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SENATE BILL NO. 1305

Offered January 14, 2015

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A *BILL to amend and reenact §§ 55-210.2 and 55-210.4:01 of the Code of Virginia, relating to the disposition of unclaimed property; funds owing under insurance policy, annuity, or retained asset account; use of death master file.*

Patron—Reeves

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:**1. That §§ 55-210.2 and 55-210.4:01 of the Code of Virginia are amended and reenacted as follows: § 55-210.2. Definitions.**

As used in this chapter, unless the context otherwise requires:

"Administrator" means the State Treasurer or his designee.

"Apparent owner" means the person whose name appears on the records of the holder as the person entitled to property held, issued, or owing by the holder.

"Banking organization" means any bank, trust company, savings bank (industrial bank, land bank, safe deposit company), or a private banker, or any other organization defined by law as a bank or banking organization.

"Business association" means any corporation, joint-stock company, investment company, business trust, partnership, limited liability company, cooperative, or association for business purposes of two or more individuals whether or not for profit, including a banking organization, financial organization, insurance company, or utility.

"Credit balance" means an item of intangible property resulting from or attributable to the sale of goods or services, which includes, by way of illustration, an overpayment, credit memo, refund, discount, rebate, unidentified remittance, or deposit.

"Death master file" means the U.S. Social Security Administration's death master file or any other database or service that is at least as comprehensive as the U.S. Social Security Administration's death master file for determining that an individual has reportedly died.

"Death master file match" means a match, resulting from a search of the death master file, of an individual on the death master file and the name and social security number, or name and date of birth, of an insured, annuity owner, or retained asset accountholder.

"Domicile" means (i) the state of incorporation, in the case of a corporation incorporated under the laws of a state, (ii) the state of organization, in the case of an unincorporated business association formed under the laws of a state, (iii) the state of the principal place of business, in the case of a nonnatural person not incorporated or formed under the laws of a state, and (iv) the state of principal residency, in the case of a natural person.

"Due diligence" shall include, but not be limited to, the mailing of a letter by first-class mail to the last known address of the owner as indicated on the records of the holder.

"Financial organization" means any savings and loan association (cooperative bank), building and loan association, or credit union.

"Gift certificate" means a certificate, electronic card or other medium that evidences the giving of consideration in exchange for the right to redeem the certificate, electronic card or other medium for goods, food, services, credit or money of an equal value.

"Holder" means a person, wherever organized or domiciled, who is (i) in possession of property belonging to another, (ii) a trustee in case of a trust, or (iii) indebted to another on an obligation.

"Insurance company" means an association, corporation, fraternal or mutual benefit organization, whether or not for profit, which is engaged in providing insurance coverage, including, by way of illustration, accident, burial, casualty, credit life, contract performance, dental, fidelity, fire, health, hospitalization, illness, life (including endowments and annuities), malpractice, marine, mortgage, surety, and wage protection insurance.

"Intangible property" includes, by way of illustration, (i) moneys, checks, drafts, deposits, interest, dividend income; (ii) credits, customer overpayments, gift certificates, security deposits, refunds, unpaid wages, and unidentified remittances; (iii) stocks and other intangible ownership interests in business associations; (iv) moneys deposited to redeem stocks, bonds, coupons, and other securities, or to make distributions; (v) amounts due and payable under the terms of insurance policies; and (vi) amounts distributable from a trust or custodial fund established under a plan to provide any health, welfare,

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59 pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings,
60 supplemental unemployment insurance or similar benefit.

61 "Last known address" means a description of the location of the apparent owner sufficient to identify
62 the state of residence of the apparent owner for the purpose of the delivery of mail.

63 "Owner" means a depositor in the case of a deposit, a beneficiary in case of a trust, other than a
64 deposit in trust, a creditor, claimant, or payee in the case of other intangible property, or a person
65 having a legal or equitable interest in property subject to this chapter or his legal representative.

66 "Payable" means the earliest date upon which the owner of property could become entitled to the
67 payments, possession, delivery, or distribution of such property from a holder.

68 "Person" means an individual, business association, government or governmental subdivision or
69 agency, public corporation, public authority, estate, trust, two or more persons having a joint or common
70 interest, or any other legal or commercial entity.

71 "Promotional incentive" means a coupon, rebate or other promotional device offered to induce a
72 consumer to purchase goods, food or services and for which (i) no direct consideration is given by the
73 consumer or (ii) the consideration given is less than the value of the goods, food or services to be
74 received.

75 "*Recordkeeping services*" means the services provided by an insurance company under the terms of
76 an agreement with the policyholder of a group insurance contract under which the insurance company
77 has agreed to be responsible for obtaining, maintaining, and administering, in the insurance company's
78 own systems, information about each individual who is a covered person under the policyholder's group
79 insurance contract, or a line of coverage under the group insurance contract, which information
80 includes each such individual's (i) name and social security number or name and date of birth, (ii)
81 beneficiary designation information, (iii) coverage eligibility, (iv) benefit amount, and (v) premium
82 payment status.

83 "State," when applied to a part of the United States, includes any state, district, commonwealth,
84 territory, insular possession, and any other area subject to the legislative authority of the United States.

85 "Unclaimed property" means property for which the owner, as shown by the records of the holder of
86 his property, has ceased, failed or neglected, within the times provided in this chapter, to make
87 presentment and demand for payment and satisfaction or to do any other act in relation to or concerning
88 such property. This definition shall be construed as excluding any act of a holder of unclaimed property
89 not done at the express request or authorization of the owner.

90 "Utility" means a person who owns or operates, for public use, any plant, equipment, property,
91 franchise, or license for the transmission of communications or the production, storage, transmission,
92 sale, delivery, or furnishing of electricity, water, steam, or gas.

93 **§ 55-210.4:01. Funds owing under life insurance policies.**

94 A. Funds held or owing under any life or endowment insurance policy or annuity contract which has
95 matured or terminated are presumed abandoned if unclaimed for more than five years after the funds
96 became due and payable as established from the records of the insurance company holding or owing the
97 funds, except that property described in ~~subsection~~ *subdivision C 2 3 on or after a death is confirmed*
98 *pursuant to subsection G* is presumed abandoned if unclaimed for more than two years.

99 B. If a person other than the insured or annuitant is entitled to the funds and no address of the
100 person is known to the *insurance* company or it is not definite and certain from the records of the
101 *insurance* company who is entitled to the funds, it is presumed that the last known address of the person
102 entitled to the funds is the same as the last known address of the insured or annuitant according to the
103 records of the *insurance* company.

104 C. For purposes of this section, a life or endowment insurance policy or annuity contract not matured
105 by actual proof of the death of the insured or annuitant according to the records of the *insurance*
106 company is deemed matured and the proceeds due and payable if:

107 1. The *insurance* company knows that the insured or annuitant has died; or

108 2. The *insurance* company confirms the death of the insured or annuitant as a result of actions taken
109 pursuant to the requirements of subsection G; or

110 3. (i) The insured has attained, or would have attained if he were living, the limiting age under the
111 mortality table on which the reserve is based; (ii) the policy was in force at the time the insured
112 attained, or would have attained, the limiting age specified in ~~paragraph~~ *clause* (i); and (iii) neither the
113 insured nor any other person appearing to have an interest in the policy within the preceding two years,
114 according to the records of the *insurance* company, has assigned, readjusted, or paid premiums on the
115 policy, subjected the policy to a loan, corresponded in writing with the *insurance* company concerning
116 the policy, or otherwise indicated an interest as evidenced by a memorandum or other record on file
117 prepared by an employee of the *insurance* company.

118 D. For purposes of this section, the application of an automatic premium loan provision or other
119 nonforfeiture provision contained in an insurance policy does not prevent a policy from being matured
120 or terminated under subsection A if the insured has died or the insured or the beneficiaries of the policy

otherwise have become entitled to the proceeds thereof before the depletion of the cash surrender value of a policy by the application of those provisions.

E. Notwithstanding any other provision of law, if the *insurance* company learns of the death of the insured or annuitant and the beneficiary has not communicated with the ~~insurer~~ *insurance company* within four months after the death, the *insurance* company shall take reasonable steps to locate the beneficiary and pay the proceeds to the beneficiary.

F. Commencing July 1, 1986, every change of beneficiary form issued by an insurance company under any life or endowment insurance policy or annuity contract to an insured or owner who is a resident of this Commonwealth must request the following information:

1. The name of each beneficiary, or if the class of beneficiaries is named, the name of each current beneficiary in the class;

2. The address of each beneficiary; and

3. The relationship of each beneficiary to the insured.

G. *Each insurance company, no less frequently than semiannually, shall perform a comparison of its in-force life or endowment insurance policies, annuities, and retained asset accounts issued in the Commonwealth after January 1, 2016, against a death master file to identify potential death master file matches, as follows:*

1. *As used in this subsection, "policy" shall not include any (i) policy or certificate of life insurance that provides a death benefit under an employee benefit plan subject to the federal Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1002 et seq., as amended, or under any federal employee benefit program; (ii) policy or certificate of life insurance that is used to fund a preneed funeral contract or prearrangement; (iii) policy or certificate of credit life or accidental death insurance; or (iv) policy issued to a group master policyholder for which the insurance company does not provide recordkeeping services;*

2. *An insurance company may comply with the requirements of this subsection by using the full death master file once and thereafter using death master file update files for subsequent comparisons;*

3. *This subsection shall not apply to any life or endowment insurance policy, annuity, or retained asset account for which the insurance company is receiving premiums outside of the policy account value by check, bank draft, payroll deduction, or any other similar method of active premium payment within the 18 months immediately preceding death master file comparison;*

4. *Nothing in this subsection shall prevent an insurance company from requesting a valid death certificate as part of any claims validation process;*

5. *If an insurance company obtains information of the possible death of an individual through a death master file match or otherwise, then the insurance company, within 90 days of obtaining such information, shall:*

a. *Complete a good faith effort, which shall be documented by the insurance company, to verify the death of the individual through other available records and information;*

b. *Review its records to determine whether the individual, if the individual's death is confirmed, had purchased any other products with the insurance company; and*

c. *Determine, if the individual's death is confirmed, whether benefits may be due on account of the individual's death in accordance with any applicable life or endowment insurance policies, annuity, or retained asset account.*

If the individual's death is confirmed and a beneficiary of the deceased individual's coverage or authorized representative of the deceased individual has not communicated with the insurance company within the 90-day period, the insurance company shall take reasonable steps, which shall be documented by the insurance company, to locate and contact the beneficiary or beneficiaries or authorized representative on any such policy, annuity, or retained asset account. Reasonable steps shall include sending the beneficiary information regarding the insurance company's claims process, including the need to provide an official death certificate if applicable under the policy, annuity, or retained asset account.

If the insurance company is unable to confirm the death of the individual, the insurance company may consider the policy, annuity, or retained asset account to be in force in accordance with its terms;

6. *To the extent permitted by law, an insurance company may disclose minimum necessary personal information about an individual or a beneficiary of the deceased individual's coverage to a person that the insurance company reasonably believes may be able to assist the insurance company in locating the beneficiary or an individual otherwise entitled to payment of the claims proceeds;*

7. *An insurance company or its service provider shall not charge any beneficiary or other authorized representative for any fees or costs associated with a death master file search or efforts conducted pursuant to subdivision 5 a to verify the possible death of an individual about which the insurance company obtained information through a death master file match or otherwise;*

8. *The benefits from a policy, annuity, or retained asset account, and any applicable accrued*

182 contractual interest, shall first be payable to the designated beneficiaries or owners. If the beneficiaries
183 or owners cannot be found, (i) the benefits are presumed abandoned and the insurance company shall
184 report and remit such property to the administrator pursuant to the provisions of Article 4 (§ 55-210.12
185 et seq.) and (ii) interest payable under § 38.2-3115 on such a policy, annuity, or retained asset account
186 shall not be presumed abandoned and need not be reported or remitted to the administrator pursuant to
187 the provisions of Article 4;

188 9. The administrator, in consultation with the Commissioner of the State Corporation Commission's
189 Bureau of Insurance, may adopt rules and regulations:

190 a. Limiting the requirement that an insurance company perform a comparison of its in-force policies,
191 annuities, and retained asset accounts issued in the Commonwealth after January 1, 2016, against a
192 death master file to the insurance company's electronic searchable files;

193 b. Approving a plan and timeline for conversion of an insurance company's files to electronic
194 searchable files;

195 c. Exempting an insurance company from the requirement that an insurance company perform a
196 comparison of its in-force policies, annuities, and retained asset accounts issued in the Commonwealth
197 after January 1, 2016, against a death master file, or permitting an insurance company to perform such
198 comparisons less frequently than semiannually, upon a demonstration by the insurance company that
199 compliance would impose a financial hardship;

200 d. Establishing a plan and timeline that phases in compliance with the requirements of this
201 subsection according to a schedule developed in consultation with the Commissioner of the State
202 Corporation Commission's Bureau of Insurance; and

203 e. Addressing other matters as may be reasonably necessary to implement the provisions of this
204 subsection; and

205 10. If an insurance company has identified an individual as possibly deceased through a death
206 master file match conducted pursuant to this subsection or other information source, has verified the
207 death of the individual through other available records and information, and either (i) is unable, after
208 conducting reasonable search efforts during a period of up to one year after the insurance company has
209 verified the death of the individual, to locate a beneficiary under the policy, annuity, or retained asset
210 account who is located in the Commonwealth or (ii) there exists no beneficiary under the policy,
211 annuity, or retained asset account and the deceased individual's last known address is in the
212 Commonwealth, then the insurance company is authorized to report and remit the proceeds of the
213 policy, annuity, or retained asset account to the administrator pursuant to the provisions of Article 4
214 (§ 55-210.12 et seq.) on an early reporting basis, without further notice to or consent by the
215 administrator, after attempting to contact such beneficiary pursuant to this subsection. An insurance
216 company that has reported and remitted such proceeds to the administrator pursuant to this subdivision
217 shall be relieved and indemnified from any and all additional liability to any person relating to the
218 proceeds reported and remitted, including any liability under this chapter for all proceeds reported and
219 remitted to the administrator. This indemnification from liability provided to an insurance company
220 under this subdivision shall be in addition to any other protections provided by law.