrator the amount abandoned under this section shall honor
26 the card on presentation indefinitely and may then request reimbursement from the administrator under 70-9-
27 811.

28 ~~(h)(g)~~ amount that is owed by an insurer on a life or endowment insurance policy or an annuity that

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1 has matured or terminated, 3 years after the obligation to pay arose or, in the case of a policy or annuity
2 payable upon ~~on~~ proof of death, 3 years after the insured has attained, or would have attained if living, the
3 limiting age under the mortality table on which the reserve is based has not matured by proof of the death of the
4 insured or annuitant, as follows:

5 (i) with respect to an amount owed on a life or endowment insurance policy, 3 years after the
6 earlier of the date:

7 (A) the insurance company has knowledge of the death of the insured; or

8 (B) the insured has attained, or would have attained if living, the limiting age under the mortality
9 table on which the reserve for the policy is based; and

10 (ii) with respect to an amount owed on an annuity contract, 3 years after the death of the
11 annuitant;

12 ~~(j)(h)~~ property distributable by a business association or financial organization in a course of
13 dissolution, 1 year after the property becomes distributable;

14 ~~(j)(i)~~ property received by a court as proceeds of a class action and not distributed pursuant to the
15 judgment, 1 year after the distribution date;

16 ~~(k)(j)~~ property held by a court, government, governmental subdivision, agency, or instrumentality, 1
17 year after the property becomes distributable;

18 ~~(j)(k)~~ wages, compensation, bonuses, reimbursements, or other compensation for personal services,
19 1 year after the compensation becomes payable;

20 ~~(m)(l)~~ deposit or refund owed to a subscriber by a utility, 1 year after the deposit or refund becomes
21 payable;

22 ~~(n)~~ property in an individual retirement account, defined benefit plan, or other account or plan that
23 is qualified for tax deferral under the income tax laws of the United States, 3 years after the earliest of the date
24 of the distribution or attempted distribution of the property, the date of the required distribution as stated in the
25 plan or trust agreement governing the plan, or the date, if determinable by the holder, specified in the income
26 tax laws of the United States by which distribution of the property must begin in order to avoid a tax penalty;

27 ~~(o)(m)~~ a patronage refund owed to a member of a rural electric or telephone cooperative organized
28 under Title 35, chapter 18, that is not used by the cooperative for educational purposes, 5 years after the

1 distribution date;

2 ~~(p)(n)~~ an unclaimed share in a cooperative that is not used for charitable or civic purposes in the
3 community in which the cooperative is located, 5 years after the distribution date; ~~and~~

4 ~~(e)(o)~~ a state or municipal bond, bearer bond, or original issue discount bond, 3 years after the
5 earliest of the date the bond matures or is called or the obligation to pay the principal of the bond arises;

6 ~~(f)(p)~~ funds on deposit or held in trust for the prepayment of a funeral or other funeral-related
7 expenses, 3 years after the death of the beneficiary;

8 ~~(e)(g)~~ property held in a pension account or retirement account that qualifies for tax deferral under the
9 income tax laws of the United States, as provided in [section 12];

10 ~~(t)(r)~~ except for property described in [section 12] and property held in a plan described in section
11 529A of the Internal Revenue Code, 26 U.S.C. 529A, as amended, property held in an account or plan,
12 including a health savings account, that qualifies for tax deferral under the income tax laws of the United States,
13 as provided in [section 13];

14 ~~(u)(s)~~ property held in an account established under a state's Uniform Gifts to Minors Act or Uniform
15 Transfers to Minors Act is presumed abandoned if it is unclaimed by or on behalf of the minor on whose behalf
16 the account was opened, as provided in [section 14];

17 ~~(v)(t)~~ a security, as provided in [section 15]; and

18 ~~(q)(w)(u)~~ all other property, 5 3 years after the owner's right to demand the property or after the
19 obligation to pay or distribute the property arises, whichever first occurs.

20 (2) At the time that an interest is presumed abandoned under subsection (1), any other property
21 right accrued or accruing to the owner as a result of the interest, and not previously presumed abandoned, is
22 also presumed abandoned.

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

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

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

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

8 (c) the owner-directed activity of making a deposit to or withdrawal from an account in a
9 financial organization, including an automatic deposit or withdrawal previously authorized by the apparent
10 owner other than an automatic reinvestment of dividends or interest; and

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

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

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

20 (6) The presumption provided in subsection (1) does not apply to:

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

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

25 (7) For the purposes of this section, "inflation factor" means a number determined for each tax
26 year by dividing the consumer price index for June of the previous tax year by the consumer price index for
27 June 2015."

28

1 circulation in the county in which the property is to be sold on the unclaimed property website maintained by the
2 administrator.

3 ~~(2) Securities listed on an established stock exchange must be sold at prices prevailing on the~~
4 ~~exchange at the time of sale. Other securities may be sold over the counter at prices prevailing at the time of~~
5 ~~sale or by any reasonable method selected by the administrator. If securities are sold by the administrator~~
6 ~~before the expiration of 3 years after their delivery to the administrator, a person making a claim under this part~~
7 ~~before the end of the 3-year period is entitled to the proceeds of the sale of the securities or the market value of~~
8 ~~the securities at the time the claim is made, whichever is greater, plus dividends, interest, and other increments~~
9 ~~up to the time the claim is made, less any deduction for expenses of sale. A person making a claim under this~~
10 ~~part after the expiration of the 3-year period is entitled to receive the securities delivered to the administrator by~~
11 ~~the holder, if they still remain in the custody of the administrator, or the net proceeds received from sale and is~~
12 ~~not entitled to receive any appreciation in the value of the property occurring after delivery to the administrator~~
13 ~~except in a case of intentional misconduct or malfeasance by the administrator.~~

14 ~~(3)(2)~~ A purchaser of property at a sale conducted by the administrator pursuant to this part takes the
15 property free of all claims of the owner or previous holder and of all persons claiming through or under them.
16 The administrator shall execute all documents necessary to complete the transfer of ownership."
17

18 **Section 8.** Section 70-9-815, MCA, is amended to read:

19 **"70-9-815. Filing claim with administrator -- handling of claims by administrator.** (1) A person,
20 excluding another state, claiming property paid or delivered to the administrator may file a claim on a form
21 prescribed by the administrator and verified by the claimant.

22 (2) Within 90 days after a claim is filed, the administrator shall allow or deny the claim and give
23 written notice of the decision to the claimant. If the claim is denied, the administrator shall inform the claimant of
24 the reasons for the denial and specify what additional evidence is required before the claim will be allowed. The
25 claimant may then file a new claim with the administrator or maintain an action under 70-9-816.

26 (3) Within 30 days after a claim is allowed, the property or the net proceeds of a sale of the
27 property must be delivered or paid by the administrator to the claimant, ~~together with any dividend, interest, or~~
28 ~~other increment to which the claimant is entitled under 70-9-812.~~

1 ~~(4) — A holder that pays the owner for property that has been delivered to the state and that, if~~
2 ~~claimed from the administrator by the owner, would be subject to an increment under 70-9-812 may recover~~
3 ~~from the administrator the amount of the increment."~~

4
5 **Section 9.** Section 70-9-820, MCA, is amended to read:

6 **"70-9-820. Requests for reports and, examination of records, and confidentiality.** (1) The
7 administrator may require a person that has not filed a report or a person that the administrator believes has
8 filed an inaccurate, incomplete, or false report to file a verified report in a form specified by the administrator.
9 The report must state whether the person is holding property reportable under this part, describe property not
10 previously reported or as to which the administrator has made inquiry, and specifically identify and state the
11 amounts of property that may be in issue.

12 (2) The administrator, at reasonable times and upon reasonable notice, may examine the records
13 of any person to determine whether the person has complied with this part. The administrator may conduct the
14 examination even if the person believes it is not in possession of any property that must be reported, paid, or
15 delivered under this part. The administrator may contract with any other person to conduct the examination on
16 behalf of the administrator.

17 (3) The administrator, at reasonable times, may examine the records of an agent, including a
18 dividend disbursing agent or transfer agent, of a business association or financial organization that is the holder
19 of property presumed abandoned if the administrator has given the notice required by subsection (2) to both the
20 association or organization and the agent at least 90 days before the examination.

21 (4) Documents and working papers obtained or compiled by the administrator, or the
22 administrator's agents, employees, or designated representatives, in the course of conducting an examination
23 and personal information obtained from a holder's reports, except for the personal information published
24 pursuant to 70-9-810, are confidential and are not public records, but the documents and papers may be:

25 (a) used by the administrator in the course of an action to collect unclaimed property or otherwise
26 enforce this part;

27 (b) used in joint examinations conducted with or pursuant to an agreement with another state, the
28 federal government, or any other governmental subdivision, agency, or instrumentality;