

**HOUSE BILL No. 2477**

By Committee on Appropriations

2-16

10 AN ACT concerning unclaimed property; amending K.S.A. 2004 Supp.  
11 58-3935 and 58-3943 and repealing the existing sections.

12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 2004 Supp. 58-3935 is hereby amended to read as  
15 follows: 58-3935. (a) Property is presumed abandoned if it is unclaimed  
16 by the apparent owner during the time set forth below for the particular  
17 property:

18 (1) Traveler's check, 15 years after its issuance;

19 (2) money order, seven years after issuance;

20 (3) except as provided in K.S.A. 58-3943, and amendments thereto,  
21 stock or other equity interest in a business association or financial organ-  
22 ization, including a security entitlement under article 8 of the uniform  
23 commercial code, ~~five~~ **and any dividend, profit, distribution, interest,**  
24 **redemption, payment on principal, or other sum held or owing by**  
25 **a business association for or to its shareholder, certificate holder,**  
26 **member, bondholder, or other security holder, three** years after the  
27 earlier of:

28 (A) The date of the most recent dividend, stock split, **redemption,**  
29 **payment on principal** or other distribution unclaimed by the apparent  
30 owner; or

31 (B) the date of the second mailing of a statement of account or other  
32 notification or communication that was returned as undeliverable or after  
33 the holder discontinued mailings, notifications or communications to the  
34 apparent owner;

35 (4) debt of a business association or financial organization, other than  
36 a bearer bond or an original issue discount bond, five years after the date  
37 of the most recent interest payment unclaimed by the apparent owner;

38 (5) a demand, savings or time deposit, including a deposit that is  
39 automatically renewable, five years after the earlier of maturity or the  
40 date of the last indication by the owner of interest in the property, except  
41 that a deposit that is automatically renewable is deemed matured for  
42 purposes of this section upon its initial date of maturity, unless the owner  
43 has consented to a renewal at or about the time of the renewal and the

- 1 consent is in writing or is evidenced by a memorandum or other record  
2 on file with the holder;
- 3 (6) money or credits owed to a customer as a result of a retail business  
4 transaction, five years after the obligation accrued;
- 5 (7) amount owed by an insurer on a life or endowment insurance  
6 policy or an annuity that has matured or terminated, three years after the  
7 obligation to pay arose or, in the case of a policy or annuity payable upon  
8 proof of death, three years after the insured has attained, or would have  
9 attained if living, the limiting age under the mortality table on which the  
10 reserve is based;
- 11 (8) property distributable by a business association or financial or-  
12 ganization in a course of dissolution, one year after the property becomes  
13 distributable;
- 14 (9) property received by a court as proceeds of a class action, and not  
15 distributed pursuant to the judgment, one year after the distribution date;
- 16 (10) property held by a court, state or other government, govern-  
17 mental subdivision, agency or instrumentality, one year after the property  
18 becomes distributable;
- 19 (11) wages or other compensation for personal services, one year after  
20 the compensation becomes payable;
- 21 (12) deposit or refund owed to a subscriber by a utility, one year after  
22 the deposit or refund becomes payable;
- 23 (13) property held by agents and fiduciaries in a fiduciary capacity  
24 for the benefit of another person, five years after it has become payable  
25 or distributable, unless the owner has increased or decreased the prin-  
26 cipal, accepted payment of principal or income, communicated concern-  
27 ing the property or otherwise indicated an interest as evidenced by a  
28 memorandum or other record on file prepared by the fiduciary;
- 29 (14) property in an individual retirement account, defined benefit  
30 plan or other account or plan that is qualified for tax deferral under the  
31 income tax laws of the United States, three years after the earliest of the  
32 date of the distribution or attempted distribution of the property, the  
33 date of the required distribution as stated in the plan or trust agreement  
34 governing the plan, or the date, if determinable by the holder, specified  
35 in the income tax laws of the United States by which distribution of the  
36 property must begin in order to avoid a tax penalty;
- 37 (15) property distributable in the course of a demutualization, reha-  
38 bilitation or related reorganization of an insurance company shall be  
39 deemed abandoned as follows:
- 40 (A) Any check or draft, two years after the date of the demutualization  
41 or reorganization, if the check or draft has not been presented for pay-  
42 ment and the owner has not otherwise communicated with the holder or  
43 its agent regarding the property;

- 1 (B) (i) any other property, two years after the date of the demutual-  
2 ization or reorganization if instruments or statements reflecting the dis-  
3 tribution are either mailed to the owner and returned by the post office  
4 as undeliverable, or not mailed to the owner because of an address on  
5 the books and records of the holder that is known to be incorrect; and  
6 (ii) the owner has not:  
7 (a) Communicated in writing with the holder or its agent regarding  
8 the property; or  
9 (b) otherwise communicated with the holder or its agent regarding  
10 the property as evidenced by a memorandum or other record on file with  
11 the holder or its agent.  
12 (c) For any time more than two years after the date of demutualiza-  
13 tion or reorganization, any property which is not subject to subparagraph  
14 (A) or (B) of this paragraph (15) shall be treated under other provisions  
15 of this chapter for the specific type of property;  
16 (16) all other property, five years after the owner's right to demand  
17 the property or after the obligation to pay or distribute the property arises,  
18 whichever first occurs; and  
19 (17) any proceeds of a sale pursuant to K.S.A. 58-817, and amend-  
20 ments thereto, which remain after satisfaction of the lien provided by  
21 K.S.A. 58-816, and amendments thereto, that have been unclaimed by  
22 the owner for one year from receipt of the proceeds of the sale and  
23 satisfaction of the lien.  
24 (b) At the time that an interest is presumed abandoned under sub-  
25 section (a) any other property right accrued or accruing to the owner as  
26 a result of the interest, and not previously presumed abandoned, is also  
27 presumed abandoned.  
28 (c) Property is unclaimed if, for the applicable period set forth in  
29 subsection (a), the apparent owner has not communicated in writing or  
30 by other means reflected in a contemporaneous record prepared by or  
31 on behalf of the holder, with the holder concerning the property or the  
32 account in which the property is held, and has not otherwise indicated  
33 an interest in the property. A communication with an owner by a person  
34 other than the holder or the holder's representative who has not in writing  
35 identified the property to the owner is not an indication of interest in the  
36 property by the owner.  
37 (d) An indication of an owner's interest in property includes:  
38 (1) The presentment of a check or other instrument of payment of a  
39 dividend or other distribution made with respect to an account or un-  
40 derlying stock or other interest in a business association or financial or-  
41 ganization or, in the case of a distribution made by electronic or similar  
42 means, evidence that the distribution has been received;  
43 (2) owner-directed activity in the account in which the property is

- 1 held, including a direction by the owner to increase, decrease or change  
2 the amount or type of property held in the account;
- 3 (3) the making of a deposit to or withdrawal from a bank account;  
4 and
- 5 (4) the payment of a premium with respect to a property interest in  
6 an insurance policy, except that the application of an automatic premium  
7 loan provision or other nonforfeiture provision contained in an insurance  
8 policy does not prevent a policy from maturing or terminating if the in-  
9 sured has died or the insured or the beneficiary of the policy has otherwise  
10 become entitled to the proceeds before the depletion of the cash surren-  
11 der value of a policy by the application of those provisions.
- 12 (e) Property is payable or distributable for the purpose of this act  
13 notwithstanding the owner's failure to make demand or to present any  
14 instrument or document otherwise required to obtain payment.
- 15 (f) Any demand or savings account or matured timed deposit with a  
16 financial organization shall not be presumed abandoned if regular cor-  
17 respondence to an owner of the account has not been returned to the  
18 sender.
- 19 (g) Any outstanding check, draft, credit balance, customer's overpay-  
20 ment or unidentified remittance issued to a sole proprietorship or busi-  
21 ness association as part of a commercial transaction in the ordinary course  
22 of a holder's business shall not be presumed abandoned.
- 23 (h) A holder may not impose with respect to any property payable or  
24 distributable for the purpose of this act, including any income or incre-  
25 ment derived therefrom, any fee or charge due to dormancy or inactivity  
26 or cease payment of interest unless:
- 27 (1) There is an enforceable written contract between the holder and  
28 the owner of the property pursuant to which the holder may impose a  
29 charge or cease payment of interest;
- 30 (2) for property in excess of \$100, the holder, no more than three  
31 months before the initial imposition of those charges or cessation of in-  
32 terest, has mailed written notice to the owner of the amount of those  
33 charges at the last known address of the owner stating that those charges  
34 will be imposed or that interest will cease, but the notice provided in this  
35 section need not be given with respect to charges imposed or interest  
36 ceased before the effective date of this act, or for property described in  
37 K.S.A. 58-3937 and 58-3938, and amendments thereto; and
- 38 (3) the holder regularly imposes such charges or ceases payment of  
39 interest and in no instance reverses or otherwise cancels them or retro-  
40 actively credits interest with respect to the property. Charges imposed  
41 because of dormancy or inactivity may be made and collected monthly,  
42 quarterly or annually except that beginning with the effective date of this  
43 act, such charges may only be imposed for a maximum of five calendar

1 years.

2 (i) For the purpose of this section, a person who holds property as  
3 an agent for a business association is deemed to hold the property in a  
4 fiduciary capacity for that business association alone unless the agreement  
5 between the agent and the business association provides otherwise.

6 (j) For the purposes of this act, a person who is deemed to hold  
7 property in a fiduciary capacity for a business association alone is the  
8 holder of the property only insofar as the interest of the business asso-  
9 ciation in the property is concerned, and the business association is the  
10 holder of the property insofar as the interest of any other person in the  
11 property is concerned.

12 (k) Any property held by a financial organization that would otherwise  
13 be presumed abandoned under this section shall not be presumed aban-  
14 doned if the apparent owner:

15 (1) Owns other property which is not presumed abandoned and if  
16 the financial organization communicates in writing with the owner with  
17 regard to the property that would otherwise be presumed abandoned  
18 under this section at the address to which communications regarding the  
19 other property regularly are sent; or

20 (2) had another relationship with the financial organization concern-  
21 ing which the owner has:

22 (A) Communicated in writing with the financial organization; or

23 (B) otherwise indicated an interest as evidenced by a memorandum  
24 or other record on file prepared by an employee of the financial organi-  
25 zation and if the financial organization communicates in writing with the  
26 owner with regard to the property that would otherwise be abandoned  
27 under this section at the address to which communications regarding the  
28 other relationship regularly are sent.

29 Sec. 2. K.S.A. 2004 Supp. 58-3943 is hereby amended to read as  
30 follows: 58-3943. This act does not apply to any stock or other intangible  
31 ownership interest enrolled in a plan that provides for the automatic re-  
32 investment of dividends, distributions or other sums payable as a result  
33 of the interest unless:

34 (a) The records available to the administrator of the plan show, with  
35 respect to any intangible ownership interest not enrolled in the reinvest-  
36 ment plan, that the owner has not within ~~five~~ *three* years communicated  
37 in any manner described in paragraph (3) of subsection (a) of K.S.A. 58-  
38 3935, and amendments thereto; or

39 (b) ~~five~~ *three* years have elapsed since the location of the owner be-  
40 came unknown to the association, as evidenced by the return of official  
41 shareholder notifications or communications by the postal service as un-  
42 deliverable, and the owner has not within those ~~five~~ *three* years com-  
43 municated in any manner described in paragraph (3) of subsection (a) of

1 K.S.A. 58-3935, and amendments thereto. The ~~five-year~~ *three-year* period  
2 from the return of official shareholder notifications or communications  
3 shall commence from the earlier of the return of the second such mailing  
4 or the time the holder discontinues mailings to the shareholder.  
5 Sec. 3. K.S.A. 2004 Supp. 58-3935 and 58-3943 are hereby repealed.  
6 Sec. 4. This act shall take effect and be in force from and after its  
7 publication in the statute book.