

CHAPTER 317
FORMERLY
SENATE BILL NO. 258
AS AMENDED BY
SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 12 OF THE DELAWARE CODE RELATING TO VOLUNTARY DISCLOSURE OF ABANDONED OR UNCLAIMED PROPERTY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

WHEREAS, the State is obligated to collect and exercise care and custody of abandoned property for the benefit of the owners of that property, and the Department of Finance undertakes the responsibility to promote the regular reporting of abandoned property through ordinary collections, voluntary disclosure agreements, and examinations by the State Escheator; and

WHEREAS, regular, annual reporting of abandoned property by Delaware entities remains in the interest of the State of Delaware and can help promote additional stability and predictability in the quantity of abandoned property collections; and

WHEREAS, while many Delaware entities report abandoned property regularly, others have not historically done so, and the State may be benefitted by promoting an alternative opportunity for those property holders to begin regular reporting with attractive incentives; and

WHEREAS, the Department of State is uniquely situated to conduct an outreach program to Delaware entities not currently reporting the holding of abandoned property, given its expertise in marketing to Delaware entities; and

WHEREAS, any outreach program conducted by the Department of State would have to be in addition to, and not in lieu of, continued diligence by the Department of Finance in the collection of abandoned property, including continued and new examinations undertaken by the State Escheator of those entities not participating in a voluntary disclosure program with the Department of State; and

WHEREAS, any voluntary disclosure outreach program undertaken by the Department of State must provide appropriate incentives to participants and be undertaken in close collaboration and cooperation with the Department of Finance;

NOW THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 11, Title 12 of the Delaware Code by adding a new § 1177 as follows:

(a) Notwithstanding any other provision of Title 12 or Chapter 23 of Title 29, the Secretary of State is authorized to resolve and compromise claims for abandoned property otherwise owing to the State Escheator pursuant to Chapter 11 of Title 12, provided that such holders must voluntarily disclose to the Secretary of State such abandoned property on or before the dates provided in this section. The Secretary of State shall possess full and complete authority to determine and resolve all such claims consistent with Chapter 11 of Title 12 and exercise such authorities as are granted to the State Escheator pursuant to that Chapter except that any unclaimed property disclosure agreement accepted by the Secretary of State shall be deemed as waiving the right of the Secretary of State and the State Escheator to seek payment of any amounts of property pursuant to § 1156 or § 1158 with respect to the abandoned property voluntarily disclosed by the holder in the agreement, except in circumstances where there

is evidence of fraud or willful misrepresentation as to any such voluntary disclosure by the holder or those acting on the holder's behalf. In the event the Secretary is unable to resolve such claims by agreement, the Secretary of State may refer the resolution of such claims to the State Escheator at any time. The care and custody of all property paid pursuant to this section is assumed for the benefit of those entitled to receive the same and the State shall have all the responsibilities, duties, and obligations as if such property were recovered by the State Escheator. The Secretary of State may make such rules and regulations as deemed necessary to enforce this section.

(b) The Secretary of State may not initiate an examination of records or an investigation pursuant to § 1155, or seek payment of any amounts of property pursuant to § 1156 or § 1158, as to any calendar year prior to:

(i) 1996, with respect to any holder that has indicated in writing its intent to enter into an unclaimed property voluntary disclosure agreement by completing, executing and delivering, on or before June 30, 2013, to the Secretary of State the such form as is acceptable to the Secretary of State, and who enters an unclaimed property voluntary disclosure agreement and makes payment in full or enters into a payment plan on or before June 30, 2014; or

(ii) 1993, with respect to any holder that has indicated in writing its intent to enter into an unclaimed property voluntary disclosure agreement by completing, executing and delivering, after June 30, 2013 and on or before June 30, 2014, to the Secretary of State such form as is acceptable to the Secretary of State, and who enters an unclaimed property voluntary disclosure agreement and makes payment in full or enters into a payment plan on or before June 30, 2015.

(c) The Secretary of State shall have no authority to accept a notice in writing of intent to enter into an unclaimed property voluntary disclosure agreement after June 30, 2014, and shall have no authority to enter an unclaimed property voluntary self-disclosure agreement with a holder or otherwise receive or seek payment of any amounts of abandoned property after June 30, 2015.

(d) Notwithstanding any other provision of this section or of Chapter 11 of Title 12, the Secretary of State shall have no authority to enter an unclaimed property voluntary self-disclosure agreement with or otherwise receive or seek payment of any amounts of abandoned property from:

(i) those holders that have indicated in writing their intent to enter into an unclaimed property voluntary disclosure agreement by completing, executing and delivering, on or before June 30, 2012, the appropriate form promulgated by the State Escheator;

(ii) those holders that have entered a voluntary self-disclosure agreement with the State Escheator on or before June 30, 2012;

(iii) those holders to which a notice of examination has been mailed by the State Escheator, and

(iv) those holders that the Secretary of State has previously referred to the State Escheator.

(e) Each of the holders described in subsections (d)(i) or (d)(ii) of this section shall be accorded the benefit of the same deadlines established in subsection (b) of this section, but the State Escheator shall retain authority over all voluntary self-disclosure agreements so described.

(f) Unless referred by the Secretary of State pursuant to subsection (a), the State Escheator shall not conduct, prior to July 1, 2015, any examination of records or an investigation pursuant to § 1155 of any holder who has indicated in writing its intent to enter into an unclaimed property voluntary disclosure agreement by completing,

executing and delivering to the Secretary of State, on or before June 30, 2014, such form as is acceptable to the Secretary of State, unless such holder's participation is prohibited by subsection (d).

Section 2. Notwithstanding the provisions of any other law, the Secretary of State or his or her designee shall have the authority to draw upon the Appropriated Special Fund Account for escheat enforcement (appropriation 60513) maintained by the Department of Finance, Office of the Secretary (25-01-01), with the approval of the Secretary of Finance, for any purpose authorized by this Act. The Secretary or his or her designee shall have the same authority granted to the Department of Finance to use such Appropriated Special Funds and enter agreements for such purposes as authorized by law.

Section 3. This Act shall sunset July 1, 2015.

Approved July 11, 2012