

CHAPTER 141

PROPERTY

SENATE BILL 95-008

BY SENATORS Rizzuto, Alexander, Bishop, Blickensderfer, Dennis, Hopper, Johnson, Lacy, Matsunaka, Mutzebaugh, Norton, Perlmutter, L. Powers, Schroeder, Tebedo, and Wells;
also REPRESENTATIVES Owen, Berry, Agler, Dean, and Taylor.

AN ACT

CONCERNING THE REMITTANCE OF PROPERTY TO THE STATE UNDER THE "UNCLAIMED PROPERTY ACT".

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 24-30-202 (9), Colorado Revised Statutes, 1988 Repl. Vol., is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

24-30-202. Procedures - vouchers and warrants - rules - penalties. (9) (c) IN THE EVENT OF ANY CONFLICT BETWEEN THIS SUBSECTION (9) AND ANY PROVISION OF THE "UNCLAIMED PROPERTY ACT", ARTICLE 13 OF TITLE 38, C.R.S., THE PROVISIONS OF THE "UNCLAIMED PROPERTY ACT" SHALL CONTROL; EXCEPT THAT THIS SUBSECTION (9) SHALL CONTROL WITH REGARD TO:

(I) A TAX WARRANT;

(II) A WARRANT DRAWN ON A FUND CONTAINING MONEYS THAT, BY LAW, DO NOT REVERT TO THE GENERAL FUND OF THE STATE; AND

(III) THAT PORTION OF A WARRANT REPRESENTING MONEYS RECEIVED FROM THE FEDERAL GOVERNMENT.

SECTION 2. 38-13-102, Colorado Revised Statutes, 1982 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

38-13-102. Definitions and use of terms. As used in this article, unless the context otherwise requires:

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(7.5) "ITEM" MEANS:

(a) IN REGARD TO INTANGIBLE PROPERTY, THE TOTAL OF ALL ACCOUNTS, CREDIT BALANCES, DEPOSITS, OR OTHER FORMS OF INTANGIBLE PROPERTY HELD UNDER THE NAME OF ANY ONE APPARENT OWNER; EXCEPT THAT, IF THE SAME APPARENT OWNER OWNS INTANGIBLE PROPERTY OF DIFFERENT TYPES OR CLASSES THAT CANNOT PRACTICABLY BE HANDLED OR ACCOUNTED FOR AT THE SAME TIME OR IN THE SAME WAY, EACH SUCH TYPE OR CLASS MAY BE CONSIDERED A SEPARATE ITEM;

(b) IN REGARD TO TANGIBLE PERSONAL PROPERTY, THE TOTAL OF ALL SUCH PROPERTY HELD UNDER THE NAME OF ANY ONE APPARENT OWNER.

SECTION 3. 38-13-110 (1), the introductory portion to 38-13-110 (2), and 38-13-110 (4) (d), (4) (e), and (6) (a), Colorado Revised Statutes, 1982 Repl. Vol., as amended, are amended to read:

38-13-110. Report and payment or delivery of abandoned property. (1) (a) A person holding property, tangible or intangible, presumed abandoned and subject to custody as unclaimed property under this article shall report to the administrator concerning the property as provided in this section.

(b) IF A PERSON IS NOT SUBJECT TO THE REQUIREMENTS OF THIS SUBSECTION (1) BECAUSE THE PERSON DOES NOT HOLD ANY PROPERTY, TANGIBLE OR INTANGIBLE, PRESUMED ABANDONED UNDER THIS ARTICLE OR THE PERSON MEETS THE CRITERIA ESTABLISHED IN PARAGRAPH (e) OF SUBSECTION (4) OF THIS SECTION, THE PERSON SHALL NOT BE REQUIRED TO NOTIFY THE ADMINISTRATOR OF THE PERSON'S EXEMPTION FROM THIS SUBSECTION (1).

(2) The report must ~~be verified and~~ must include:

(4) (d) Notwithstanding the provisions of paragraph (a) of this subsection (4), the public employees' retirement association shall file an initial report on or before June 1, 1992. ~~pursuant to the provisions of section 38-13-112.5 (1):~~ The public employees' retirement association shall file subsequent reports in conformance with the requirements of paragraph (a) of this subsection (4) on or before November 1, 1993, and on or before November 1 of each year thereafter.

(e) (I) Any business association with annual gross receipts of less than five hundred thousand dollars that holds property, tangible or intangible, ~~of~~ ACQUIRED DURING THE IMMEDIATELY PRECEDING FIVE-YEAR PERIOD OF AN AGGREGATE value under THREE THOUSAND five hundred dollars shall not be subject to the requirements of paragraph (a) of this subsection (4) and section 38-13-112 until such time as the aggregate value of such property ACQUIRED DURING THE IMMEDIATELY PRECEDING FIVE-YEAR PERIOD exceeds THREE THOUSAND five hundred dollars; EXCEPT THAT, IF ANY SUCH BUSINESS ASSOCIATION HOLDS AN ITEM OF PROPERTY OF ANY ONE APPARENT OWNER ACQUIRED DURING SUCH PERIOD OF AN AGGREGATE VALUE OVER TWO HUNDRED FIFTY DOLLARS, SUCH BUSINESS ASSOCIATION SHALL REPORT AND PAY OR DELIVER SUCH PROPERTY TO THE ADMINISTRATOR IN ACCORDANCE WITH PARAGRAPH (a) OF THIS SUBSECTION (4) AND SECTION 38-13-112.

(II) ANY ORGANIZATION EXEMPT FROM TAXATION UNDER SECTION 501 (c) (3) OF

THE FEDERAL "INTERNAL REVENUE CODE OF 1986", 26 U.S.C. 501 (c) (3), OR ITS SUCCESSOR STATUTE, THAT RECEIVES CONTRIBUTIONS TOTALLING ONE MILLION DOLLARS OR MORE ANNUALLY AND THAT HOLDS PROPERTY, TANGIBLE OR INTANGIBLE, ACQUIRED DURING THE IMMEDIATELY PRECEDING FIVE-YEAR PERIOD OF AN AGGREGATE VALUE UNDER THREE THOUSAND FIVE HUNDRED DOLLARS SHALL NOT BE SUBJECT TO THE REQUIREMENTS OF PARAGRAPH (a) OF THIS SUBSECTION (4) AND SECTION 38-13-112 UNTIL SUCH TIME AS THE AGGREGATE VALUE OF SUCH PROPERTY ACQUIRED DURING THE IMMEDIATELY PRECEDING FIVE-YEAR PERIOD EXCEEDS THREE THOUSAND FIVE HUNDRED DOLLARS; EXCEPT THAT, IF ANY SUCH ORGANIZATION HOLDS AN ITEM OF PROPERTY OF ANY ONE APPARENT OWNER ACQUIRED DURING SUCH PERIOD OF AN AGGREGATE VALUE OVER TWO HUNDRED FIFTY DOLLARS, SUCH ORGANIZATION SHALL REPORT AND PAY OR DELIVER SUCH PROPERTY TO THE ADMINISTRATOR IN ACCORDANCE WITH PARAGRAPH (a) OF THIS SUBSECTION (4) AND SECTION 38-13-112.

(III) ANY ORGANIZATION EXEMPT FROM TAXATION UNDER SECTION 501 (c) (3) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", 26 U.S.C. 501 (c) (3), OR ITS SUCCESSOR STATUTE, THAT RECEIVES CONTRIBUTIONS TOTALLING LESS THAN ONE MILLION DOLLARS ANNUALLY SHALL NOT BE SUBJECT TO THE REQUIREMENTS OF PARAGRAPH (a) OF THIS SUBSECTION (4) AND SECTION 38-13-112.

~~(6) (a) Notwithstanding the provisions of subsection (5) of this section, the public employees' retirement association shall not be required to send a written notice to the apparent owners of property which is presumed abandoned prior to the filing of the initial report of the public employees' retirement association pursuant to the provisions of section 38-13-112.5 (1).~~

SECTION 4. 38-13-111 (1), (2) (c) (II), and (4), Colorado Revised Statutes, 1982 Repl. Vol., as amended, are amended to read:

38-13-111. Notice and publication of lists of abandoned property. (1) The administrator shall cause a notice to be published not later than March 1 of the year immediately following the report required by section 38-13-110 ~~or section 38-13-112.5~~; or, in the case of property reported by life insurance companies, not later than September 1 of the year of the report required by section 38-13-110, at least once a week for two consecutive weeks in a newspaper of general circulation in the county of this state in which is located the last-known address of any person to be named in the notice. If no address is listed or the address is outside this state, the notice must be published in the county in which the holder of the property has its principal place of business within this state.

(2) The published notice must be entitled "Notice of Names of Persons Appearing to be Owners of Abandoned Property" and must contain:

~~(c) (II) The published notice regarding the property listed in the initial report filed by the public employees' retirement association pursuant to the provisions of section 38-13-112.5 shall contain a statement indicating that the property has been placed in the custody of the administrator and that all further claims to such property must be directed to the administrator.~~

(4) Not later than March 1 of the year immediately following the report required

by section 38-13-110 ~~or section 38-13-112.5~~, or, in the case of property reported by life insurance companies, not later than September 1 of the year of the report required by section 38-13-110, the administrator shall mail a notice to each person whose last-known address is listed in the report and who appears to be entitled to property of the value of fifty dollars or more presumed abandoned under this article and any beneficiary of a life or endowment insurance policy or annuity contract for whom the administrator has a last-known address.

SECTION 5. 38-13-112, Colorado Revised Statutes, 1982 Repl. Vol., as amended, is amended to read:

38-13-112. Payment or delivery of abandoned property to the administrator.

(1) (a) Except as otherwise provided in subsection (2) of this section, a person who is required to file a report under section 38-13-110 shall pay or deliver to the administrator all abandoned property required to be reported at the time such report is filed.

(b) (I) A holder may VOLUNTARILY, prior to payment or delivery of said abandoned property, deduct and retain two percent of the value of the property or twenty-five dollars whichever is ~~less~~ MORE PER ITEM.

(II) HOLDERS THAT ARE BANKING OR FINANCIAL ORGANIZATIONS AND HOLDERS OF DIVIDENDS, ROYALTIES, OR OTHER ITEMS THAT ARE BACKED BY AN UNDERLYING SHARE, INTEREST, INSURANCE POLICY, OR ANNUITY CONTRACT MAY VOLUNTARILY, PRIOR TO PAYMENT OR DELIVERY OF SAID ABANDONED PROPERTY, DEDUCT AND RETAIN TWO PERCENT OF THE VALUE OF THE PROPERTY OR TWENTY-FIVE DOLLARS, WHICHEVER IS MORE PER ITEM; EXCEPT THAT, IF THE ABANDONED PROPERTY IS A DEMAND, SAVINGS, OR MATURED TIME DEPOSIT OR FUNDS HELD OR OWING UNDER AN INSURANCE POLICY OR ANNUITY CONTRACT, THE HOLDER MAY DEDUCT AND RETAIN TWO PERCENT OF THE VALUE OF THE PROPERTY OR TWENTY-FIVE DOLLARS, WHICHEVER IS LESS.

(c) A holder may also deduct any sum due and owing from the value of the property prior to delivery.

(2) (a) If the owner establishes the right to receive the abandoned property to the satisfaction of the holder before the property has been delivered or if it appears that for some other reason the presumption of abandonment is erroneous, the holder need not pay or deliver the property to the administrator, and the property will no longer be presumed abandoned. In that case, the holder shall file with the administrator a ~~verified~~ written explanation of the proof of claim or of the error in the presumption of abandonment.

(b) ~~Notwithstanding the provisions of subsection (1) of this section, the initial payment or delivery of abandoned property by the public employees' retirement association to the administrator shall be governed by the provisions of section 38-13-112.5 (2).~~ The provisions of subsection (1) of this section shall apply to any payment or delivery of abandoned property by the public employees' retirement association if such property was included in a report required to be filed by the public employees' retirement association on or before November 1, 1993, or on or before November 1 of any succeeding year.

SECTION 6. 38-13-112.5, Colorado Revised Statutes, 1982 Repl. Vol., as amended, is repealed as follows:

38-13-112.5. Public employees' retirement association - initial report of abandoned property - payment of moneys. ~~(1) The public employees' retirement association shall file its initial report of abandoned property with the administrator on or before June 1, 1992. Such report shall be in such form as is required by section 38-13-110 and shall contain information relating to any property held by the public employees' retirement association which was unclaimed for more than five years on November 1, 1991.~~

~~(2) Except as otherwise provided in section 38-13-112 (2) (a), the public employees' retirement association shall pay or deliver to the administrator on or before September 1, 1992, all abandoned property required to be reported by the provisions of subsection (1) of this section. The public employees' retirement association may, prior to payment or delivery of said abandoned property, deduct and retain two percent of the value of the property or twenty-five dollars, whichever is less. The public employees' retirement association may also deduct any sum due and owing from the value of the property prior to payment or delivery.~~

SECTION 7. 38-13-116 (3) (b), Colorado Revised Statutes, 1982 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBPARAGRAPH to read:

38-13-116. Creation of funds - repeal. (3) (b) (III) THE ADMINISTRATOR SHALL CALCULATE THE EFFECT OF ANY INCREASE IN THE SCOPE, COVERAGE, OR DOLLAR AMOUNT OF THE DE MINIMIS EXEMPTION PROVIDED FOR IN SECTION 38-13-110 (4) (e) OCCURRING ON OR AFTER JUNE 30, 1995, AND SHALL ADJUST THE AMOUNTS PAYABLE INTO THE SPECIAL FUND FOR INDUSTRIAL BANK MONEYS AND THE COLORADO UNINSURABLE HEALTH INSURANCE PLAN CASH FUND ACCORDINGLY SO AS TO RESULT IN NO NET LOSS TO SUCH FUNDS AS A RESULT OF SUCH INCREASE.

SECTION 8. 38-13-116 (4) (a), Colorado Revised Statutes, 1982 Repl. Vol., as amended, is amended to read:

38-13-116. Creation of funds - repeal. (4) (a) There is hereby created in the state treasury a fund to be known as the business associations unclaimed moneys fund. Moneys collected by the administrator under this article as a result of payment or delivery to the administrator of amounts due and payable by business associations, except moneys collected pursuant to sections 38-13-105, 38-13-106, 38-13-107, ~~38-13-108, 38-13-109, 38-13-108, 38-13-108.5, 38-13-109, 38-13-109.5, and 38-13-112.5~~, shall be credited to the business associations unclaimed moneys fund and are appropriated to the administrator for payment of claims as provided in this section. THE ADMINISTRATOR SHALL DETERMINE AN APPROPRIATE AMOUNT OF MONEYS TO BE MAINTAINED in the business associations unclaimed moneys fund FOR PAYMENT OF CLAIMS AS PROVIDED IN THIS SECTION, AND THE MONEYS MAINTAINED IN THE FUND shall not revert to the general fund at the end of any fiscal year. MONEYS IN THE BUSINESS ASSOCIATIONS UNCLAIMED MONEYS FUND RECEIVED IN EXCESS OF THAT REQUIRED BY THIS PARAGRAPH (a) TO BE MAINTAINED IN THE FUND AND THAT REQUIRED BY PARAGRAPH (b) OF THIS SUBSECTION (4) TO BE TRANSFERRED TO THE COLORADO UNINSURABLE HEALTH INSURANCE PLAN CASH FUND SHALL BE CREDITED TO THE GENERAL FUND.

SECTION 9. 38-13-120 (1), Colorado Revised Statutes, 1982 Repl. Vol., as amended, is amended to read:

38-13-120. Election to take payment or delivery. (1) The administrator may decline to receive any property reported under this article ~~which he~~ THAT THE ADMINISTRATOR considers to have a value less than the expense of giving notice and of sale. If the administrator elects not to receive custody of the property, the holder shall be notified within one hundred twenty days after filing the report required under section 38-13-110. ~~If the administrator elects not to receive any property reported by the public employees' retirement association pursuant to the provisions of section 38-13-112.5 (1), the administrator shall provide notice to the public employees' retirement association on or before August 1, 1992, concerning the identity of any property that the administrator is declining to receive.~~

SECTION 10. 38-13-123 (1) and (5), Colorado Revised Statutes, 1982 Repl. Vol., as amended, are amended to read:

38-13-123. Requests for reports and examination of records. (1) The administrator may require any person who has not filed a report to file a ~~verified report~~ ONE stating whether or not the person is holding any unclaimed property reportable or deliverable under this article.

(5) On or after July 1, 1987, if a holder fails to maintain records in existence on or after July 1, 1987, that are required by section 38-13-124 and, in addition, if the records of the holder available for the periods subject to this article are insufficient to permit the preparation of a report pursuant to section 38-13-110, ~~or section 38-13-112.5~~; then the administrator may require the holder to report and pay such amounts as may reasonably be estimated from any available records.

SECTION 11. 38-13-124 (1), Colorado Revised Statutes, 1982 Repl. Vol., as amended, is amended to read:

38-13-124. Retention of records. (1) Every holder required to file a report under section 38-13-110, ~~or section 38-13-112.5~~; as to any property for which it has obtained the last-known address of the owner, shall maintain a record of the name and last-known address of the owner for five years after the property becomes reportable, except to the extent that a shorter time is provided in subsection (2) of this section or by rule of the administrator.

SECTION 12. 38-13-128, Colorado Revised Statutes, 1982 Repl. Vol., as amended, is amended to read:

38-13-128. Agreements to locate reported property. All agreements to pay compensation to recover or assist in the recovery of property reported under section 38-13-110, ~~or section 38-13-112.5~~; made within twenty-four months after the date payment or delivery is made under section 38-13-112, ~~or section 38-13-112.5~~; are unenforceable.

SECTION 13. 38-13-130 (2), Colorado Revised Statutes, 1982 Repl. Vol., as amended, is amended to read:

38-13-130. Effect of new provisions - clarification of application. (2) (a) The initial report filed under this article for property that was not required to be reported before July 1, 1987, but ~~which~~ THAT is subject to this article must include all items of property for which the presumption of abandonment first arose during the ~~ten-year~~ FIVE-YEAR period preceding July 1, 1987, as if this article had been in effect during that period.

(b) The initial report filed under this article for property that was not required to be reported before July 1, 1992, but ~~which~~ THAT is subject to this article must include all items of property for which the presumption of abandonment first arose during the ~~ten-year~~ FIVE-YEAR period preceding July 1, 1992, as if this article had been in effect during that period. Any person who has not reported as of July 1, 1992, shall not be penalized for not reporting prior to November 1, 1993.

SECTION 14. Effective date. This act shall take effect upon passage; except that sections 1 and 13 shall take effect July 1, 1995.

SECTION 15. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 16, 1995