

By: Senator(s) Doxey

To: Judiciary, Division A

SENATE BILL NO. 2834

1 AN ACT TO MAKE CERTAIN REVISIONS TO THE UNIFORM DISPOSITION
 2 OF UNCLAIMED PROPERTY ACT; TO AMEND SECTION 89-12-3, MISSISSIPPI
 3 CODE OF 1972, TO DEFINE CERTAIN TERMS; TO AMEND SECTIONS 89-12-5,
 4 85-12-7 AND 89-12-9, MISSISSIPPI CODE OF 1972, TO REVISE THE
 5 DORMANCY PERIOD; TO AMEND SECTION 89-12-11, MISSISSIPPI CODE OF
 6 1972, TO REVISE THE PRESUMED ABANDONMENT OF DIVIDEND, INTEREST AND
 7 THE LIKE; TO AMEND SECTION 89-12-13, 89-12-14, 89-12-15 AND
 8 89-12-16, MISSISSIPPI CODE OF 1972, TO REVISE THE DORMANCY PERIOD;
 9 TO AMEND SECTION 89-12-23, MISSISSIPPI CODE OF 1972, TO REVISE
 10 REPORTING REQUIREMENTS; TO AMEND SECTION 89-12-27, MISSISSIPPI
 11 CODE OF 1972, TO REVISE THE PUBLICATION NOTICE OF NAMES OF PERSONS
 12 APPEARING TO OWN PROPERTY PRESUMED ABANDONED; TO PROVIDE FOR THE
 13 PRESUMPTION OF UNCLAIMED DEMUTUALIZATION PROCEEDS; AND FOR RELATED
 14 PURPOSES.

15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

16 **SECTION 1.** Section 89-12-3, Mississippi Code of 1972, is
 17 amended as follows:

18 89-12-3. As used in this act, unless the context otherwise
 19 requires:

20 (a) "Banking organization" means any national or state
 21 bank, trust company, savings bank, land bank, private banker, or
 22 any similar organization which is engaged in business in this
 23 state.

24 (b) "Business association" means any corporation, joint
 25 stock company, business trust, partnership, or any association for
 26 business purposes of two (2) or more individuals, whether
 27 organized for profit or nonprofit, including, but not limited to,
 28 a banking organization, financial organization, life insurance
 29 corporation and utility.

30 (c) "Financial organization" means any federal or state
 31 savings and loan association, building and loan association,
 32 credit union, cooperative bank or investment company, or any
 33 similar organization which is engaged in business in this state.

34 (d) "Holder" means any person in possession of property
35 subject to the provisions of this act belonging to another, or who
36 is trustee in case of a trust, or is indebted to another on an
37 obligation subject to the provisions of this chapter.

38 (e) "Insurance corporation" means any association or
39 corporation transacting in this state the business of insurance
40 involving in any manner a person or property.

41 (f) "Intangible personal property" includes, but is not
42 limited to:

43 (i) Monies, checks, drafts, deposits, interest,
44 dividends, and income;

45 (ii) Credit balances, customer overpayments, gift
46 certificates, security deposits, refunds, credit memos, unpaid
47 wages, unused airline tickets, and unidentified remittances;

48 (iii) Monies deposited to redeem stocks, bonds,
49 coupons, and other securities, or to make distributions;

50 (iv) Amounts due and payable under the terms of
51 insurance policies;

52 (v) Amounts distributable from a trust or
53 custodial fund established under a plan to provide health,
54 welfare, pension, vacation, severance, retirement, death, stock
55 purchase, profit sharing, employee savings, supplemental
56 unemployment insurance, or similar benefits;

57 (vi) Shares of corporate stock and other
58 intangible ownership interests in business associations; and

59 (vii) Bonds, notes and other debt obligations.

60 (g) "Owner" means a depositor in case of a deposit, a
61 beneficiary in case of a trust, a creditor, claimant or payee in
62 case of other choses in action, or any person having a legal or
63 equitable interest in property subject to the provisions of this
64 act, or his legal representative.

65 (h) "Apparent owner" means the person who appears from
66 the records of the holder to be entitled to property held by the
67 holder.

68 (i) "Person" means any individual, business
69 association, government or political subdivision or agency,
70 corporation, public authority, estate, trust, two (2) or more
71 persons having a joint or common interest, or any other legal or
72 commercial entity whether such person is acting in his own right
73 or in a representative capacity.

74 (j) "Treasurer" means the State Treasurer of the State
75 of Mississippi.

76 (k) "Utility" means any person who owns or operates in
77 this state for public use, any plant, equipment, property,
78 franchise, or license for the transmission of communications or
79 the production, storage, transmission, sale, delivery, or
80 furnishing of electricity, water, steam or gas.

81 (l) "Mineral" means gas; oil; coal; other gaseous,
82 liquid and solid hydrocarbons; oil shale; cement material; sand
83 and gravel; road material; building stone; chemical raw material;
84 gemstone; fissionable and nonfissionable ores; colloidal and other
85 clay; steam and other geothermal resource; or any other substance
86 defined as a mineral by the law of this state.

87 (m) "Mineral proceeds" means amounts payable for the
88 extraction, production or sale of minerals, or upon the
89 abandonment of those payments, all payments that become payable
90 thereafter. The term includes amounts payable:

91 (i) For the acquisition and retention of a mineral
92 lease, including bonuses, royalties, compensatory royalties,
93 shut-in royalties, minimum royalties and delay rentals;

94 (ii) For the extraction, production or sale of
95 minerals, including net revenue interests, royalties, overriding
96 royalties, extraction payments and production payments; and

97 (iii) Under an agreement or option, including a
98 joint operating agreement, unit agreement, pooling agreement and
99 farmout agreement.

100 **SECTION 2.** Section 89-12-5, Mississippi Code of 1972, is
101 amended as follows:

102 89-12-5. (1) Subject to the provisions of Sections 89-12-17
103 and 89-12-19, the following property held or owing by a banking or
104 financial organization or by a business association shall be
105 presumed abandoned:

106 (a) Any demand, savings, or matured time deposit made
107 in this state with a banking organization or financial
108 organization, together with any interest or dividend thereon,
109 excluding any charges that may have accrued, unless the owner has,
110 within three (3) years:

111 (i) Increased or decreased the amount of the
112 deposit, or presented the passbook or other similar evidence of
113 the deposit for the crediting of interest; or

114 (ii) Corresponded in writing with the banking
115 organization or financial organization concerning the deposit; or

116 (iii) Otherwise indicated an interest in the
117 deposit as evidenced by a memorandum on file with the banking
118 organization or financial organization.

119 (b) Any sum payable on checks certified in this state
120 or on written instruments issued in this state on which a banking
121 or financial organization or business association is directly
122 liable, including, but not limited to, certificates of deposit,
123 drafts, money orders and traveler's checks, that, with the
124 exception of traveler's checks and money orders, has been
125 outstanding for more than three (3) years from the date it was
126 payable, or from the date of its issuance if payable on demand,
127 or, in the case of traveler's checks, that has been outstanding
128 for more than fifteen (15) years from the date of its issuance,
129 or, in the case of money orders, that has been outstanding for

130 more than seven (7) years from the date of its issuance, unless
131 the owner has within three (3) years, or within fifteen (15) years
132 in the case of traveler's checks or within seven (7) years in the
133 case of money orders, corresponded in writing with the banking or
134 financial organization or business association concerning it, or
135 otherwise indicated an interest as evidenced by a memorandum on
136 file with the banking or financial organization or business
137 association.

138 (2) Any certificate of deposit made in this state with a
139 banking organization, together with an interest or dividend
140 thereon, with a maturity date equal to or greater than ten (10)
141 years shall be exempt from the time limit provisions of this
142 chapter.

143 **SECTION 3.** Section 89-12-7, Mississippi Code of 1972, is
144 amended as follows:

145 89-12-7. (1) Subject to the provisions of Section 89-12-17,
146 funds held or owing by a life insurance corporation under any life
147 or endowment insurance policy or annuity contract which has
148 matured or terminated shall be presumed abandoned if unclaimed and
149 unpaid for more than three (3) years after the funds became due
150 and payable as established from the records of the corporation.

151 (2) If a person other than the insured or annuitant is
152 entitled to the funds and no address of such person is known to
153 the corporation or if it is not definite and certain from the
154 records of the corporation what person is entitled to the funds,
155 it shall be presumed that the last known address of the person
156 entitled to the funds is the same as the last known address of the
157 insured or annuitant according to the records of the corporation.
158 This presumption is a presumption affecting the burden of proof.

159 (3) A life insurance policy not matured by actual proof of
160 the death of the insured according to the records of the
161 corporation shall be deemed to be matured and the proceeds due and
162 payable if:

163 (a) The insured has attained, or would have attained if
164 he were living, the limiting age under the mortality table on
165 which the reserve is based;

166 (b) The policy was in force at the time the insured
167 attained, or would have attained, the limiting age specified in
168 paragraph (a) of this subsection; and

169 (c) Neither the insured nor any other person appearing
170 to have an interest in the policy has, within the preceding three
171 (3) years, according to the records of the corporation:

172 (i) Assigned, readjusted, or paid premiums on the
173 policy,

174 (ii) Subjected the policy to loan, or

175 (iii) Corresponded in writing with the life
176 insurance corporation concerning the policy.

177 (4) Any funds otherwise payable according to the records of
178 the corporation shall be deemed due and payable although the
179 policy or contract has not been surrendered as required.

180 **SECTION 4.** Section 89-12-9, Mississippi Code of 1972, is
181 amended as follows:

182 89-12-9. Subject to the provisions of Section 89-12-17 of
183 this act, the following funds held or owing by any utility shall
184 be presumed abandoned:

185 (a) Any deposit made by a subscriber with a utility to
186 secure payment for, or any sum paid in advance for, utility
187 services to be furnished in this state, less any lawful
188 deductions, that has remained unclaimed by the person appearing on
189 the records of the utility entitled thereto for more than three
190 (3) years after the termination of the services for which the
191 deposit or advance payment was made.

192 (b) Any sum which a utility has been ordered to refund
193 and which was received for utility services rendered in this
194 state, together with any interest thereon, less any lawful
195 deduction, that has remained unclaimed by the person appearing on

196 the records of the utility entitled thereto for more than three
197 (3) years after the date it became payable in accordance with the
198 final determination or order providing for the refund.

199 **SECTION 5.** Section 89-12-11, Mississippi Code of 1972, is
200 amended as follows:

201 89-12-11. (1) (a) Stock or other equity interest in a
202 business association is presumed unclaimed three (3) years after
203 the earliest of:

204 (i) The date of the most recent dividend, stock
205 split or other distribution unclaimed by the apparent owner;

206 (ii) The date of a statement of account or other
207 notification or communication that was returned as undeliverable;
208 or

209 (iii) The date the holder discontinued mailings,
210 notifications or communications to the apparent owner.

211 This section applies to both the underlying stock, share or
212 other intangible ownership interest of an owner, and any stock,
213 share or other intangible ownership interest of which the business
214 association is in possession of the certificate or other evidence
215 or indicia of ownership, and to the stock, share or other
216 ownership interest of dividend and nondividend paying business
217 associations whether or not the interest is represented by a
218 certificate.

219 (b) Unmatured or unredeemed debt, other than a bearer
220 bond or an original issue discount bond, is presumed unclaimed
221 three (3) years after the date of the most recent interest payment
222 unclaimed by the owner.

223 (c) Matured or redeemed debt is presumed unclaimed
224 three (3) years after the date of maturity or redemption.

225 (d) At the time property is presumed unclaimed under
226 paragraph (a) or paragraph (b), any other property right accrued
227 or accruing to the owner as a result of the property interest and
228 not previously presumed unclaimed is also presumed unclaimed.

229 (2) The running of the three-year period ceases if the
230 person:

231 (a) (i) Communicates in writing with the association
232 or its agent regarding the interest or a dividend, distribution or
233 other sum payable as a result of the interest; or

234 (ii) Otherwise communicates with the association
235 regarding the interest or a dividend, distribution or other sum
236 payable as a result of the interest, as evidenced by a memorandum
237 or other record on file with the association or its agent.

238 (b) Presents an instrument issued to pay interest or a
239 dividend or other cash distribution. If any future dividend,
240 distribution or other sum payable to the owner as a result of the
241 interest is subsequently not claimed by the owner, a new period in
242 which the property is presumed unclaimed commences and relates
243 back only to the time a subsequent dividend, distribution or other
244 sum became due and payable.

245 (3) Any dividend, profit, distribution, interest,
246 redemption, payment on principal or other sum held or owing by a
247 business association for or to its shareholders, certificate
248 holder, member, bondholder or other security holder who has not
249 claimed it or corresponded in writing with the business
250 association concerning it, within three (3) years after the date
251 prescribed for payment or delivery is presumed unclaimed.

252 (4) At the time an interest is presumed abandoned under this
253 section, any dividend, distribution or other sum then held for or
254 owing to the owner as a result of the interest, and not previously
255 abandoned, is presumed abandoned.

256 (5) This section does not apply to any stock or other
257 intangible ownership of interest enrolled in a plan that provides
258 for the automatic reinvestment of dividends, distributions or
259 other sums payable as a result of the interest unless the records
260 available to the State Treasurer show, with respect to any
261 intangible ownership interest not enrolled in the reinvestment

262 plan, that the owner has not within three (3) years communicated
263 in any manner described in subsection (1) of this section.

264 (6) Notwithstanding anything in this section or any other
265 section in this chapter to the contrary, the property presumed
266 abandoned under this chapter shall not include capital credits or
267 patronage refunds offered for payment by nonprofit cooperative
268 electric power associations, nonprofit cooperative water and sewer
269 associations, or nonprofit agricultural cooperative marketing
270 associations, but rather such unclaimed funds shall be used for
271 the benefit of the general membership of such associations.

272 **SECTION 6.** Section 89-12-13, Mississippi Code of 1972, is
273 amended as follows:

274 89-12-13. Subject to the provisions of Section 89-12-17, any
275 intangible personal property and any income or increment thereon,
276 held in a fiduciary capacity for the benefit of another person
277 shall be presumed abandoned unless the owner has, within three (3)
278 years after it became payable or distributable, increased or
279 decreased the principal, accepted payment of principal or income,
280 corresponded in writing concerning the property or otherwise
281 indicated an interest as evidenced by a memorandum or other record
282 on file with the fiduciary.

283 **SECTION 7.** Section 89-12-14, Mississippi Code of 1972, is
284 amended as follows:

285 89-12-14. (1) All intangible property, including, but not
286 limited to, any interest, dividend, or other earnings thereon,
287 less any lawful charges, held by a business association, federal,
288 state or local government or governmental subdivision, agency or
289 entity, or any other person or entity, regardless of where the
290 holder may be found, if the owner has not claimed or corresponded
291 in writing concerning the property within three (3) years after
292 the date prescribed for payment or delivery, is presumed abandoned
293 and subject to the custody of this state as unclaimed property if:

294 (a) The last known address of the owner is unknown; and

295 (b) The person or entity originating or issuing the
296 intangible property is this state or any political subdivision of
297 this state, or is incorporated, organized, created or otherwise
298 located in this state.

299 (2) The provisions of subsection (1) of this section shall
300 not apply to property that is or may be presumed abandoned and
301 subject to the custody of this state pursuant to any other
302 provision of law containing a dormancy period different than that
303 prescribed in subsection (1) of this section.

304 (3) The provisions of subsection (1) of this section shall
305 apply to all property held at the time of the effective date of
306 this section, or at any time thereafter, regardless of when such
307 property became or becomes presumptively abandoned.

308 (4) Insofar and only insofar as funds reflected by the
309 cancellation of State of Mississippi warrants are unclaimed and
310 presumed abandoned, the State Treasurer shall transfer such funds
311 out of the Abandoned Property Fund established by Section 89-12-37
312 to the original fund source after the expiration of three (3)
313 years as required herein.

314 **SECTION 8.** Section 89-12-15, Mississippi Code of 1972, is
315 amended as follows:

316 89-12-15. All intangible personal property not otherwise
317 covered by the provisions of this chapter, including any income or
318 increment thereon and deducting any charges that may have accrued,
319 that is held in the ordinary course of the holder's business and
320 has remained unclaimed by the owner for more than three (3) years
321 after it became payable or distributable shall be presumed
322 abandoned.

323 **SECTION 9.** Section 89-12-16, Mississippi Code of 1972, is
324 amended as follows:

325 89-12-16. (1) All tangible personal property or intangible
326 personal property, including choses in action in amounts certain,
327 and all debts owed or entrusted funds or other property held by

328 the federal government, or any federal agency, or any officer, or
329 appointee thereof, shall be presumed abandoned in this state if
330 the last known address of the owner of the property is in this
331 state and the property has remained unclaimed for three (3) years.

332 (2) This section shall apply to all abandoned property held
333 by the federal government, or any federal agency, or any officer,
334 or any appointee thereof, at the time of the effective date of
335 this section, or at any time thereafter, regardless of when such
336 property became presumptively abandoned.

337 **SECTION 10.** Section 89-12-23, Mississippi Code of 1972, is
338 amended as follows:

339 89-12-23. (1) Every person holding funds or other
340 intangible personal property presumed abandoned under the
341 provisions of this chapter shall report to the Treasurer with
342 respect to the property as hereinafter provided.

343 (2) The report shall be verified, shall be on a form
344 prescribed or approved by the Treasurer, and shall include:

345 (a) Except with respect to traveler's checks and money
346 orders, the name, if known, and last known address, if any, of
347 each person appearing from the records of the holder to be the
348 owner of any property of the value of more than One Hundred
349 Dollars (\$100.00) presumed abandoned under the provisions of this
350 chapter;

351 (b) In case of unclaimed funds of life insurance
352 corporations, the full name of the insured or annuitant and his
353 last known address according to the life insurance corporation's
354 records;

355 (c) The nature and identifying number, if any, or
356 description of the property and the amount appearing from the
357 records to be due, except that items of value under One Hundred
358 Dollars (\$100.00) each may be reported in aggregate;

359 (d) Except for any property reported in the aggregate,
360 the date when the property became payable, demandable, or

361 returnable, and the date of the last transaction with the owner
362 with respect to the property; and

363 (e) Other information which the Treasurer prescribes by
364 regulation as necessary for the administration of this act.

365 (3) If the person holding property presumed abandoned under
366 the provisions of this act is a successor to other persons who
367 previously held the property for the owner, or if the holder has
368 changed his name while holding the property, he shall file with
369 his report all prior-known names and addresses of each holder of
370 the property.

371 (4) The report shall be filed annually * * * before November
372 1 of each year in which a report is required as of June 30 next
373 preceding unless otherwise provided herein. The Treasurer may
374 postpone the reporting date upon written request by any person
375 required to file a report.

376 (5) If the holder of property presumed abandoned under the
377 provisions of this act knows the whereabouts of the owner and if
378 the owner's claim has not been barred by the statute of
379 limitations, the holder shall, before filing the required report,
380 endeavor to communicate with the owner and take reasonable steps
381 to prevent abandonment from being presumed. The mailing of notice
382 to the last-known address of the owner by the holder shall
383 constitute compliance with this subsection and no further act on
384 the part of the holder shall be necessary.

385 (6) Verification, if made by a partnership, shall be
386 executed by a partner; if made by an unincorporated association or
387 private corporation, by an officer; and if made by a public
388 corporation, by its chief fiscal officer.

389 (7) Every person who is requested in writing by the
390 Treasurer shall file a report stating that such person is not
391 holding any abandoned property which is reportable pursuant to the
392 provisions of this section.

393 (8) The initial report filed under this chapter shall
394 include all items of property that would have been presumed
395 abandoned if this act had been in effect since July 1, 1969, and
396 all such property shall be subject to the provisions of this
397 chapter.

398 **SECTION 11.** Section 89-12-27, Mississippi Code of 1972, is
399 amended as follows:

400 89-12-27. (1) The department shall notify apparent owners
401 of unclaimed property in the manner and method set out in
402 subsection (2) of this section. In deciding whether to use an
403 additional method specified in subsection (2)(b) of this section,
404 and which of those methods to use, the department shall employ the
405 most cost-effective method available within its appropriations.

406 (2) The department:

407 (a) Shall notify all apparent owner of the unclaimed
408 property in accordance with this section by means of posting on
409 the department's website on the Internet;

410 (b) Many use any of the following to provide additional
411 notice to the apparent owners:

412 (i) Publication in a newspaper of general
413 circulation in the area of the state in which the last known
414 address of a person to be named in the notice is located or, if
415 the address is unknown, in the area in which the holder has its
416 principal place of business in the state;

417 (ii) Individual contact by regular or electronic
418 mail, or by telephone, if the department has current contact
419 information on file;

420 (iii) Any other manner and method that the
421 department considers effective for providing notice and
422 publication.

423 (3) In its notice and publication under subsection (2) of
424 this section, the department shall provide the names of the

425 apparent owners of the property and information regarding recovery
426 of the unclaimed property.

427 (4) Within one hundred twenty (120) days from the receipt of
428 the report required by Section 89-12-23, the Treasurer shall mail
429 a notice to each person having an address listed therein who
430 appears to be entitled to property valued at One Hundred Dollars
431 (\$100.00) or more and presumed abandoned under the provisions of
432 this chapter.

433 (5) The mailed notice shall contain:

434 (a) A statement that property is being held to which
435 the addressee appears entitled;

436 (b) A statement that any person claiming an interest in
437 the property must file a proof of claim with the Treasurer as set
438 forth in Section 89-12-39.

439 (6) This section shall not be applicable to sums payable on
440 traveler's checks or money orders presumed abandoned under the
441 provisions of Section 89-12-5.

442 **SECTION 12.** (1) Property distributable in the course of the
443 demutualization of an insurance company is presumed abandoned as
444 follows:

445 (a) Any funds two (2) years after the date of the
446 demutualization, if the funds remain unclaimed and the owner has
447 not otherwise communicated with the holder or its agent regarding
448 the property as evidenced by a memorandum or other record on file
449 with the holder or its agent.

450 (b) Any stock two (2) years after the date of the
451 demutualization, if instruments or statements reflecting the
452 distribution are either mailed to the owner and returned by the
453 post office as undeliverable or not mailed to the owner because of
454 an address on the books and records of the holder or its agent
455 regarding the property as evidenced by a memorandum or other
456 record on file with the holder or its agent.

457 (2) A holder of unclaimed property described in subsection
458 (1) shall file an initial one-time report of unclaimed
459 demutualization proceeds not later than October 1, 2005, for the
460 period ending December 31, 2004.

461 (3) As used in this section, "demutualization" means the
462 payment of consideration for the relinquishment of a mutual
463 membership interest in a mutual insurance company, regardless if
464 undertaken in conjunction with a plan of demutualization,
465 liquidation, merger or other form of reorganization.

466 (4) Demutualization property not otherwise subject to this
467 section is subject to Section 89-12-15.

468 **SECTION 13.** This act shall take effect and be in force from
469 and after July 1, 2005.