



February 18, 2005

SENATE BILL No. 198

DIGEST OF SB 198 (Updated February 16, 2005 1:32 pm - DI 106)

Citations Affected: IC 32-34.

Synopsis: Abandoned and unclaimed property. Provides that, under the law concerning abandoned and unclaimed property, the attorney general may waive the payment of interest for a person who is obligated but fails to pay money or deliver property owned by another. Reduces from five years to three years the period after which stock is considered abandoned.

Effective: July 1, 2005.

Zakas

January 4, 2005, read first time and referred to Committee on Judiciary.
February 17, 2005, amended, reported favorably — Do Pass.

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SB 198—LS 7125/DI 107+



February 18, 2005

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

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SENATE BILL No. 198

A BILL FOR AN ACT to amend the Indiana Code concerning property.

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

- 1 SECTION 1. IC 32-34-1-20 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 20. (a) For purposes of
3 this section, an indication of interest in the property by the owner:
4 (1) does not include a communication with an owner by an agent
5 of the holder who has not identified in writing the property to the
6 owner; and
7 (2) includes the following:
8 (A) With respect to an account or underlying shares of stock
9 or other interest in a business association or financial
10 organization:
11 (i) the cashing of a dividend check or other instrument of
12 payment received; or
13 (ii) evidence that the distribution has been received if the
14 distribution was made by electronic or similar means.
15 (B) A deposit to or withdrawal from a bank account.
16 (C) The payment of a premium with respect to a property
17 interest in an insurance policy.

SB 198—LS 7125/DI 107+



1 (D) The mailing of any correspondence in writing from a
 2 financial institution to the owner, including:
 3 (i) a statement;
 4 (ii) a report of interest paid or credited; or
 5 (iii) any other written advice;
 6 relating to a demand, savings, or matured time deposit
 7 account, including a deposit account that is automatically
 8 renewable, or any other account or other property the owner
 9 has with the financial institution if the correspondence is not
 10 returned to the financial institution for nondelivery.
 11 (E) Any activity by the owner that concerns:
 12 (i) another demand, savings, or matured time deposit
 13 account or other account that the owner has with a financial
 14 institution, including any activity by the owner that results
 15 in an increase or decrease in the amount of any other
 16 account; or
 17 (ii) any other relationship with the financial institution,
 18 including the payment of any amounts due on a loan;
 19 if the mailing address for the owner contained in the financial
 20 institution's books and records is the same for both an inactive
 21 account and for a related account.
 22 (b) The application of an automatic premium loan provision or other
 23 nonforfeiture provision contained in an insurance policy does not
 24 prevent the policy from maturing or terminating if the insured has died
 25 or the insured or the beneficiary of the policy otherwise has become
 26 entitled to the proceeds before the depletion of the cash surrender value
 27 of the policy by the application of those provisions.
 28 (c) Property that is held, issued, or owed in the ordinary course of
 29 a holder's business is presumed abandoned if the owner or apparent
 30 owner has not communicated in writing with the holder concerning the
 31 property or has not otherwise given an indication of interest in the
 32 property during the following times:
 33 (1) For traveler's checks, fifteen (15) years after issuance.
 34 (2) For money orders, seven (7) years after issuance.
 35 (3) For consumer credits, three (3) years after the credit becomes
 36 payable.
 37 (4) For amounts owed by an insurer on a life or an endowment
 38 insurance policy or an annuity contract:
 39 (A) if the policy or contract has matured or terminated, three
 40 (3) years after the obligation to pay arose; or
 41 (B) if the policy or contract is payable upon proof of death,
 42 three (3) years after the insured has attained, or would have

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- 1 attained if living, the limiting age under the mortality table on
- 2 which the reserve is based.
- 3 (5) For property distributable by a business association in a course
- 4 of dissolution, one (1) year after the property becomes
- 5 distributable.
- 6 (6) For property or proceeds held by a court or a court clerk, five
- 7 (5) years after the property or proceeds become distributable. The
- 8 property or proceeds must be treated as unclaimed property under
- 9 IC 32-34-3.
- 10 (7) For property held by a state or other government,
- 11 governmental subdivision or agency, or public corporation or
- 12 other public authority, one (1) year after the property becomes
- 13 distributable.
- 14 (8) For compensation for personal services, one (1) year after the
- 15 compensation becomes payable.
- 16 (9) For deposits and refunds held for subscribers by utilities, one
- 17 (1) year after the deposits or refunds became payable.
- 18 (10) For stock or other interest in a business association, ~~five (5)~~
- 19 **three (3)** years after the earlier of:
- 20 (A) the date of the last dividend, stock split, or other
- 21 distribution unclaimed by the apparent owner; or
- 22 (B) the date of the second mailing of a statement of account or
- 23 other notification or communication that was:
- 24 (i) returned as undeliverable; or
- 25 (ii) made after the holder discontinued mailings to the
- 26 apparent owner.
- 27 (11) For property in an individual retirement account or another
- 28 account or plan that is qualified for tax deferral under the Internal
- 29 Revenue Code, three (3) years after the earliest of:
- 30 (A) the actual date of the distribution or attempted
- 31 distribution;
- 32 (B) the distribution date as stated in the plan or trust
- 33 agreement governing the plan; or
- 34 (C) the date specified in the Internal Revenue Code by which
- 35 distribution must begin in order to avoid a tax penalty.
- 36 (12) For a demand, savings, or matured time deposit, including a
- 37 deposit that is automatically renewable, five (5) years after
- 38 maturity or five (5) years after the date of the last indication by
- 39 the owner of interest in the property, whichever is earlier.
- 40 Property that is automatically renewable is considered matured for
- 41 purposes of this section upon the expiration of its initial period,
- 42 unless the owner has consented to a renewal at or about the time

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1 of the renewal and the consent is in writing or is evidenced by a
 2 memorandum or other record on file with the holder.
 3 (13) For property payable or distributable in the course of a
 4 demutualization, rehabilitation, or related reorganization of a
 5 mutual insurance company, five (5) years after the earlier of:
 6 (A) the date of last contact with the policyholder; or
 7 (B) the date the property became payable or distributable.
 8 (14) For all other property, the earlier of five (5) years after:
 9 (A) the owner's right to demand the property; or
 10 (B) the obligation to pay or distribute the property;
 11 arose.

12 (d) Property is payable or distributed for purposes of this chapter
 13 notwithstanding the owner's failure to make demand or present an
 14 instrument or a document otherwise required to receive payment.

15 SECTION 2. IC 32-34-1-45 IS AMENDED TO READ AS
 16 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 45. (a) **Except as**
 17 **provided in subsection (b)**, a holder that fails to pay or deliver the
 18 property within the time required by this chapter shall pay to the
 19 attorney general interest for the time the holder is delinquent. Interest
 20 shall accrue under this subsection at the following rates:

21 (1) The annual interest rate for a period of one (1) year or less
 22 after the time required by this chapter for payment or delivery of
 23 the property is:

24 (A) the one (1) year Treasury Bill rate published in the Wall
 25 Street Journal or its successor on the third Tuesday of the
 26 month in which the remittance was due; plus

27 (B) one (1) percentage point.

28 (2) The interest rate for each year after the initial year to which
 29 subdivision (1) applies is:

30 (A) the one (1) year Treasury Bill rate published in the Wall
 31 Street Journal or its successor on the third Tuesday of the
 32 month immediately preceding the anniversary; plus

33 (B) one (1) percentage point.

34 As used in this subdivision, "anniversary" means the anniversary
 35 of the date on which the property was originally due to be paid or
 36 delivered under this chapter.

37 **(b) The attorney general may waive the payment of interest**
 38 **described in subsection (a), in whole or part.**

39 ~~(b)~~ (c) A holder who fails to render any report or perform other
 40 duties required under this chapter shall pay a civil penalty of one
 41 hundred dollars (\$100) for each day for the first fifteen (15) days that
 42 the report is withheld or the duty not performed. After the first fifteen

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- 1 (15) days, the holder shall pay a civil penalty of the greater of:
- 2 (1) one hundred dollars (\$100) a day for each additional day, not
- 3 to exceed five thousand dollars (\$5,000); or
- 4 (2) ten percent (10%) of the value of the property at issue, not to
- 5 exceed five thousand dollars (\$5,000).

6 Upon a showing by the holder of good cause sufficient in the discretion
 7 of the attorney general to excuse the failure, the attorney general may
 8 waive the penalty in whole or in part.

9 ~~(c)~~ (d) A holder who knowingly or intentionally fails to pay or
 10 deliver property to the attorney general as required under this chapter
 11 shall pay an additional civil penalty equal to ten percent (10%) of the
 12 value of the property that must be paid or delivered under this chapter.
 13 If the attorney general believes it is in the best interest for the
 14 administration of this chapter, the attorney general may waive the
 15 penalty in whole or in part.

16 ~~(d)~~ (e) A holder who willfully refuses, after written demand by the
 17 attorney general, to pay or deliver property to the attorney general as
 18 required under this chapter commits a Class B misdemeanor.

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COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 198, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 32-34-1-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 20. (a) For purposes of this section, an indication of interest in the property by the owner:

(1) does not include a communication with an owner by an agent of the holder who has not identified in writing the property to the owner; and

(2) includes the following:

(A) With respect to an account or underlying shares of stock or other interest in a business association or financial organization:

(i) the cashing of a dividend check or other instrument of payment received; or

(ii) evidence that the distribution has been received if the distribution was made by electronic or similar means.

(B) A deposit to or withdrawal from a bank account.

(C) The payment of a premium with respect to a property interest in an insurance policy.

(D) The mailing of any correspondence in writing from a financial institution to the owner, including:

(i) a statement;

(ii) a report of interest paid or credited; or

(iii) any other written advice;

relating to a demand, savings, or matured time deposit account, including a deposit account that is automatically renewable, or any other account or other property the owner has with the financial institution if the correspondence is not returned to the financial institution for nondelivery.

(E) Any activity by the owner that concerns:

(i) another demand, savings, or matured time deposit account or other account that the owner has with a financial institution, including any activity by the owner that results in an increase or decrease in the amount of any other account; or

(ii) any other relationship with the financial institution, including the payment of any amounts due on a loan;

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if the mailing address for the owner contained in the financial institution's books and records is the same for both an inactive account and for a related account.

(b) The application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent the policy from maturing or terminating if the insured has died or the insured or the beneficiary of the policy otherwise has become entitled to the proceeds before the depletion of the cash surrender value of the policy by the application of those provisions.

(c) Property that is held, issued, or owed in the ordinary course of a holder's business is presumed abandoned if the owner or apparent owner has not communicated in writing with the holder concerning the property or has not otherwise given an indication of interest in the property during the following times:

- (1) For traveler's checks, fifteen (15) years after issuance.
- (2) For money orders, seven (7) years after issuance.
- (3) For consumer credits, three (3) years after the credit becomes payable.
- (4) For amounts owed by an insurer on a life or an endowment insurance policy or an annuity contract:
 - (A) if the policy or contract has matured or terminated, three (3) years after the obligation to pay arose; or
 - (B) if the policy or contract is payable upon proof of death, three (3) years after the insured has attained, or would have attained if living, the limiting age under the mortality table on which the reserve is based.
- (5) For property distributable by a business association in a course of dissolution, one (1) year after the property becomes distributable.
- (6) For property or proceeds held by a court or a court clerk, five (5) years after the property or proceeds become distributable. The property or proceeds must be treated as unclaimed property under IC 32-34-3.
- (7) For property held by a state or other government, governmental subdivision or agency, or public corporation or other public authority, one (1) year after the property becomes distributable.
- (8) For compensation for personal services, one (1) year after the compensation becomes payable.
- (9) For deposits and refunds held for subscribers by utilities, one (1) year after the deposits or refunds became payable.
- (10) For stock or other interest in a business association, ~~five (5)~~

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three (3) years after the earlier of:

- (A) the date of the last dividend, stock split, or other distribution unclaimed by the apparent owner; or
- (B) the date of the second mailing of a statement of account or other notification or communication that was:
 - (i) returned as undeliverable; or
 - (ii) made after the holder discontinued mailings to the apparent owner.

(11) For property in an individual retirement account or another account or plan that is qualified for tax deferral under the Internal Revenue Code, **three (3) years** after the earliest of:

- (A) the actual date of the distribution or attempted distribution;
- (B) the distribution date as stated in the plan or trust agreement governing the plan; or
- (C) the date specified in the Internal Revenue Code by which distribution must begin in order to avoid a tax penalty.

(12) For a demand, savings, or matured time deposit, including a deposit that is automatically renewable, **five (5) years** after maturity or **five (5) years** after the date of the last indication by the owner of interest in the property, whichever is earlier. Property that is automatically renewable is considered matured for purposes of this section upon the expiration of its initial period, unless the owner has consented to a renewal at or about the time of the renewal and the consent is in writing or is evidenced by a memorandum or other record on file with the holder.

(13) For property payable or distributable in the course of a demutualization, rehabilitation, or related reorganization of a mutual insurance company, **five (5) years** after the earlier of:

- (A) the date of last contact with the policyholder; or
- (B) the date the property became payable or distributable.

(14) For all other property, the earlier of **five (5) years** after:

- (A) the owner's right to demand the property; or
- (B) the obligation to pay or distribute the property;

arose.

(d) Property is payable or distributed for purposes of this chapter notwithstanding the owner's failure to make demand or present an instrument or a document otherwise required to receive payment."

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Renumber all SECTIONS consecutively.
and when so amended that said bill do pass.

(Reference is to SB 198 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 10, Nays 0.

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