

CS FOR HOUSE BILL NO. 330(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered: 3/31/04

Referred: State Affairs, Finance

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to unclaimed property; and providing for an effective date."**

2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 * **Section 1.** AS 34.45.110(a) is amended to read:

4 (a) Except as otherwise provided in AS 34.45.120 - 34.45.780, all intangible
5 property, including income or increment derived from the property, less lawful
6 charges, that is held, issued, or owing in the ordinary course of a holder's business and
7 has remained unclaimed by the owner for more than **three** [FIVE] years after
8 becoming payable or distributable is presumed abandoned.

9 * **Sec. 2.** AS 34.45.150(a) is amended to read:

10 (a) Other than money payable on an instrument that is subject to
11 AS 34.45.140, money payable on a check, draft, or similar instrument on which a
12 banking or financial organization is directly liable, including a cashier's check and a
13 certified check, that has been outstanding for more than **five** [SEVEN] years after it
14 was payable or after its issuance if payable on demand, is presumed abandoned. This
15 presumption does not apply if the owner, within the preceding **five** [SEVEN] years,

1 has communicated in writing with the banking or financial organization concerning
 2 the instrument or has otherwise indicated an interest as evidenced by a memorandum
 3 or other record, on file, prepared by an employee of the organization.

4 * **Sec. 3.** AS 34.45.160(a) is amended to read:

5 (a) A demand, savings, or matured time deposit with a banking or financial
 6 organization, including a deposit that is automatically renewable, and money paid
 7 toward the purchase of a share, a mutual investment certificate, or other intangible
 8 property interest in a banking or financial organization is presumed abandoned unless
 9 the owner, within the preceding five [SEVEN] years, has

10 (1) in the case of a deposit, increased or decreased its amount or
 11 presented the passbook or other similar evidence of the deposit for the crediting of
 12 interest;

13 (2) communicated in writing with the banking or financial organization
 14 concerning the property; or

15 (3) otherwise indicated an interest in the property as evidenced by a
 16 memorandum or other record, on file, prepared by an employee of the banking or
 17 financial organization [;

18 (4) OWNED OTHER PROPERTY TO WHICH (1), (2), OR (3) OF
 19 THIS SUBSECTION APPLIES AND THE BANKING OR FINANCIAL
 20 ORGANIZATION HAS COMMUNICATED IN WRITING WITH THE OWNER
 21 WITH REGARD TO THE PROPERTY THAT WOULD OTHERWISE BE
 22 PRESUMED ABANDONED UNDER THIS SUBSECTION AT THE ADDRESS TO
 23 WHICH COMMUNICATIONS REGARDING THE OTHER PROPERTY ARE
 24 REGULARLY SENT; OR

25 (5) HAD ANOTHER RELATIONSHIP WITH THE BANKING OR
 26 FINANCIAL ORGANIZATION CONCERNING WHICH THE OWNER HAS

27 (A) COMMUNICATED IN WRITING WITH THE
 28 BANKING OR FINANCIAL ORGANIZATION OR OTHERWISE
 29 INDICATED AN INTEREST AS EVIDENCE BY A MEMORANDUM OR
 30 OTHER RECORD, ON FILE, PREPARED BY AN EMPLOYEE OF THE
 31 BANKING OR FINANCIAL ORGANIZATION; AND

1 (B) THE BANKING OR FINANCIAL ORGANIZATION
 2 COMMUNICATES IN WRITING WITH THE OWNER WITH REGARD TO
 3 THE PROPERTY THAT WOULD OTHERWISE BE ABANDONED
 4 UNDER THIS SUBSECTION AT THE ADDRESS TO WHICH
 5 COMMUNICATIONS REGARDING THE OTHER RELATIONSHIP
 6 REGULARLY ARE SENT].

7 * **Sec. 4.** AS 34.45.170(a) is amended to read:

8 (a) Money held or owing under a life or endowment insurance policy or
 9 annuity contract that has matured or terminated is presumed abandoned if unclaimed
 10 for more than three [FIVE] years after the money became due and payable as
 11 established from the records of the insurance company holding or owing the money.
 12 [HOWEVER, PROPERTY DESCRIBED IN (c)(2) OF THIS SECTION IS
 13 PRESUMED ABANDONED IF UNCLAIMED FOR MORE THAN TWO YEARS.]

14 * **Sec. 5.** AS 34.45 is amended by adding a new section to read:

15 **Sec. 34.45.175. Certain property distributed in insurance company**
 16 **reorganizations.** (a) Property distributed in the course of a demutualization,
 17 rehabilitation, or related reorganization of an insurance company is presumed
 18 abandoned two years after the date of the demutualization, rehabilitation, or related
 19 reorganization if, at the time of the demutualization, rehabilitation, or related
 20 reorganization, the last known address of the owner on the books and records of the
 21 holder is known to be incorrect, or a distribution or statement is returned by the post
 22 office as undeliverable, and the owner has not

23 (1) communicated in writing with the holder or its agent regarding the
 24 property; or

25 (2) otherwise communicated with the holder regarding the property as
 26 evidenced by a memorandum on file with the holder or its agent.

27 (b) The conditions raising a presumption of abandonment for property
 28 distributable in the course of a demutualization, rehabilitation, or related
 29 reorganization of a mutual insurance company that is not subject to (a) of this section
 30 are as otherwise provided in AS 34.45.110 - 34.45.780.

31 * **Sec. 6.** AS 34.45.200 is repealed and reenacted to read:

1 **Sec. 34.45.200. Stock and other intangible interests in business**
 2 **associations or financial organizations.** (a) Stock or other equity interest in a
 3 business association or financial organization is presumed abandoned five years after
 4 the earliest of

5 (1) the date of the most recent dividend, stock split, or other
 6 distribution unclaimed by the owner;

7 (2) the date that a statement of account or other notification or
 8 communication concerning the stock or other equity interest was returned as
 9 undeliverable; or

10 (3) the date that the holder of the stock or other equity interest
 11 discontinued mailings, notifications, or communications to the owner.

12 (b) Unmatured or unredeemed debt of a business association or financial
 13 organization, other than a bearer bond or an original issue discount bond, is presumed
 14 abandoned five years after the date of the most recent interest payment unclaimed by
 15 the owner.

16 (c) Matured or redeemed debt, including bearer bonds and original issue
 17 discount bonds, is presumed abandoned five years after the date of maturity or
 18 redemption.

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

22 (e) A distribution of net margins by a cooperative incorporated under
 23 AS 10.25 is presumed abandoned if the distribution remains unclaimed by the owner
 24 for more than one year after the date authorized for the distribution. The distribution
 25 presumed abandoned under this subsection reverts to the cooperative if the cooperative
 26 has, at least six months before the proposed date that the distribution reverts to the
 27 cooperative, both

28 (1) mailed a notice of the proposed reversion to the last known address
 29 of the owner as shown on the cooperative records; and

30 (2) published notice of the proposed reversion in the manner provided
 31 by law or court rule for service of a summons by publication.

1 * **Sec. 7.** AS 34.45.220(a) is amended to read:

2 (a) Intangible property and income or increment derived from the intangible
3 property held in a fiduciary capacity for the benefit of another person is presumed
4 abandoned unless the owner, within three [FIVE] years after it has become payable or
5 distributable, has increased or decreased the principal, accepted payment of principal
6 or income, communicated concerning the property, or otherwise indicated an interest
7 as evidenced by a memorandum or other record, on file, prepared by the fiduciary.

8 * **Sec. 8.** AS 34.45.240(a) is amended to read:

9 (a) A gift certificate or a credit memo, issued in the ordinary course of an
10 issuer's business, that remains unclaimed by the owner for more than three [FIVE]
11 years after becoming payable or distributable is presumed abandoned.

12 * **Sec. 9.** AS 34.45 is amended by adding a section to article 3 to read:

13 **Sec. 34.45.270. Burden of proof as to property evidenced by record of**
14 **check, draft, or similar instrument.** A record of the issuance of a check, draft, or
15 similar instrument is prima facie evidence of an obligation. In claiming property from
16 a holder who is also the issuer, the department's burden of proof as to the existence
17 and amount of the property and its abandonment is satisfied by showing issuance of
18 the instrument and passage of the requisite period of abandonment. Defenses of
19 payment, satisfaction, discharge, and want of consideration are affirmative defenses
20 that must be established by the holder.

21 * **Sec. 10.** AS 34.45.280(f) is repealed and reenacted to read:

22 (f) The requirements of this section apply to the holder of intangible property
23 with a total aggregate value greater than \$750 that is presumed abandoned under
24 AS 34.45.110 - 34.45.780 during the year preceding June 30 of each year. For
25 purposes of determining total aggregate value under this subsection, the holder shall
26 include all intangible property from prior years that was not reported under
27 AS 34.45.110 - 34.45.780.

28 * **Sec. 11.** AS 34.45.290 is repealed and reenacted to read:

29 **Sec. 34.45.290. Requests for reports and examination of records.** (a) The
30 department may require a person who has not filed a report under AS 34.45.280 or a
31 person who the department believes has filed an inaccurate, incomplete, or false

1 report, to file a verified report in a form specified by the department. The report must
2 state whether the person is holding property reportable under AS 34.45.110 -
3 34.45.780, describe property not previously reported or as to which the department has
4 made inquiry, and specifically identify and state the amounts of the property that may
5 be in issue.

6 (b) The department, at reasonable times and upon reasonable notice, may
7 examine the records of any person to determine whether the person has complied with
8 AS 34.45.110 - 34.45.780. The department may conduct the examination even if the
9 person believes it is not in possession of any property that must be reported, paid, or
10 delivered under AS 34.45.110 - 34.45.780. The department may contract with any
11 other person to conduct the examination on behalf of the department.

12 (c) The department at reasonable times may examine the records of an agent,
13 including a dividend disbursing agent or transfer agent, of a business association or
14 financial organization that is the holder of property presumed abandoned if the
15 department has given the notice required by (b) of this section to both the association
16 or organization and the agent at least 90 days before the examination.

17 (d) Documents and working papers obtained or compiled by the department,
18 or the department's agents, employees, contractors, or designated representatives in the
19 course of conducting an examination under AS 34.45.110 - 34.45.780 are confidential
20 and are not public records, but the documents and papers may be

21 (1) used by the department in the course of an action to collect
22 unclaimed property or otherwise enforce AS 34.45.110 - 34.45.780;

23 (2) used in joint examinations conducted with or under an agreement
24 with another state, the federal government, or any other governmental subdivision,
25 agency, or instrumentality;

26 (3) produced under subpoena or court order; or

27 (4) disclosed to the unclaimed property office of another state for that
28 state's use in circumstances equivalent to those described in this subsection, if the
29 other state is bound to keep the documents and papers confidential.

30 (e) If an examination of the records of a person results in the disclosure of
31 property reportable under AS 34.45.110 - 34.45.780, the department may assess the

1 cost of the examination against the holder at the rate of \$200 a day for each examiner,
 2 or a greater amount that is reasonable and was incurred, but the assessment may not
 3 exceed the value of the property found to be reportable under AS 34.45.110 -
 4 34.45.780. The cost of an examination made under (c) of this section may be assessed
 5 only against the business association or financial organization.

6 (f) If a holder does not maintain the records required by AS 34.45.300 and the
 7 records of the holder available for the periods subject to AS 34.45.110 - 34.45.780 are
 8 insufficient to permit the preparation of a report, the department may require the
 9 holder to report and pay to the department the amount the department reasonably
 10 estimates, on the basis of any available records of the holder or by any other
 11 reasonable method of estimation, should have been but was not reported.

12 * **Sec. 12.** AS 34.45.300(a) is repealed and reenacted to read:

13 (a) Except as otherwise provided in (b) of this section, a holder required to file
 14 a report under AS 34.45.280 shall maintain the records containing the information
 15 required to be included in the report for 10 years after the holder files the report,
 16 unless a shorter period is provided by regulations adopted by the department.

17 * **Sec. 13.** AS 34.45.310 is repealed and reenacted to read:

18 **Sec. 34.45.310. Notice and publication of lists of unclaimed property.** (a)
 19 The department shall notify apparent owners of unclaimed property under
 20 AS 34.45.110 - 34.45.780 in the manner and method set out in (b) of this section. In
 21 deciding whether to use an additional method specified in (b)(2) of this section, and
 22 which of those methods to use, the department shall employ the most cost-effective
 23 method available within its appropriations.

24 (b) The department

25 (1) shall notify all apparent owners of the unclaimed property in
 26 accordance with this section by means of posting on the department's website on the
 27 Internet;

28 (2) may use any of the following to provide additional notice to the
 29 apparent owners:

30 (A) publication in a newspaper of general circulation in the
 31 area of the state in which the last known address of a person to be named in the

1 notice is located, or if the address is unknown, in the area in which the holder
2 has its principal place of business in the state;

3 (B) individual contact by regular or electronic mail, or by
4 telephone, if the department has current contact information on file under
5 AS 34.45.110 - 34.45.780;

6 (C) any other manner and method that the department considers
7 effective for providing notice and publication under AS 34.45.110 - 34.45.780.

8 (c) In its notice and publication under (b) of this section, the department shall
9 provide the names of the apparent owners of the property and information regarding
10 recovery of the unclaimed property.

11 (d) The department is not required to publish in the notice an item of less than
12 \$100 in value.

13 (e) This section does not apply to money payable on traveler's checks, money
14 orders, and other written instruments presumed abandoned under AS 34.45.140.

15 * **Sec. 14.** AS 34.45.760(10) is amended to read:

16 (10) "intangible property"

17 (A) includes

18 (i) money, checks, drafts, warrants, deposits, interest,
19 dividends, and income;

20 (ii) credit balances, customer overpayments, gift
21 certificates, security deposits, refunds, credit memos, unpaid wages,
22 and unidentified remittances;

23 (iii) stocks and other intangible ownership interests in
24 business associations;

25 (iv) money deposited to redeem stocks, bonds, coupons,
26 and other securities, or to make distributions;

27 (v) amounts due and payable under the terms of
28 insurance policies; [AND]

29 (vi) amounts distributable from a trust or custodial fund
30 established under a plan to provide health, welfare, pension, vacation,
31 severance, retirement, death, stock purchase, profit-sharing, employee

1 savings, supplemental unemployment insurance, or similar benefits;

2 **and**

3 **(vii) amounts due and payable as mineral proceeds;**

4 (B) does not include

5 (i) unused airline tickets;

6 (ii) shares of stock issued by a corporation organized
7 under 43 U.S.C. 1601 - 1629a (Alaska Native Claims Settlement Act)
8 or unclaimed dividends payable on the shares of stock; or

9 (iii) overpaid contributions by employers to the
10 unemployment compensation fund under AS 23.20.130;

11 * **Sec. 15.** AS 34.45.760(11) is repealed and reenacted to read:

12 (11) "last known address" means

13 (A) if the address is sufficient to direct the delivery of mail or
14 receipt of a communication by the means known to the holder, a description of
15 the location of the apparent owner's residence or business;

16 (B) if the address is not sufficient as described in (A) of this
17 paragraph, a description indicating that the apparent owner was located within
18 this state;

19 * **Sec. 16.** AS 34.45.760 is amended by adding new paragraphs to read:

20 (18) "gift certificate" means an obligation of a business association
21 arising from a transaction between the business association and a consumer to provide
22 goods or services at a future date; "gift certificate" includes a gift certificate, stored
23 value card, gift card, on-line gift account, or other representation or evidence of the
24 obligation of a business association;

25 (19) "mineral" means gas; oil; other gaseous, liquid, and solid
26 hydrocarbons; oil shale; cement material; sand and gravel; road material; building
27 stone; chemical raw material; gemstone; fissionable and nonfissionable ores; colloidal
28 and other clay; steam and other geothermal resources; or any other substance defined
29 as mineral by other state law;

30 (20) "mineral proceeds" means amounts payable for the extraction,
31 production, or sale of minerals, or, upon the abandonment of those payments, all

1 payments that become payable after the abandonment; "mineral proceeds" includes
2 amounts payable

3 (A) for the acquisition and retention of a mineral lease,
4 including bonuses, royalties, compensatory royalties, shut-in royalties,
5 minimum royalties, and delay rentals;

6 (B) for the extraction, production, or sale of minerals, including
7 net revenue interests, royalties, overriding royalties, extraction payments, and
8 production payments;

9 (C) under an agreement or option, including a joint operating
10 agreement, unit agreement, pooling agreement, and farm-out agreement.

11 * **Sec. 17.** The uncodified law of the State of Alaska is amended by adding a new section to
12 read:

13 **APPLICABILITY.** The changes made by this Act apply to property that meets either
14 of the following:

15 (1) property that, on the effective date of this Act, already was subject to a
16 statutory provision amended by this Act;

17 (2) property that, on or after the effective date of this Act, becomes subject to
18 a statutory provision amended by this Act.

19 * **Sec. 18.** This Act takes effect immediately under AS 01.10.070(c).