

SB0070S01 compared with SB0070

~~{deleted text}~~ shows text that was in SB0070 but was deleted in SB0070S01.

Inserted text shows text that was not in SB0070 but was inserted into SB0070S01.

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Senator Lyle W. Hillyard proposes the following substitute bill:

UNCLAIMED PROPERTY AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lyle W. Hillyard

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Uniform Unclaimed Property Act by amending unclaimed property provisions.

Highlighted Provisions:

This bill:

- ▶ provides and amends definitions;
- ▶ provides that an indication of apparent owner interest for determining whether property is presumed abandoned includes any other action by the apparent owner which reasonably demonstrates to the holder that the apparent owner knows that the account exists;
- ▶ specifies when a company is deemed to have knowledge of the death of an insured or annuitant with respect to a life or endowment insurance policy or annuity contract

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for which an amount is owed on proof of death, but which has not matured by proof of death of the insured or annuitant;

- ▶ specifies rules for when certain death master file matches occur;
- ▶ provides that a death master file match does not constitute proof of death for the purpose of a beneficiary, annuitant, or owner of an insurance policy or annuitant contract submitting a claim to an insurance company;
- ▶ provides that the death master file match or validation of the insured's or annuitant's death does not alter the requirements for a beneficiary, annuitant, or owner of an insurance policy or annuity contract to make a claim to receive proceeds under the terms of the policy or contract;
- ▶ requires an insurance company to make a good faith effort using other available records and information to validate a death and document the effort taken in certain circumstances; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

67-4a-102, as last amended by Laws of Utah 2018, Chapter 459

67-4a-208, as repealed and reenacted by Laws of Utah 2017, Chapter 371

ENACTS:

67-4a-215, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **67-4a-102** is amended to read:

67-4a-102. Definitions.

As used in this chapter:

- (1) "Administrator" means the deputy state treasurer assigned by the state treasurer.
- (2) (a) "Administrator's agent" means a person with which the administrator contracts

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to conduct an examination under Part 10, Verified Report of Property and Examination of Records, on behalf of the administrator.

(b) [~~Administrator's~~] "Administrator's agent" includes an independent contractor of the person and each individual participating in the examination on behalf of the person or contractor.

(3) "Apparent owner" means a person whose name appears on the records of a holder as the owner of property held, issued, or owing by the holder.

(4) (a) "Bank draft" means a check, draft, or similar instrument on which a banking or financial organization is directly liable.

(b) "Bank draft" includes:

(i) a cashier's check; and

(ii) a certified check.

(c) "Bank draft" does not include:

(i) a traveler's check; or

(ii) a money order.

(5) "Banking organization" means:

(a) a bank;

(b) an industrial bank;

(c) a trust company;

(d) a savings bank; or

(e) any organization defined by other law as a bank or banking organization.

(6) "Business association" means a corporation, joint stock company, investment company other than an investment company registered under the Investment Company Act of 1940, partnership, unincorporated association, joint venture, limited liability company, business trust, trust company, land bank, safe deposit company, safekeeping depository, financial organization, banking organization, insurance company, federally chartered entity, utility, sole proprietorship, or other business entity, whether or not for profit.

(7) "Cashier's check" means a check that:

(a) is drawn by a banking organization on itself;

(b) is signed by an officer of the banking organization; and

(c) authorizes payment of the amount shown on the check's face to the payee.

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(8) "Class action" means a legal action:

(a) certified by the court as a class action; or

(b) treated by the court as a class action without being formally certified as a class action.

(9) "Confidential information" means records, reports, and information that is confidential under Section 67-4a-1402.

(10) (a) "Deposit in a financial institution" means a demand, savings, or matured time deposit with a banking or financial organization.

(b) "Deposit in a financial institution" includes:

(i) any interest or dividends on a deposit; and

(ii) a deposit that is automatically renewable.

(11) "Domicile" means:

(a) for a corporation, the state of the corporation's incorporation;

(b) for a business association other than a corporation, whose formation requires a filing with a state, the state of the business association's filing;

(c) for a federally chartered entity or an investment company registered under the Investment Company Act of 1940, the state of the entity's or company's home office; and

(d) for any other holder, the state of the holder's principal place of business.

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

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

(14) "Financial organization" means:

(a) a savings and loan association; or

(b) a credit union.

(15) (a) "Game-related digital content" means digital content that exists only in an electronic game or electronic-game platform.

(b) "Game-related digital content" includes:

(i) game-play currency, including a virtual wallet, even if denominated in United States currency; and

(ii) the following, if for use or redemption only within the game or platform or another

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electronic game or electronic-game platform:

(A) points sometimes referred to as gems, tokens, gold, and similar names; and

(B) digital codes.

(c) "Game-related digital content" does not include an item that the issuer:

(i) permits to be redeemed for use outside a game or platform for:

(A) money; or

(B) goods or services that have more than minimal value; or

(ii) otherwise monetizes for use outside a game or platform.

(16) (a) "Gift card" means a record that:

(i) is usable at:

(A) a single merchant; or

(B) a specified group of merchants;

(ii) is prefunded before the record is used; and

(iii) can be used for purchases of goods or services.

(b) "Gift card" includes a prepaid commercial mobile radio service as defined in 47

C.F.R. Sec. 20.3.

(17) "Holder" means a person obligated to hold for the account of, or to deliver or pay to, the owner property subject to this chapter.

(18) "Insurance company" means an association, corporation, or fraternal or mutual benefit organization, whether or not for profit, engaged in the business of providing life endowments, annuities, or insurance, including:

(a) accident insurance;

(b) burial insurance;

(c) casualty insurance;

(d) credit life insurance;

(e) contract performance insurance;

(f) dental insurance;

(g) disability insurance;

(h) fidelity insurance;

(i) fire insurance;

(j) health insurance;

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- (k) hospitalization insurance;
- (l) illness insurance;
- (m) life insurance, including endowments and annuities;
- (n) malpractice insurance;
- (o) marine insurance;
- (p) mortgage insurance;
- (q) surety insurance;
- (r) wage protection insurance; and
- (s) worker compensation insurance.

(19) "Last known address" means a description of the location of the apparent owner sufficient for the purpose of the delivery of mail.

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

(b) "Loyalty card" does not include a record that may be redeemed for money or otherwise monetized by the issuer.

(21) (a) "Mineral" means any substance that is ordinarily and naturally considered a mineral, regardless of the depth at which the substance is found.

(b) "Mineral" includes:

- (i) building stone;
- (ii) cement material;
- (iii) chemical raw material;
- (iv) coal;
- (v) colloidal and other clay;
- (vi) fissionable and nonfissionable ore;
- (vii) gas;
- (viii) gemstone;
- (ix) gravel;
- (x) lignite;
- (xi) oil;
- (xii) oil shale;

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- (xiii) other gaseous liquid or solid hydrocarbon;
- (xiv) road material;
- (xv) sand;
- (xvi) steam and other geothermal resources;
- (xvii) sulphur; and
- (xviii) uranium.

(22) (a) "Mineral proceeds" means an amount payable:

- (i) for extraction, production, or sale of minerals; or
- (ii) for the abandonment of an interest in minerals.

(b) "Mineral proceeds" includes an amount payable:

- (i) for the acquisition and retention of a mineral lease, including a bonus, royalty, compensatory royalty, shut-in royalty, minimum royalty, or delay rental;
- (ii) for the extraction, production, or sale of minerals, including a net revenue interest, royalty, overriding royalty, extraction payment, or production payment; and
- (iii) under an agreement or option, including a joint-operating agreement, unit agreement, pooling agreement, and farm-out agreement.

(23) (a) "Money order" means a payment order for a specified amount of money.

(b) "Money order" includes an express money order and a personal money order on which the remitter is the purchaser.

(c) "Money order" does not include a cashier's check.

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

(25) (a) "Nonfreely transferable security" means a security that cannot be delivered to the administrator by the Depository Trust Clearing Corporation or a similar custodian of securities providing post-trade clearing and settlement services to financial markets or cannot be delivered because there is no agent to effect transfer.

(b) "Nonfreely transferable security" includes a worthless security.

(26) (a) "Owner" means a person that has a legal, beneficial, or equitable interest in property subject to this chapter or the person's legal representative when acting on behalf of the owner.

(b) "Owner" includes:

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(i) a depositor, for a deposit;
(ii) a beneficiary, for a trust other than a deposit in trust;
(iii) a creditor, claimant, or payee, for other property; and
(iv) the lawful bearer of a record that may be used to obtain money, a reward, or a thing of value.

(27) "Payroll card" means a record that evidences a payroll card account as defined in 12 C.F.R. Part 1005, Electronic Fund Transfers (Regulation E).

(28) "Person" means:

- (a) an individual;
- (b) an estate;
- (c) a business association;
- (d) a public corporation;
- (e) a government entity;
- (f) an agency;
- (g) a trust;
- (h) an instrumentality; or
- (i) any other legal or commercial entity.

(29) (a) "Property" means tangible property described in Section 67-4a-205 or a fixed and certain interest in intangible property held, issued, or owed in the course of a holder's business or by a government entity.

(b) "Property" includes:

- (i) all income from or increments to the property;
- (ii) property referred to as or evidenced by:
 - (A) money, virtual currency, interest, or a dividend, check, draft, or deposit;
 - (B) a credit balance, customer's overpayment, stored-value card, payroll card, security deposit, refund, credit memorandum, unpaid wage, unused ticket for which the issuer has an obligation to provide a refund, mineral proceeds, or unidentified remittance; and
 - (C) a security except for:
 - (I) a worthless security; or
 - (II) a security that is subject to a lien, legal hold, or restriction evidenced on the records of the holder or imposed by operation of law, if the lien, legal hold, or restriction restricts the

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holder's or owner's ability to receive, transfer, sell, or otherwise negotiate the security;

(iii) a bond, debenture, note, or other evidence of indebtedness;

(iv) money deposited to redeem a security, make a distribution, or pay a dividend;

(v) an amount due and payable under an annuity contract or insurance policy;

(vi) an amount distributable from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit-sharing, employee-savings, supplemental-unemployment insurance, or a similar benefit; and

(vii) an amount held under a preneed funeral or burial contract, other than a contract for burial rights or opening and closing services, where the contract has not been serviced following the death or the presumed death of the beneficiary.

(c) "Property" does not include:

(i) property held in a plan described in Section 529A, Internal Revenue Code;

(ii) game-related digital content;

(iii) a loyalty card;

(iv) an in-store credit for returned merchandise; [~~or~~]

(v) patronage capital of an electric, telephone, or agricultural cooperative; or

~~(v)~~ (vi) a gift card.

(30) "Putative holder" means a person believed by the administrator to be a holder, until:

(a) the person pays or delivers to the administrator property subject to this chapter; or

(b) the administrator or a court makes a final determination that the person is or is not a holder.

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

(32) "Security" means:

(a) a security as defined in Revised Article 8 of the Uniform Commercial Code; or

(b) a security entitlement as defined in Revised Article 8 of the Uniform Commercial Code, including a customer security account held by a registered broker-dealer, to the extent the financial assets held in the security account are not:

(i) registered on the books of the issuer in the name of the person for which the

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broker-dealer holds the assets;

- (ii) payable to the order of the person;
- (iii) specifically endorsed to the person; or
- (iv) an equity interest in a business association not included in this Subsection (32).

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

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

process.

(34) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(35) (a) "Stored-value card" means a reloadable or non-reloadable record:

- (i) with a monetary value or amount that can be:
 - (A) used to purchase or otherwise acquire goods or services;
 - (B) used to obtain cash; or
 - (C) redeemed for cash value; and
- (ii) of which the issuer or the issuer's agent has a record of the name and last known address of the apparent owner and the address is in the state of Utah.

(b) "Stored-value card" does not include:

(i) a record described in Subsection (35)(a) that is purchased or acquired by an intermediary or other party for resale, for sale on consignment, or as a gift to the card user, when the issuer does not know the name and address of the ultimate buyer or recipient of the record;

- (ii) a loyalty card;
- (iii) a gift card; or
- (iv) game-related digital content.

(36) "Utility" means a person that owns or operates for public use a plant, equipment, real property, franchise, or license for:

- (a) the transmission of communications or information;
- (b) the production, storage, transmission, sale, delivery, or furnishing of electricity,

water, steam, or gas; or

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(c) the provision of sewage or septic services, or trash, garbage, or recycling disposal.

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

(b) "Virtual currency" does not include:

(i) the software or protocols governing the transfer of the digital representation of value;

(ii) game-related digital content;

(iii) a loyalty card;

(iv) membership rewards; or

(v) a gift card.

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

Section 2. Section 67-4a-208 is amended to read:

67-4a-208. Indication of apparent owner interest in property.

(1) The period after which property is presumed abandoned is measured from the later of:

(a) the date the property is presumed abandoned under this part; or

(b) the latest indication of interest by the apparent owner in the property.

(2) Under this chapter, an indication of an apparent owner's interest in property includes:

(a) a record communicated by the apparent owner to the holder or agent of the holder concerning the property or the account in which the property is held;

(b) an oral communication by the apparent owner to the holder or agent of the holder concerning the property or the account in which the property is held, if the holder or the holder's agent contemporaneously makes and preserves a record of the fact of the apparent owner's communication;

(c) presentment of a check or other instrument of payment of a dividend, interest payment, or other distribution, or evidence of receipt of a distribution made by electronic or similar means, with respect to an account, underlying security, or interest in a business

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association;

(d) activity directed by an apparent owner in the account in which the property is held, including accessing the account or information concerning the account, or a direction by the apparent owner to increase, decrease, or otherwise change the amount or type of property held in the account;

(e) a deposit into or withdrawal from an account at a banking organization or financial organization, ~~[except for]~~ including an automatic deposit or withdrawal previously authorized by the apparent owner ~~[or]~~ other than an automatic reinvestment of dividends or interest; ~~and~~

~~— (f) [and]~~

(f) any other action by the apparent owner which reasonably demonstrates to the holder that the apparent owner knows that the account exists; and

~~[(f)] (g)~~ subject to Subsection (5), payment of a premium on an insurance policy.

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

(4) A communication with an apparent owner by a person other than the holder or the holder's representative is not an indication of interest in the property by the apparent owner unless a record of the communication evidences the apparent owner's knowledge of a right to the property.

(5) If the insured dies or the insured or beneficiary of an insurance policy otherwise becomes entitled to the proceeds before depletion of the cash surrender value of the policy by operation of an automatic premium loan provision or other nonforfeiture provision contained in the policy, the operation does not prevent the policy from maturing or terminating.

Section ~~{2}~~3. Section **67-4a-215** is enacted to read:

67-4a-215. Knowledge of death of insured or annuitant.

(1) As used in this section, "death master file" means:

(a) the United States Social Security Administration death master file; or

(b) another database or service that is at least as comprehensive as the United States Social Security Administration death master file for determining that an individual has reportedly died.

(2) With respect to a life or endowment insurance policy or annuity contract for which

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an amount is owed on proof of death, but which has not matured by proof of death of the insured or annuitant, the company is deemed to have knowledge of the death of an insured or annuitant when:

(a) the company receives a death certificate or court order determining that the insured or annuitant has died;

(b) due diligence, performed as required under Section 31A-22-1903, to maintain contact with the insured or annuitant to determine whether the insured or annuitant has died validates the death of the insured or annuitant;

(c) the company conducts a comparison for any purpose between a death master file and the names of some of the company's insureds or annuitants and finds a match that provides notice that the insured or annuitant has died, and the company validates the death; or

(d) the company:

(i) receives notice of the death of the insured or annuitant from an administrator, beneficiary, policy owner, relative of the insured, or trustee or from a personal representative, executor, or other legal representative of the insured's or annuitant's estate; and

(ii) validates the death of the insured or annuitant.

(3) A death master file match under Subsection (2)(c) occurs if the criteria for an exact or partial match are satisfied as provided by:

(a) a law of this state other than this chapter, including Section 31A-22-1903; or

(b) a rule or policy adopted by the Insurance Department.

(4) A death master file match does not constitute proof of death for the purpose of a beneficiary, annuitant, or owner of an insurance policy or annuitant contract submitting a claim to an insurance company.

(5) The death master file match or validation of the insured's or annuitant's death does not alter the requirements for a beneficiary, annuitant, or owner of the policy or contract to make a claim to receive proceeds under the terms of the policy or contract.

(6) If a provision in Section 31A-22-1903 does not establish a time for validation of a death of an insured or annuitant, the insurance company shall make a good faith effort using other available records and information, no later than 90 days after the insurance company has notice of the death, to:

(a) validate the death; and

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(b) document the effort taken.

(7) This section does not affect the determination of the extent to which an insurance company, before May 14, 2019:

(a) had knowledge of the death of an insured or annuitant; or

(b) was required to conduct a death master file comparison to determine whether amounts owed by the company on a life or endowment insurance policy or annuity contract were presumed or abandoned.