

# Unclaimed Life Insurance Benefits: The First Half of 2018 in Review

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The pace of developments in the unclaimed life insurance benefits space remained active in the first six months of 2018, with new judicial decisions and state legislative enactments making an impact.

## Judicial Developments

In April, a Florida state court granted summary judgment in favor of life insurers challenging the retroactive application of amendments to the state's Disposition of Unclaimed Property Act that required insurers to perform Death Master File (DMF) searches for all policies dating back to 1992. The court accepted the insurers' argument that the retroactivity violated their constitutional due process rights notwithstanding that the amendments explicitly provided for retroactive application. Specifically, the court concluded: the amendments related to the DMF search; contacting beneficiaries after the policyholder's death and dormancy triggered new obligations and duties; and the amendments were substantive and thus could only apply prospectively. The state of Florida filed a notice of appeal in May.

## Legislative Developments

In Illinois, a law expanding the state's Unclaimed Life Insurance Benefits Act's DMF requirements took effect January 1, after the legislature overrode the governor's veto late last year. That law, in relevant part, applies its DMF search requirements retroactively to lapsed or terminated life insurance policies, annuities, contracts, or retained asset accounts in a tiered system based on whether the insurer maintains electronic searchable files and whether the insurer had entered into an agreement with the state treasurer based on an unclaimed property examination. Governor Bruce Rauner (R) vetoed the bill based partially on concerns that its retroactive application was unconstitutional.

This decision follows a 2014 Kentucky Court of Appeals decision, cited by the Florida court as persuasive, that likewise struck down the retroactive application of DMF search requirements. However, the Kentucky court avoided the constitutional question by basing its decision on a statutory interpretation principle that precludes retroactive application absent the legislature's express statement of retroactive intent. The Florida decision is a warning to other state legislatures considering retroactive application of DMF search requirements: even though Florida tried to bulletproof its statute following the Kentucky decision with an express statement of retroactive intent, it was still vulnerable to a constitutional challenge. The Florida and Kentucky rulings have potentially far-reaching implications for challenges against existing state DMF laws with retroactive application and for states with pending unclaimed life insurance benefits bills.

The NCOIL Model Unclaimed Life Insurance Benefits Act (the "NCOIL Model") — which requires insurers to search in-force policies, contracts, and accounts against the DMF and make good faith efforts to locate and contact beneficiaries where potential matches are identified — continues to make headway in state legislatures but is notably silent on the retroactive application of its requirements. Nebraska's version of the NCOIL Model, which it enacted last spring, took effect January 1, with no provision prescribing retrospective (or prospective) application. Likewise, Wisconsin Governor Scott Walker (R) signed his state's form of the NCOIL Model into law on April 3, with an April 1, 2019 effective date set. The question of retrospective or prospective application was again left unanswered.

With these various enactments, 30 states now have unclaimed life insurance benefits laws based on the NCOIL Model with several other states considering their own. Both chambers of the Hawaii legislature have passed an NCOIL Model-based bill that awaits action by Governor David Ige (D) and comparable legislation has been introduced in several other states including Massachusetts, Minnesota, Oklahoma, and South Dakota.

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