

State of South Dakota

NINETY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2019

400B0383

SENATE BILL NO. 29

Introduced by: The Committee on Retirement Laws at the request of the Office of the State
Treasurer

1 FOR AN ACT ENTITLED, An Act to revise provisions related to unclaimed property and to
2 declare an emergency.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 43-41B-17 be amended to read:

5 43-41B-17. Any tangible and intangible property held in a safe deposit box or any other
6 safekeeping repository or agency or collateral deposit box in this state in the ordinary course of
7 the holder's business and proceeds resulting from the sale of the property permitted by other law,
8 which remain unclaimed by the owner for more than three years after the lease or rental period
9 on the box or other repository has expired, are presumed abandoned. Any United States savings
10 bond included in the contents of a safe deposit box or other repository must be reported and
11 recorded in the unclaimed property database, independently of the box or repository. The
12 savings bonds must be listed using the owner information on the original bond under property
13 type code SC15 United States Government Securities. The savings bonds must be claimable by
14 the person listed on the bond or by that person's heirs.

15 Section 2. That § 43-41B-18 be amended to read:



1 43-41B-18. (a) A person holding property tangible or intangible, presumed abandoned and
2 subject to custody as unclaimed property under this chapter shall report to the administrator
3 concerning the property as provided in this section. The expiration of any period of time
4 specified by statute or court order, during which an action or proceeding may be commenced
5 or enforced to obtain payment of a claim for money or recovery of property, ~~shall~~ does not
6 prevent the money or property from being presumed abandoned property, nor affect any duty
7 to file a report required by this chapter or to pay or deliver abandoned property to the state
8 treasurer.

9 The holder of unclaimed property shall, before filing the annual report required by this
10 section, communicate with the owner and take necessary steps to prevent abandonment from
11 being presumed by exercising due diligence to ascertain the whereabouts of the owner. This
12 ~~shall include, but is not limited to,~~ includes the mailing of notice to each person having an
13 address if ~~said~~ the person is entitled to property of the value of fifty dollars or more presumed
14 abandoned under this chapter.

15 The mailed notice shall contain:

- 16 (1) A statement that according to the records of the holder, property is being held to
17 which the addressee appears to be entitled;
- 18 (2) Information regarding any changes of the name of the holder; and
- 19 (3) A statement that the property will escheat to the state.

20 (b) The report must be verified and must include:

- 21 (1) Except with respect to travelers checks and money orders, the name, if known, and
22 last known address, if any, of each person appearing from the records of the holder
23 to be the owner of property of the value of ~~fifty~~ ten dollars or more presumed
24 abandoned under this chapter;

1 (2) In the case of unclaimed funds of ~~fifty~~ ten dollars or more held or owing under any
2 life or endowment insurance policy or annuity contract, the full name and last known
3 address of the insured or annuitant and of the beneficiary according to the records of
4 the insurance company holding or owing the funds;

5 (3) In the case of the contents of a safe deposit box or other safekeeping repository or of
6 other tangible property, a description of the property and the place where it is held
7 and may be inspected by the administrator and any amounts owing to the holder;

8 (4) The nature and identifying number, if any, or description of the property and the
9 amount appearing from the records to be due, but items of value under ~~fifty~~ ten
10 dollars each may be reported in the aggregate;

11 (5) The date the property became payable, demandable, or returnable, and the date of the
12 last transaction with the apparent owner with respect to the property; and

13 (6) Other information the administrator prescribes by rule as necessary for the
14 administration of this chapter.

15 (c) If the person holding property presumed abandoned and subject to custody as unclaimed
16 property is a successor to other persons who previously held the property for the apparent owner
17 or the holder has changed his or her name while holding the property, ~~he~~ the person shall file
18 with ~~his~~ a report all known names and addresses of each previous holder of the property.

19 (d) The report must be filed before November first of each year as of June thirtieth, next
20 preceding, but the report of any life insurance company must be filed before May first of each
21 year as of December thirty-first next preceding. On written request by any person required to
22 file a report, the administrator may postpone the reporting date or waive any interest fees or
23 penalties.

24 (e) The holder in possession of property presumed abandoned and subject to custody as

1 unclaimed property under this chapter shall, between the time of the commencement and the
2 termination of the applicable dormancy period, send written notice to the apparent owner at ~~his~~
3 the owner's last known address informing ~~him~~ the owner that the holder is in possession of
4 property subject to this chapter if:

- 5 (1) The holder has in its records an address for the apparent owner which the holder's
6 records disclose to be accurate;
- 7 (2) The claim of the apparent owner is not barred by the statutes of limitations; and
- 8 (3) The property has a value of fifty dollars or more.

9 Section 3. That chapter 43-41B be amended by adding a NEW SECTION to read:

10 Any property available for claim must be made available to the public at the time and in the
11 manner determined by the administrator and may include the use of website searches, direct
12 mail, newspapers, radio, social media, and television.

13 Section 4. That § 43-41B-23 be amended to read:

14 43-41B-23. (a) ~~Except as provided in subsections (b) and (c), the administrator, within No~~
15 earlier than three years after the receipt of abandoned property, the administrator shall sell the
16 property to the highest bidder at a public sale in whatever city in the state affords, in the
17 judgment of or by means of an internet auction, depending on which method of sale the
18 administrator, determines affords the most favorable market for the property ~~involved~~. The
19 administrator may decline the highest bid and reoffer the property for sale if ~~in the judgment of~~
20 the administrator determines that the bid is insufficient. If ~~in the judgment of~~ the administrator
21 determines that the probable cost of the sale exceeds will exceed the value of the property, the
22 administrator need not offer the property ~~need not be offered~~ for sale. ~~Any sale held under this~~
23 ~~section shall be preceded by a publication of notice, at least three weeks in advance of sale, in~~
24 ~~a newspaper of general circulation in the county in which the property is to be sold.~~

(b) Securities listed on an established stock exchange shall be sold at prices prevailing at the time of sale on the exchange. Other securities may be sold over the counter at prices prevailing at the time of sale or by any other method the administrator considers advisable.

(c) The state treasurer shall sell all stocks, bonds, and other negotiable instruments within one hundred eighty days of confirmed receipt of such instruments, unless the property is on an open claim. The state treasurer is not liable for any loss or gain in the value that the instrument would have obtained had the instrument been held instead of being sold.

(d) The purchaser of property at any sale conducted by the administrator pursuant to this chapter takes the property free of all claims ~~of~~ by the owner or previous holder of the property and ~~of~~ by all persons claiming through or under the owner or previous holder.

(e) The administrator shall execute all documents necessary to complete the transfer of ownership.

Section 5. That § 43-41B-25 be amended to read:

43-41B-25. (a) A person, excluding another state, claiming an interest in any property paid or delivered to the administrator may file a claim on a form prescribed by the administrator and verified by the claimant.

(b) The administrator shall consider each claim within one hundred eighty days after it is filed and ~~give written~~ provide notice to the claimant if the claim is denied in whole or in part. The notice may be ~~given by sending the notice sent by mail~~ sent by mail to the last address ~~or, if any, of the claimant stated in the claim as the address to which for the receipt of notices are to be sent. In the alternative, the notice may be sent electronically to the last e-mail address of the claimant or to the e-mail address stated in the claim for the receipt of notices.~~

If no address for notices is stated in the claim, the notice may be mailed to the last address, ~~if any,~~ or e-mailed to the last e-mail address of the claimant, as stated in the claim. No notice

1 of denial need be given if the claim fails to state either the last mailing or e-mail address to
2 which notices are to be sent or the mailing or e-mail address of the claimant.

3 (c) If a claim is allowed, the administrator shall pay over or deliver to the claimant the
4 property or the amount the administrator actually received or the net proceeds if ~~it~~ the property
5 has been sold by the administrator, together with any additional amount required by § 43-41B-
6 22.

7 If the claim is for property that is presumed abandoned under § 43-41B-10 ~~which and that~~
8 was sold by the administrator within ~~ninety~~ one hundred eighty days of confirmed receipt of the
9 property, the amount payable for that claim is the net proceeds of sale. When property is paid
10 or delivered to the administrator under this chapter, the owner is not entitled to receive income
11 or other increments accruing thereafter.

12 Section 6. That § 43-41B-44 be amended to read:

13 43-41B-44. (a) Notwithstanding the provisions of §§ 43-41B-3, 43-41B-14, 43-41B-18, ~~43-~~
14 ~~41B-19~~, 43-41B-20, 43-41B-21, 43-41B-23, and 43-41B-36, United States savings bonds ~~which~~
15 that are unclaimed property and subject to the provisions of chapter 43-41B shall escheat to this
16 state three years after becoming unclaimed property and subject to the provisions of chapter 43-
17 41B and all property rights and legal title to and ownership of such United States savings bonds
18 or proceeds from ~~such~~ the bonds, including all rights, powers, and privileges of survivorship of
19 any owner, co-owner, or beneficiary, shall vest solely in this state.

20 (b) Within one hundred eighty days after the three year period in subsection (a), if no claim
21 has been filed in accordance with the provisions of chapter 43-41B for such United States
22 savings bonds, the administrator shall commence a civil action in the Sixth Judicial Circuit for
23 a determination that such United States savings bonds shall escheat to this state. The
24 administrator may postpone the bringing of ~~such~~ the action until sufficient United States savings

bonds have accumulated in the administrator's custody to justify the expense of the proceedings.

(c) The administrator shall make service by publication of the proceeding in Hughes County in accordance with § 15-9-7. The notice shall name any defendant to be served and notify the defendant:

- (1) The defendant has been sued in a named court;
- (2) The defendant shall answer the petition or other pleading or otherwise defend, on or before a specified date, not less than forty-one days after the date the notice is first published; and
- (3) If the defendant does not answer or otherwise defend, the petition or other pleading will be taken as true and judgment, the nature of which will be stated, will be rendered accordingly.

In addition, before service by publication under this section can be made, the administrator or the administrator's attorney shall file an affidavit or a declaration stating all of the following facts that apply:

- (i) The residences of all named defendants sought to be served, if known, and the names of all defendants whose residences are unknown after reasonable effort to ascertain them and the specific efforts made to ascertain their residences;
- (ii) The affiant or declarant has made a reasonable but unsuccessful effort to ascertain the names and residences of any defendants sought to be served as unknown parties and the specific efforts made to ascertain the names and residences;
- (iii) The party seeking service by publication is unable to obtain service of summons on the defendants in this state; and
- (iv) The case is one in which the party with due diligence is unable to serve

1 summons on the defendant in this state and:

2 (A) The case relates to or involves real or personal property in this state, if
3 any defendant has or claims a lien or interest, vested or contingent, in
4 the property; or

5 (B) In which the relief demanded consists wholly or partly in excluding the
6 defendant from any interest in the property.

7 (d) If no person files a claim or appears at the hearing to substantiate a claim, or where the
8 court determines that a claimant is not entitled to the property claimed by such claimant, then
9 the court, if satisfied by evidence that the administrator has substantially complied with the laws
10 of this state, shall enter a judgment that the subject United States savings bonds have escheated
11 to this state, and all property rights and legal title to and ownership of ~~such~~ the United States
12 savings bonds or proceeds from ~~such~~ the bonds, including all rights, powers, and privileges of
13 survivorship of any owner, co-owner, or beneficiary, have vested solely to this state.

14 (e) The administrator shall redeem ~~such~~ the United States savings bonds escheated to the
15 state and the proceeds from the redemption of United States savings bonds shall be deposited
16 into an account in the state treasury in accordance with the provisions of § 43-41B-24.

17 (f) Any person making a claim for the United States savings bonds escheated to the state
18 under this section, or for the proceeds from ~~such~~ the bonds, may file a claim in accordance with
19 the provisions of chapter 43-41B. Upon providing sufficient proof of the validity of the person's
20 claim, the administrator may pay the claim in accordance with the provisions of chapter 43-41B.

21 Section 7. That § 43-41B-19 be repealed.

22 ~~43-41B-19. (a) The administrator shall cause a notice to be published within the quarter~~
23 ~~immediately following the report required by § 43-41B-18 at least once in a newspaper of~~
24 ~~general circulation in the county of this state in which is located the last known address of any~~

1 ~~person to be named in the notice. If no address is listed or the address is outside this state, the~~
2 ~~notice must be published in the county in which the holder of the property has its principal place~~
3 ~~of business within this state.~~

4 ~~— (b) The published notice must be entitled "Notice of Names of Persons Appearing to be~~
5 ~~Owners of Abandoned Property" and contain:~~

6 ~~— (1) — The names in alphabetical order and last known address, if any, of persons listed in~~
7 ~~the report and entitled to notice within the county as specified in subsection (a);~~

8 ~~— (2) — A statement that information concerning the property and the name and last known~~
9 ~~address of the holder may be obtained by any person possessing an interest in the~~
10 ~~property by addressing an inquiry to the administrator; and~~

11 ~~— (3) — A statement that if proof of claim is not presented by the owner and the owner's right~~
12 ~~to receive the property must be established to the administrator's satisfaction to whom~~
13 ~~all claims must be directed.~~

14 ~~— (c) The administrator is not required to publish in the notice any items of less than one~~
15 ~~hundred twenty-five dollars unless the administrator considers their publication to be in the~~
16 ~~public interest.~~

17 ~~— (d) This section is not applicable to sums payable on travelers checks, money orders, and~~
18 ~~other written instruments presumed abandoned under § 43-41B-4.~~

19 Section 8. Whereas, this Act is necessary for the support of the state government and its
20 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in
21 full force and effect from and after its passage and approval.