

As Amended by House Committee

Session of 2016

HOUSE BILL No. 2196

By Committee on Taxation

2-2

1 AN ACT concerning abandoned property; relating to de minimis amounts
2 of property; amending K.S.A. 2014 Supp. 58-3935 and repealing the
3 existing section.
4

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

6 Section 1. K.S.A. 2014 Supp. 58-3935 is hereby amended to read as
7 follows: 58-3935. (a) Property is presumed abandoned if it is unclaimed by
8 the apparent owner during the time set forth below for the particular
9 property:

10 (1) Traveler's check, 15 years after its issuance;
11 (2) money order, seven years after issuance;
12 (3) except as provided in K.S.A. 58-3943, and amendments thereto,
13 stock or other equity interest in a business association or financial
14 organization, including a security entitlement under article 8 of the
15 uniform commercial code, five years after the earlier of:

16 (A) The date of the most recent dividend, stock split or other
17 distribution unclaimed by the apparent owner; or

18 (B) the date of the second mailing of a statement of account or other
19 notification or communication that was returned as undeliverable or after
20 the holder discontinued mailings, notifications or communications to the
21 apparent owner;

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

25 (5) a demand, savings or time deposit, including a deposit that is
26 automatically renewable, five years after the earlier of maturity or the date
27 of the last indication by the owner of interest in the property, except that a
28 deposit that is automatically renewable is deemed matured for purposes of
29 this section upon its initial date of maturity, unless the owner has
30 consented to a renewal at or about the time of the renewal and the consent
31 is in writing or is evidenced by a memorandum or other record on file with
32 the holder;

33 (6) money or credits owed to a customer as a result of a retail
34 business transaction, five years after the obligation accrued;

35 (7) amount owed by an insurer on a life or endowment insurance
36 policy or an annuity that has matured or terminated, three years after the

1 obligation to pay arose or, in the case of a policy or annuity payable upon
2 proof of death, three years after the insured has attained, or would have
3 attained if living, the limiting age under the mortality table on which the
4 reserve is based;

5 (8) property distributable by a business association or financial
6 organization in a course of dissolution, one year after the property
7 becomes distributable;

8 (9) property received by a court as proceeds of a class action, and not
9 distributed pursuant to the judgment, one year after the distribution date;

10 (10) property held by a court, state or other government,
11 governmental subdivision, agency or instrumentality, one year after the
12 property becomes distributable;

13 (11) wages or other compensation for personal services, one year
14 after the compensation becomes payable;

15 (12) deposit or refund owed to a subscriber by a utility, one year after
16 the deposit or refund becomes payable;

17 (13) property held by agents and fiduciaries in a fiduciary capacity
18 for the benefit of another person, five years after it has become payable or
19 distributable, unless the owner has increased or decreased the principal,
20 accepted payment of principal or income, communicated concerning the
21 property or otherwise indicated an interest as evidenced by a memorandum
22 or other record on file prepared by the fiduciary;

23 (14) property in an individual retirement account, defined benefit plan
24 or other account or plan that is qualified for tax deferral under the income
25 tax laws of the United States, three years after the earliest of the date of the
26 distribution or attempted distribution of the property, the date of the
27 required distribution as stated in the plan or trust agreement governing the
28 plan, or the date, if determinable by the holder, specified in the income tax
29 laws of the United States by which distribution of the property must begin
30 in order to avoid a tax penalty;

31 (15) property distributable in the course of a demutualization,
32 rehabilitation or related reorganization of an insurance company shall be
33 deemed abandoned as follows:

34 (A) Any check or draft, two years after the date of the
35 demutualization or reorganization, if the check or draft has not been
36 presented for payment and the owner has not otherwise communicated
37 with the holder or its agent regarding the property;

38 (B) (i) any other property, two years after the date of the
39 demutualization or reorganization if instruments or statements reflecting
40 the distribution are either mailed to the owner and returned by the post
41 office as undeliverable, or not mailed to the owner because of an address
42 on the books and records of the holder that is known to be incorrect; and

43 (ii) the owner has not:

1 (a) Communicated in writing with the holder or its agent regarding
2 the property; or

3 (b) otherwise communicated with the holder or its agent regarding the
4 property as evidenced by a memorandum or other record on file with the
5 holder or its agent.

6 (c) For any time more than two years after the date of
7 demutualization or reorganization, any property which is not subject to
8 ~~subparagraph (A) or (B)~~ of this paragraph (15) shall be treated under other
9 provisions of this chapter for the specific type of property;

10 (16) all other property, five years after the owner's right to demand
11 the property or after the obligation to pay or distribute the property arises,
12 whichever first occurs; and

13 (17) any proceeds of a sale pursuant to K.S.A. 58-817, and
14 amendments thereto, which remain after satisfaction of the lien provided
15 by K.S.A. 58-816, and amendments thereto, that have been unclaimed by
16 the owner for one year from receipt of the proceeds of the sale and
17 satisfaction of the lien.

18 (b) At the time that an interest is presumed abandoned under
19 subsection (a) any other property right accrued or accruing to the owner as
20 a result of the interest, and not previously presumed abandoned, is also
21 presumed abandoned.

22 (c) Property is unclaimed if, for the applicable period set forth in
23 subsection (a), the apparent owner has not communicated in writing or by
24 other means reflected in a contemporaneous record prepared by or on
25 behalf of the holder, with the holder concerning the property or the account
26 in which the property is held, and has not otherwise indicated an interest in
27 the property. A communication by an owner with a person other than the
28 holder or the holder's representative who has not in writing identified the
29 property to the owner is not an indication of interest in the property by the
30 owner.

31 (d) An indication of an owner's interest in property includes:

32 (1) The presentment of a check or other instrument of payment of a
33 dividend or other distribution made with respect to an account or
34 underlying stock or other interest in a business association or financial
35 organization or, in the case of a distribution made by electronic or similar
36 means, evidence that the distribution has been received;

37 (2) owner-directed activity in the account in which the property is
38 held, including a direction by the owner to increase, decrease or change
39 the amount or type of property held in the account;

40 (3) the making of a deposit to or withdrawal from a bank account;
41 and

42 (4) the payment of a premium with respect to a property interest in an
43 insurance policy, except that the application of an automatic premium loan

1 provision or other nonforfeiture provision contained in an insurance policy
2 does not prevent a policy from maturing or terminating if the insured has
3 died or the insured or the beneficiary of the policy has otherwise become
4 entitled to the proceeds before the depletion of the cash surrender value of
5 a policy by the application of those provisions.

6 (e) Property is payable or distributable for the purpose of this act
7 notwithstanding the owner's failure to make demand or to present any
8 instrument or document otherwise required to obtain payment.

9 (f) Any demand or savings account or matured timed deposit with a
10 financial organization shall not be presumed abandoned if regular
11 correspondence to an owner of the account has not been returned to the
12 sender.

13 (g) Any outstanding check, draft, credit balance, customer's
14 overpayment or unidentified remittance issued to a sole proprietorship or
15 business association as part of a commercial transaction in the ordinary
16 course of a holder's business shall not be presumed abandoned.

17 (h) A holder may not impose with respect to any property payable or
18 distributable for the purpose of this act, including any income or increment
19 derived therefrom, any fee or charge due to dormancy or inactivity or
20 cease payment of interest unless:

21 (1) There is an enforceable written contract between the holder and
22 the owner of the property pursuant to which the holder may impose a
23 charge or cease payment of interest;

24 (2) for property in excess of \$100, the holder, no more than three
25 months before the initial imposition of those charges or cessation of
26 interest, has mailed written notice to the owner of the amount of those
27 charges at the last known address of the owner stating that those charges
28 will be imposed or that interest will cease, but the notice provided in this
29 section need not be given with respect to charges imposed or interest
30 ceased before the effective date of this act, or for property described in
31 K.S.A. 58-3937 and 58-3938, and amendments thereto; and

32 (3) the holder regularly imposes such charges or ceases payment of
33 interest and in no instance reverses or otherwise cancels them or
34 retroactively credits interest with respect to the property. Charges imposed
35 because of dormancy or inactivity may be made and collected monthly,
36 quarterly or annually except that beginning with the effective date of this
37 act, such charges may only be imposed for a maximum of five calendar
38 years.

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

43 (j) For the purposes of this act, a person who is deemed to hold

1 property in a fiduciary capacity for a business association alone is the
2 holder of the property only insofar as the interest of the business
3 association in the property is concerned, and the business association is the
4 holder of the property insofar as the interest of any other person in the
5 property is concerned.

6 (k) Any property held by a financial organization that would
7 otherwise be presumed abandoned under this section shall not be
8 presumed abandoned if the apparent owner:

9 (1) Owns other property which is not presumed abandoned and if the
10 financial organization communicates in writing with the owner with regard
11 to the property that would otherwise be presumed abandoned under this
12 section at the address to which communications regarding the other
13 property regularly are sent; or

14 (2) had another relationship with the financial organization
15 concerning which the owner has:

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

17 (B) otherwise indicated an interest as evidenced by a memorandum or
18 other record on file prepared by an employee of the financial organization
19 and if the financial organization communicates in writing with the owner
20 with regard to the property that would otherwise be abandoned under this
21 section at the address to which communications regarding the other
22 relationship regularly are sent.

23 *(l) For purposes of this subsection, "government entity" means the*
24 *state, any governmental subdivision, agency, or instrumentality thereof,*
25 *and any municipality, county, court or any other unit of local government.*
26 *De minimis property is property valued at \$20 or less. De minimis*
27 *property which is abandoned and in the possession of a government entity*
28 *shall be held by such government entity for a period of one year. If the de*
29 *minimis property remains unclaimed for more than one year the*
30 *governmental entity shall use or dispose of the de minimis property as the*
31 *government entity sees fit* **Any financial instrument valued at \$20 or less**
32 **which is abandoned and in the possession of a governmental entity**
33 **shall be held by such governmental entity for a period of one year. If**
34 **the financial instrument remains unclaimed for more than one year,**
35 **the governmental entity shall use or dispose of the financial**
36 **instrument as the governmental entity sees fit. As used in this**
37 **subsection, "governmental entity" means the state, any governmental**
38 **subdivision, agency or instrumentality thereof, and any municipality,**
39 **county, court or any other unit of local government; and "financial**
40 **instrument" means any check, draft, money order, certificate of**
41 **deposit, letter of credit, bill of exchange, credit card, debit card or**
42 **marketable security.**

43 Sec. 2. K.S.A. 2014 Supp. 58-3935 is hereby repealed.

1 Sec. 3. This act shall take effect and be in force from and after its
2 publication in the statute book.