



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

SB3515

Introduced 2/16/2018, by Sen. Antonio Muñoz

SYNOPSIS AS INTRODUCED:

765 ILCS 1026/15-102

815 ILCS 390/16

815 ILCS 390/18.5 new

from Ch. 21, par. 216

Amends the Revised Uniform Unclaimed Property Act to exclude, from the scope of the term "property", funds on deposit or held in trust under the Illinois Pre-Need Cemetery Sales Act. Amends the Illinois Pre-Need Cemetery Sales Act to provide that amounts attributable to undelivered merchandise or unprovided services that are held in trust may be presumptively abandoned. Sets forth the terms for presumptive abandonment. Requires the remittance of presumptively abandoned funds to the Comptroller for deposit into the Cemetery Consumer Protection Fund.

LRB100 18842 JLS 34084 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Revised Uniform Unclaimed Property Act is
5 amended by changing Section 15-102 as follows:

6 (765 ILCS 1026/15-102)

7 Sec. 15-102. Definitions. In this Act:

8 (1) "Administrator" means the State Treasurer.

9 (2) "Administrator's agent" means a person with which
10 the administrator contracts to conduct an examination
11 under Article 10 on behalf of the administrator. The term
12 includes an independent contractor of the person and each
13 individual participating in the examination on behalf of
14 the person or contractor.

15 (2.5) (Blank).

16 (3) "Apparent owner" means a person whose name appears
17 on the records of a holder as the owner of property held,
18 issued, or owing by the holder.

19 (4) "Business association" means a corporation, joint
20 stock company, investment company, unincorporated
21 association, joint venture, limited liability company,
22 business trust, trust company, land bank, safe deposit
23 company, safekeeping depository, financial organization,

1 insurance company, federally chartered entity, utility,
2 sole proprietorship, or other business entity, whether or
3 not for profit.

4 (5) "Confidential information" means information that
5 is "personal information" under the Personal Information
6 Protection Act, "private information" under the Freedom of
7 Information Act or personal information contained within
8 public records, the disclosure of which would constitute a
9 clearly unwarranted invasion of personal privacy, unless
10 the disclosure is consented to in writing by the individual
11 subjects of the information as provided in the Freedom of
12 Information Act.

13 (6) "Domicile" means:

14 (A) for a corporation, the state of its
15 incorporation;

16 (B) for a business association whose formation
17 requires a filing with a state, other than a
18 corporation, the state of its filing;

19 (C) for a federally chartered entity or an
20 investment company registered under the Investment
21 Company Act of 1940, the state of its home office; and

22 (D) for any other holder, the state of its
23 principal place of business.

24 (7) "Electronic" means relating to technology having
25 electrical, digital, magnetic, wireless, optical,
26 electromagnetic, or similar capabilities.

1 (8) "Electronic mail" means a communication by
2 electronic means which is automatically retained and
3 stored and may be readily accessed or retrieved.

4 (8.5) "Escheat fee" means any charge imposed solely by
5 virtue of property being reported as presumed abandoned.

6 (9) "Financial organization" means a bank, savings
7 bank, foreign bank, corporate fiduciary, currency
8 exchange, money transmitter, or credit union.

9 (10) "Game-related digital content" means digital
10 content that exists only in an electronic game or
11 electronic-game platform. The term:

12 (A) includes:

13 (i) game-play currency such as a virtual
14 wallet, even if denominated in United States
15 currency; and

16 (ii) the following if for use or redemption
17 only within the game or platform or another
18 electronic game or electronic-game platform:

19 (I) points sometimes referred to as gems,
20 tokens, gold, and similar names; and

21 (II) digital codes; and

22 (B) does not include an item that the issuer:

23 (i) permits to be redeemed for use outside a
24 game or platform for:

25 (I) money; or

26 (II) goods or services that have more than

1 minimal value; or

2 (ii) otherwise monetizes for use outside a
3 game or platform.

4 (11) "Gift card" means a record evidencing a promise
5 made for consideration by the seller or issuer of the
6 record that goods, services, or money will be provided to
7 the owner of the record to the value or amount shown in the
8 record that is either:

9 (A) a record:

10 (i) issued on a prepaid basis primarily for
11 personal, family, or household purposes to a
12 consumer in a specified amount;

13 (ii) the value of which does not expire;

14 (iii) that is not subject to a dormancy,
15 inactivity, or post-sale service fee;

16 (iv) that is redeemable upon presentation for
17 goods or services; and

18 (v) that, unless required by law, may not be
19 redeemed for or converted into money or otherwise
20 monetized by the issuer; or

21 (B) a prepaid commercial mobile radio service, as
22 defined in 47 C.F.R. 20.3, as amended.

23 (12) "Holder" means a person obligated to hold for the
24 account of, or to deliver or pay to, the owner, property
25 subject to this Act.

26 (13) "Insurance company" means an association,

1 corporation, or fraternal or mutual-benefit organization,
2 whether or not for profit, engaged in the business of
3 providing life endowments, annuities, or insurance,
4 including accident, burial, casualty, credit-life,
5 contract-performance, dental, disability, fidelity, fire,
6 health, hospitalization, illness, life, malpractice,
7 marine, mortgage, surety, wage-protection, and
8 worker-compensation insurance.

9 (14) "Loyalty card" means a record given without direct
10 monetary consideration under an award, reward, benefit,
11 loyalty, incentive, rebate, or promotional program which
12 may be used or redeemed only to obtain goods or services or
13 a discount on goods or services. The term does not include
14 a record that may be redeemed for money or otherwise
15 monetized by the issuer.

16 (15) "Mineral" means gas, oil, coal, oil shale, other
17 gaseous liquid or solid hydrocarbon, cement material, sand
18 and gravel, road material, building stone, chemical raw
19 material, gemstone, fissionable and nonfissionable ores,
20 colloidal and other clay, steam and other geothermal
21 resources, and any other substance defined as a mineral by
22 law of this State other than this Act.

23 (16) "Mineral proceeds" means an amount payable for
24 extraction, production, or sale of minerals, or, on the
25 abandonment of the amount, an amount that becomes payable
26 after abandonment. The term includes an amount payable:

1 (A) for the acquisition and retention of a mineral
2 lease, including a bonus, royalty, compensatory
3 royalty, shut-in royalty, minimum royalty, and delay
4 rental;

5 (B) for the extraction, production, or sale of
6 minerals, including a net revenue interest, royalty,
7 overriding royalty, extraction payment, and production
8 payment; and

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

12 (17) "Money order" means a payment order for a
13 specified amount of money. The term includes an express
14 money order and a personal money order on which the
15 remitter is the purchaser.

16 (18) "Municipal bond" means a bond or evidence of
17 indebtedness issued by a municipality or other political
18 subdivision of a state.

19 (19) "Net card value" means the original purchase price
20 or original issued value of a stored-value card, plus
21 amounts added to the original price or value, minus amounts
22 used and any service charge, fee, or dormancy charge
23 permitted by law.

24 (20) "Non-freely transferable security" means a
25 security that cannot be delivered to the administrator by
26 the Depository Trust Clearing Corporation or similar

1 custodian of securities providing post-trade clearing and
2 settlement services to financial markets or cannot be
3 delivered because there is no agent to effect transfer. The
4 term includes a worthless security.

5 (21) "Owner", unless the context otherwise requires,
6 means a person that has a legal, beneficial, or equitable
7 interest in property subject to this Act or the person's
8 legal representative when acting on behalf of the owner.
9 The term includes:

10 (A) a depositor, for a deposit;

11 (B) a beneficiary, for a trust other than a deposit
12 in trust;

13 (C) a creditor, claimant, or payee, for other
14 property; and

15 (D) the lawful bearer of a record that may be used
16 to obtain money, a reward, or a thing of value.

17 (22) "Payroll card" means a record that evidences a
18 payroll-card account as defined in Regulation E, 12 CFR
19 Part 1005, as amended.

20 (23) "Person" means an individual, estate, business
21 association, public corporation, government or
22 governmental subdivision, agency, or instrumentality, or
23 other legal entity, whether or not for profit.

24 (24) "Property" means tangible property described in
25 Section 15-201 or a fixed and certain interest in
26 intangible property held, issued, or owed in the course of

1 a holder's business or by a government, governmental
2 subdivision, agency, or instrumentality. The term:

3 (A) includes all income from or increments to the
4 property;

5 (B) includes property referred to as or evidenced
6 by:

7 (i) money, virtual currency, interest, or a
8 dividend, check, draft, deposit, or payroll card;

9 (ii) a credit balance, customer's overpayment,
10 stored-value card, security deposit, refund,
11 credit memorandum, unpaid wage, unused ticket for
12 which the issuer has an obligation to provide a
13 refund, mineral proceeds, or unidentified
14 remittance;

15 (iii) a security except for:

16 (I) a worthless security; or

17 (II) a security that is subject to a lien,
18 legal hold, or restriction evidenced on the
19 records of the holder or imposed by operation
20 of law, if the lien, legal hold, or restriction
21 restricts the holder's or owner's ability to
22 receive, transfer, sell, or otherwise
23 negotiate the security;

24 (iv) a bond, debenture, note, or other
25 evidence of indebtedness;

26 (v) money deposited to redeem a security, make

1 a distribution, or pay a dividend;

2 (vi) an amount due and payable under an annuity
3 contract or insurance policy;

4 (vii) an amount distributable from a trust or
5 custodial fund established under a plan to provide
6 health, welfare, pension, vacation, severance,
7 retirement, death, stock purchase, profit-sharing,
8 employee-savings, supplemental-unemployment
9 insurance, or a similar benefit; and

10 (viii) any instrument on which a financial
11 organization or business association is directly
12 liable; and

13 (C) does not include:

14 (i) game-related digital content;

15 (ii) a loyalty card; ~~or~~

16 (iii) a gift card; or

17 (iv) funds on deposit or held in trust pursuant
18 to Section 16 of the Pre-Need Cemetery Sales Act.

19 (25) "Putative holder" means a person believed by the
20 administrator to be a holder, until the person pays or
21 delivers to the administrator property subject to this Act
22 or the administrator or a court makes a final determination
23 that the person is or is not a holder.

24 (26) "Record" means information that is inscribed on a
25 tangible medium or that is stored in an electronic or other
26 medium and is retrievable in perceivable form. The phrase

1 "records of the holder" includes records maintained by a
2 third party that has contracted with the holder.

3 (27) "Security" means:

4 (A) a security as defined in Article 8 of the
5 Uniform Commercial Code;

6 (B) a security entitlement as defined in Article 8
7 of the Uniform Commercial Code, including a customer
8 security account held by a registered broker-dealer,
9 to the extent the financial assets held in the security
10 account are not:

11 (i) registered on the books of the issuer in
12 the name of the person for which the broker-dealer
13 holds the assets;

14 (ii) payable to the order of the person; or

15 (iii) specifically indorsed to the person; or

16 (C) an equity interest in a business association
17 not included in subparagraph (A) or (B).

18 (28) "Sign" means, with present intent to authenticate
19 or adopt a record:

20 (A) to execute or adopt a tangible symbol; or

21 (B) to attach to or logically associate with the
22 record an electronic symbol, sound, or process.

23 (29) "State" means a state of the United States, the
24 District of Columbia, the Commonwealth of Puerto Rico, the
25 United States Virgin Islands, or any territory or insular
26 possession subject to the jurisdiction of the United

1 States.

2 (30) "Stored-value card" means a card, code, or other
3 device that is:

4 (A) issued on a prepaid basis primarily for
5 personal, family, or household purposes to a consumer
6 in a specified amount, whether or not that amount may
7 be increased or reloaded in exchange for payment; and

8 (B) redeemable upon presentation at multiple
9 unaffiliated merchants for goods or services or usable
10 at automated teller machines; and

11 "Stored-value card" does not include a gift card,
12 payroll card, loyalty card, or game-related digital
13 content.

14 (31) "Utility" means a person that owns or operates for
15 public use a plant, equipment, real property, franchise, or
16 license for the following public services:

17 (A) transmission of communications or information;

18 (B) production, storage, transmission, sale,
19 delivery, or furnishing of electricity, water, steam,
20 or gas; or

21 (C) provision of sewage or septic services, or
22 trash, garbage, or recycling disposal.

23 (32) "Virtual currency" means a digital representation
24 of value used as a medium of exchange, unit of account, or
25 store of value, which does not have legal tender status
26 recognized by the United States. The term does not include:

1 (A) the software or protocols governing the
2 transfer of the digital representation of value;

3 (B) game-related digital content; or

4 (C) a loyalty card or gift card.

5 (33) "Worthless security" means a security whose cost
6 of liquidation and delivery to the administrator would
7 exceed the value of the security on the date a report is
8 due under this Act.

9 (Source: P.A. 100-22, eff. 1-1-18; 100-566, eff. 1-1-18.)

10 Section 10. The Illinois Pre-Need Cemetery Sales Act is
11 amended by changing Section 16 and by adding Section 18.5 as
12 follows:

13 (815 ILCS 390/16) (from Ch. 21, par. 216)

14 Sec. 16. Trust funds; disbursements.

15 (a) A trustee shall make no disbursements from the trust
16 fund except as provided in this Act.

17 (b) A trustee has a duty to invest and manage the trust
18 assets pursuant to the Prudent Investor Rule under the Trusts
19 and Trustees Act. Whenever the seller changes trustees pursuant
20 to this Act, the trustee must provide written notice of the
21 change in trustees to the Comptroller no less than 28 days
22 prior to the effective date of such a change in trustee. The
23 trustee has an ongoing duty to provide the Comptroller with a
24 current and true copy of the trust agreement under which the

1 trust funds are held pursuant to this Act.

2 (c) The trustee may rely upon certifications and affidavits
3 made to it under the provisions of this Act, and shall not be
4 liable to any person for such reliance.

5 (d) A trustee shall be allowed to withdraw from the trust
6 funds maintained pursuant to this Act a reasonable fee pursuant
7 to the Trusts and Trustees Act.

8 (e) The trust shall be a single-purpose trust fund. In the
9 event of the seller's bankruptcy, insolvency or assignment for
10 the benefit of creditors, or an adverse judgment, the trust
11 funds shall not be available to any creditor as assets of the
12 seller or to pay any expenses of any bankruptcy or similar
13 proceeding, but shall be distributed to the purchasers or
14 managed for their benefit by the trustee holding the funds.
15 Except in an action by the Comptroller to revoke a license
16 issued pursuant to this Act and for creation of a receivership
17 as provided in this Act, the trust shall not be subject to
18 judgment, execution, garnishment, attachment, or other seizure
19 by process in bankruptcy or otherwise, nor to sale, pledge,
20 mortgage, or other alienation, and shall not be assignable
21 except as approved by the Comptroller. The changes made by this
22 amendatory Act of the 91st General Assembly are intended to
23 clarify existing law regarding the inability of licensees to
24 pledge the trust.

25 (f) Because it is not known at the time of deposit or at
26 the time that income is earned on the trust account to whom the

1 principal and the accumulated earnings will be distributed, for
2 purposes of determining the Illinois Income Tax due on these
3 trust funds, the principal and any accrued earnings or losses
4 relating to each individual account shall be held in suspense
5 until the final determination is made as to whom the account
6 shall be paid.

7 (g) A trustee shall at least annually furnish to each
8 purchaser a statement identifying: (1) the receipts,
9 disbursements, and inventory of the trust, including an
10 explanation of any fees or expenses charged by the trustee
11 under paragraph (d) of this Section or otherwise, (2) an
12 explanation of the purchaser's right to a refund, if any, under
13 this Act, and (3) the primary regulator of the trust as a
14 corporate fiduciary under state or federal law. If the trustee
15 has reason to believe that the contact information for a
16 purchaser is no longer valid, then the trustee shall promptly
17 notify the seller. If the trustee has reason to believe that
18 the purchaser is deceased, then the trustee shall promptly
19 notify the seller.

20 (Source: P.A. 96-879, eff. 2-2-10.)

21 (815 ILCS 390/18.5 new)

22 Sec. 18.5. Presumptively abandoned trust funds.

23 (a) After final payment on a pre-need contract, the entire
24 amount held in trust attributable to undelivered cemetery
25 merchandise and unperformed cemetery services, including

1 undistributed interest earned thereon, is presumptively
2 abandoned 3 years after the earlier of:

3 (1) the death of the beneficiary and the purchaser or
4 the heirs or assigns or a duly authorized representative of
5 the purchaser or the beneficiary have not indicated an
6 interest in the trust funds; or

7 (2) the trustee notifies the seller that the contact
8 information for the purchaser is no longer valid and the
9 purchaser or the heirs or assigns or a duly authorized
10 representative of the purchaser or the beneficiary have not
11 indicated an interest in the trust funds.

12 (b) The period after which trust funds are presumed
13 abandoned is measured from the later of:

14 (1) the date the trust funds are presumed abandoned
15 under this Section; or

16 (2) the latest indication of interest by the apparent
17 owner in the trust funds.

18 An indication of interest in the trust funds includes any
19 one or more of the actions listed in subsection (b) of Section
20 15-210 of the Revised Uniform Unclaimed Property Act.

21 (c) The seller shall notify the trustee in writing within
22 30 days when any trust funds are presumed abandoned under this
23 Section. The trustee shall remit presumptively abandoned trust
24 funds to the Comptroller semi-annually within 30 days after the
25 end of June and December for deposit into the Cemetery Consumer
26 Protection Fund.