

103D CONGRESS
1ST SESSION

S. 1715

To provide for the equitable disposition of distributions that are held by a bank or other intermediary as to which the beneficial owners are unknown or whose addresses are unknown, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 19 (legislative day, NOVEMBER 2), 1993

Mrs. HUTCHISON (for herself, Mrs. BOXER, Mr. RIEGLE, Mr. FAIRCLOTH, Mr. PRYOR, Mr. CAMPBELL, Mr. PRESSLER, Mr. HARKIN, Mr. PELL, Mr. BAUCUS, Mr. GRAHAM, Mr. BREAU, Mr. GRASSLEY, Mr. REID, Mr. BURNS, Mr. HELMS, Mr. AKAKA, Mr. SIMON, Mr. COCHRAN, Mr. LOTT, Mr. BOND, Mr. BRADLEY, Mr. SHELBY, Ms. MOSELEY-BRAUN, Mr. FORD, Mr. SMITH, Mr. COATS, Mr. CHAFEE, Mr. WOFFORD, Mr. SIMPSON, Mr. LAUTENBERG, Mr. BENNETT, and Mrs. FEINSTEIN) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To provide for the equitable disposition of distributions that are held by a bank or other intermediary as to which the beneficial owners are unknown or whose addresses are unknown, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Equitable Escheatment
5 Act of 1993”.

1 **SEC. 2. DISPOSITION OF UNCLAIMED DISTRIBUTIONS.**

2 Title VI of the Act entitled “An Act to increase de-
3 posit insurance from \$20,000 to \$40,000, to provide full
4 insurance for public unit deposits of \$100,000 per ac-
5 count, to establish a National Commission on Electronic
6 Fund Transfers, and for other purposes.” and approved
7 October 28, 1974 (12 U.S.C. 2501 et seq.) is amended—

8 (1) by striking the title heading and inserting
9 the following:

10 **“TITLE VI—DISPOSITION OF**
11 **ABANDONED MONEY ORDERS**
12 **AND TRAVELER’S CHECKS**
13 **AND OTHER UNCLAIMED DIS-**
14 **TRIBUTIONS**

15 **“Subtitle A—Disposition of Aban-**
16 **doned Money Orders and Trav-**
17 **eler’s Checks”**; and

18 (2) by adding at the end the following new sub-
19 title:

20 **“Subtitle B—Disposition of Other**
21 **Unclaimed Distributions**

22 **“SEC. 611. CONGRESSIONAL FINDINGS.**

23 “The Congress finds that—

24 “(1) banks and other intermediaries hold secu-
25 rities which are registered in the street name or
26 nominee name of banks or other intermediaries;

1 “(2) a very small percentage of the dividends,
2 interest, and other distributions made by issuers of
3 securities is unable to be transmitted by the banks
4 and other intermediaries because the intermediaries
5 do not know the identities or addresses of the bene-
6 ficial owners;

7 “(3) this small percentage of unclaimed dis-
8 tributions nonetheless amounts to a substantial sum
9 of money annually; and

10 “(4) as a matter of equity among the several
11 States, the State entitled to such unclaimed distribu-
12 tions should be the State in which the principal exec-
13 utive offices of the issuer of such distribution are
14 maintained.

15 **“SEC. 612. DEFINITIONS.**

16 “For purposes of this subtitle, the following defini-
17 tions shall apply:

18 “(1) BENEFICIAL OWNER.—The term ‘bene-
19 ficial owner’ means any person who holds an owner-
20 ship interest in a security and is entitled to receive
21 the economic benefits of ownership.

22 “(2) DISTRIBUTION.—The term ‘distribution’
23 means the payment of a dividend or interest or any
24 other transfer of money, securities, or value made
25 with respect to a security, including a transfer of

1 any ownership interest in such security and any pay-
2 ment of principal with respect to such security.

3 “(3) HOLDER.—The term ‘holder’ means a per-
4 son in possession of all or part of a distribution who
5 is not the beneficial owner of the security with re-
6 spect to which a distribution is made, including
7 banks, depositories, brokerage firms, and other fi-
8 nancial intermediaries.

9 “(4) ISSUER.—The term ‘issuer’ means a cor-
10 poration, partnership, trust, or governmental entity,
11 including a federally chartered or foreign entity, that
12 issues equity or debt securities.

13 “(5) PRINCIPAL EXECUTIVE OFFICES.—

14 “(A) IN GENERAL.—Except as provided in
15 subparagraph (B), the term ‘principal executive
16 offices’ means—

17 “(i) the offices identified as the prin-
18 cipal executive offices in the most recent
19 filing, as required under section 13 of the
20 Securities Exchange Act of 1934, during
21 the 12-month period ending on the date
22 immediately prior to the date of payment
23 of such distribution;

24 “(ii) in any case in which principal ex-
25 ecutive offices were not identified or re-

1 quired to be identified in a filing described
2 in clause (i), or where no filing was re-
3 quired, the offices identified as the prin-
4 cipal executive offices in—

5 “(I) the most recent required fil-
6 ing with a Federal regulatory agency;
7 or

8 “(II) if no filing described in
9 subclause (I) was required, any other
10 filing with a self-regulatory agency (as
11 defined in section 3(26) of the Securi-
12 ties Exchange Act of 1934); and

13 “(iii) in any case in which no filing
14 described in clause (i) or (ii) was made,
15 the offices identified by the holder.

16 “(B) STATE AND MUNICIPAL ISSUERS.—In
17 the case of any issuer that is a State or States,
18 or a political subdivision thereof, the principal
19 executive offices shall be deemed to be located
20 within such State or States.

21 “(6) SECURITY.—The term ‘security’ has the
22 same meaning as in section 2 of the Securities Act
23 of 1933.

1 “(7) STATE.—The term ‘State’ has the same
2 meaning as in section 3(a)(3) of the Federal Deposit
3 Insurance Act.

4 **“SEC. 613. STATE ENTITLEMENT TO ESCHEAT OR CUSTODY.**

5 “(a) ESCHEAT OR CUSTODY TO STATE IN WHICH
6 THE PRINCIPAL EXECUTIVE OFFICES OF THE ISSUER
7 ARE LOCATED.—

8 “(1) IN GENERAL.—Subject to paragraph (2),
9 if—

10 “(A) the books and records of the holder
11 of a distribution paid on a security do not con-
12 tain the last-known address of the beneficial
13 owner of such security; or

14 “(B) the last-known address of the bene-
15 ficial owner of a security, as contained on the
16 books and records of the holder of a distribu-
17 tion paid with respect to such security, is in a
18 State that does not provide for the escheat or
19 custodial taking of any distribution with respect
20 to such security or is in a foreign country;

21 such distribution shall be subject to escheat or cus-
22 todial taking only by the State in which the principal
23 executive offices of the issuer of the security are lo-
24 cated, to the extent that the laws of such State re-
25 lating to the escheat or custodial taking of un-

1 claimed property authorize the State to take posses-
2 sion of such distribution.

3 “(2) RECOVERY BY STATE DESCRIBED IN PARA-
4 GRAPH (1)(B).—If a law that provides for the escheat
5 or custodial taking of any distribution by any State
6 described in paragraph (1)(B) is enacted by or oth-
7 erwise takes effect in such State at any time after
8 a distribution has escheated to or has been taken
9 into the custody of another State pursuant to para-
10 graph (1), the State described in paragraph (1)(B)
11 shall have the right to recover such distribution
12 (other than amounts paid by the other State to the
13 beneficial owner) from the other State for disposi-
14 tion in accordance with such law.

15 “(b) ESCHEAT OR CUSTODY TO STATE IN WHICH
16 THE PRINCIPAL EXECUTIVE OFFICES OF THE HOLDER
17 ARE LOCATED.—

18 “(1) IN GENERAL.—Subject to paragraph (2),
19 if, in any case described in subparagraph (A) or (B)
20 of subsection (a)(1)—

21 “(A) the books and records of the holder
22 of a distribution do not contain the identity of
23 the issuer of the security with respect to which
24 the distribution was made; or

1 “(B) the principal executive offices of the
2 issuer of the security with respect to which the
3 distribution was made are in a State which does
4 not provide for the escheat or custodial taking
5 of any distribution with respect to such security
6 or are in a foreign country;

7 such distribution shall be subject to escheat or cus-
8 todial taking only by the State in which the principal
9 executive offices of the holder of the distribution are
10 located, to the extent that the laws of such State re-
11 lating to the escheat or custodial taking of un-
12 claimed property authorize the State to take posses-
13 sion of such distribution.

14 “(2) RECOVERY BY STATE DESCRIBED IN PARA-
15 GRAPH (1)(B).—If a law that provides for the escheat
16 or custodial taking of any distribution by a State de-
17 scribed in paragraph (1)(B) is enacted by or other-
18 wise takes effect in such State at any time after a
19 distribution has escheated to or has been taken into
20 the custody of another State pursuant to paragraph
21 (1), the State described in paragraph (1)(B) shall
22 have the right to recover such distribution (other
23 than amounts paid by the other State to the bene-
24 ficial owner) from the other State for disposition in
25 accordance with such law.

1 “(c) DETERMINATION OF IDENTIFICATION AND AD-
2 DRESSES OF BENEFICIAL OWNERS, ISSUERS, AND HOLD-
3 ERS.—

4 “(1) IN GENERAL.—With respect to any un-
5 claimed distribution in the possession of a holder,
6 the holder’s determination of—

7 “(A) the identity and address of the bene-
8 ficial owner of the security with respect to
9 which such distribution was made;

10 “(B) the issuer of such security; and

11 “(C) the location of the principal executive
12 offices;

13 shall be prima facie evidence for purposes of this
14 subtitle. In making such determinations, the holder
15 shall make reasonable efforts to review its books and
16 records, publicly available information, and
17 databases containing such information.

18 “(2) BURDEN OF SHOWING OTHERWISE.—The
19 burden shall rest upon any State seeking to contest
20 a holder’s determination in accordance with para-
21 graph (1) to demonstrate, at the cost of such State,
22 that the books and records of the holder, other pub-
23 licly available information, or databases identify a
24 different State.

1 “(3) BENEFICIAL OWNER UNKNOWN.—For pur-
2 poses of this subsection, a holder’s determination,
3 after reasonable inquiry, that its books and records
4 do not contain the identity or last-known address of
5 the beneficial owner of the security with respect to
6 which a distribution was made shall be conclusive
7 evidence that its books and records do not contain
8 such identity or address.

9 “(d) DISTRIBUTIONS IN EVENT OF PRINCIPAL EXEC-
10 UTIVE OFFICES IN MORE THAN 1 STATE.—If an issuer
11 or holder identifies principal executive offices in more than
12 1 State, each State identified as the location of a principal
13 executive office shall be entitled to escheat or to take
14 custodially on a pro rata basis to the extent that the laws
15 of such State relating to the escheat or custodial taking
16 of unclaimed property authorize the State to take posses-
17 sion of a distribution.

18 **“SEC. 614. CHANGES IN PRINCIPAL EXECUTIVE OFFICES**
19 **DESIGNATION.**

20 “‘No issuer may change the issuer’s designation of
21 principal executive offices in any filing described in section
22 612(5)(A) for the sole purpose of altering the entitlement
23 of any State to escheatment or custodial possession of
24 property subject to this subtitle.

1 **“SEC. 615. SCOPE OF APPLICATION.**

2 “(a) IN GENERAL.—Section 613 shall apply to all un-
3 claimed distributions (other than amounts paid to the ben-
4 eficial owner) without regard to the date on which any
5 such distribution was made by the issuer or whether any
6 distribution was paid over by a holder to 1 or more States.

7 “(b) OTHER APPLICATION.—With respect to dis-
8 tributions that escheated to or were taken into custody
9 by a State before the date of enactment of the Equitable
10 Escheatment Act of 1993—

11 “(1) those distributions described in section
12 613(a)(1) (other than amounts paid by such State
13 to a beneficial owner) shall be subject to escheat or
14 custodial taking by any other State in the manner
15 provided in section 613(a); and

16 “(2) those distributions described in section
17 613(b)(1) (other than amounts paid by such State
18 to a beneficial owner) shall be subject to escheat or
19 custodial taking by any other State in the same pro-
20 portion as the proportion which that other State is
21 entitled to receive of the total distributions payable
22 by such State under paragraph (1).”.

23 **SEC. 3. TECHNICAL AMENDMENTS.**

24 Sections 602 and 604 of title VI of the Act entitled
25 “An Act to increase deposit insurance from \$20,000 to
26 \$40,000, to provide full insurance for public unit deposits

1 of \$100,000 per account, to establish a National Commis-
2 sion on Electronic Fund Transfers, and for other pur-
3 poses.” and approved October 28, 1974 (12 U.S.C. 2501
4 note, 2502) are amended by striking “title” and inserting
5 “subtitle” each place such term appears.

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