

Florida Imposes Additional Unclaimed Property Requirements on Life Insurers

April 13, 2016



On April 12, Florida Governor Scott signed Senate Bill 966 into law. SB 966 amends the insurance benefits provisions of [Florida's Uniform Unclaimed Property Act, Fl. Stat. Section 717.107](#). These amendments effectively codify certain terms of settlement agreements Florida's Office of Insurance Regulation (OIR) entered into over the past five years with many large life insurers, and require all insurers to compare records of certain insurance policies and annuity contracts providing death benefits as well as retained asset accounts ("Contracts") against the U.S. Social Security Administration Death Master File (DMF) or equivalent database to determine whether a death is indicated. The amendments took effect on April 12, and change Florida' unclaimed property law as follows:

- Insurers must run an initial search of their Contracts that were in force at any time on or after January 1, 1992, except that insurers which, as of June 30, 2016, had either entered into a regulatory settlement agreement with the OIR or had received a favorable targeted market conduct exam report issued by the OIR are required to run DMF searches only on their in-force Contracts.

- Before August 31 of each year thereafter, insurers must run a search against the DMF update file for all such Contracts, and if the insurer runs DMF searches on its annuities or other books of business more frequently than annually, additional update searches must be run for all Contracts with the same frequency.
- A DMF match, including a “fuzzy” match, creates a presumption that a person is deceased unless the insurer has in its records “competent and substantial” evidence that the person is living.
- The amendments add two new circumstances in which a Contract is “deemed matured and proceeds due and payable” -- if the presumption of death raised by a DMF match has not been rebutted, or when the Contract has reached its maturity date.
- No later than 120 days after a DMF match, the insurer must complete and document an effort to confirm death, review its records to determine if the deceased purchased other products from the insurer, determine whether benefits are due, and complete and document an effort to locate and contact the beneficiary.
- The amendments recite that they are remedial in nature and apply retroactively. However, fines, penalties, and additional interest may not be imposed if any unclaimed Contract proceeds are reported and remitted to Florida’s Department of Financial Services on or before May 1, 2021.

The amendments exempt certain Contracts from the DMF comparison requirements, including annuities issued in connection with ERISA plans, credit life and AD&D insurance, policies issued to group master policy owners for which the insurer does not perform recordkeeping functions, and policies funding preneed funeral contracts. The retroactive component evidences legislative intent to apply the amendment to Contracts entered into prior to the effective date of the amendment. The insurance industry strongly opposed retroactivity, and a constitutional or other challenge is possible. A challenge to a similar amendment to Kentucky’s Unclaimed Life Insurance Benefits Act resulted in a [2015 Kentucky Court of Appeals ruling](#) that the retrospective application of the amendment constituted “a substantive and not a remedial alteration of the contractual relationship between insurers and insureds.” While Kentucky’s insurance commissioner initially appealed this decision to the Kentucky Supreme Court, the insurance commissioner dismissed the appeal. Insurers, including those who have entered into settlement agreements with the OIR, should review their Florida unclaimed property practices and procedures against the requirements of Florida’s new amendments.

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