

SENATE No. 1582

The Commonwealth of Massachusetts

PRESENTED BY:

Mr. Brewer

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act Relative to Certain Checks Not Cashed and Deemed Abandoned.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Mr. Brewer	Worcester, Hampden, Hampshire and Franklin
Cory Atkins	14th Middlesex
Todd M. Smola	1st Hampden
Viriato Manuel deMacedo	1st Plymouth
George N. Peterson, Jr.	9th Worcester
Bruce E. Tarr	First Essex and Middlesex
Michael O. Moore	Second Worcester

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO CERTAIN CHECKS NOT CASHED AND DEEMED ABANDONED.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 9A of chapter 200A of the general laws is hereby repealed in its entirety
2 and shall be replaced with the following:

3 **Section 9A. Alternative procedure for handling abandoned funds held by cities, towns and**
4 **districts.**

5 (a) This section shall apply to abandoned funds, as determined herein, held in the custody of
6 cities, towns or districts that have accepted the provisions of this section pursuant to section 4 of
7 chapter 4 of the general laws. In the case of such cities, towns or districts accepting the
8 provisions of this section there shall be an alternative procedure for disposing of abandoned
9 funds held in the custody of such cities, towns or districts as provided in this section, and only
10 this section shall apply to the disposition of such funds.

11 (b) Any funds held in the custody of a city, town or district that has accepted this section may be
12 presumed by the city, town or district treasurer to be abandoned unless claimed by the
13 corporation, organization, beneficiary or person entitled thereto within one year after the date
14 prescribed for payment or delivery, provided the last instrument intended as payment bears upon
15 its face the statement "void if not cashed within one year from date of issue." Once a period of
16 one year has elapsed from the date of any such instrument, the treasurer of any such city, town or
17 district may cause the financial institution upon which the instrument was drawn to stop payment
18 on the instrument, or otherwise cause the financial institution to decline payment on the
19 instrument, and any claims made beyond this date may only be paid by the city, town or district
20 through the issuance of a new instrument. Neither the city, town, district nor financial institution
21 shall be liable for damages, consequential or otherwise, resulting from a refusal to honor an
22 instrument of a city, town or district submitted for payment more than one year from its
23 issuance.

24 (c) The treasurer of a city, town or district holding funds owed to a corporation, organization,
25 beneficiary or person entitled thereto, that are presumed to be abandoned as aforementioned,
26 shall post a notice, which notice shall be entitled “Notice of Names of Persons appearing to be
27 Owners of funds held by (insert city, town or district name), and deemed abandoned.” The notice
28 shall specify those who appear from available information to be entitled to such funds, shall
29 provide a description of the appropriate method for claiming such funds, and shall state a
30 deadline beyond which funds may no longer be claimed, provided such deadline is no earlier
31 than sixty days from the date such notice was either postmarked or first posted on a website as
32 herein provided. The treasurer of such city, town or district may post such notice using one or
33 both of the following methods: (1) by mailing such notice postpaid to the last known address of
34 the beneficiary or person entitled thereto, sent via first class mail, or (2) if the city, town or
35 district maintains an official website the said treasurer may, as an alternative, post the notice
36 conspicuously on said website for a period of not less than 60 days.

37 (d) In the event funds appearing to be owed to a corporation, organization, beneficiary or person
38 amount to \$100 or more, and the deadline as provided in the aforementioned notice has passed,
39 and no claim for the funds has been made, the treasurer shall cause an additional notice, in
40 substantially the same form as the aforementioned notice, to be published in a newspaper of
41 general circulation in the county (or counties) in which the city, town or district is located, except
42 that this notice shall provide an extended deadline beyond which funds cannot be claimed, which
43 shall be no earlier than one year from the date of publication of such notice.

44 (e) Once the final deadline of the aforementioned notice(s) has passed, the funds owed to such
45 corporation, organization, beneficiary or person entitled thereto shall escheat to the city, town or
46 district and the treasurer thereof shall record the funds as revenue in the general fund of the city,
47 town or district, and the city, town or district shall not thereafter be liable to the corporation,
48 organization, beneficiary or person for payment of those funds, nor for the underlying liability
49 for which the funds were originally intended. These funds shall then be available to the city,
50 town or district’s appropriating authority for appropriation for any other public purpose. In
51 addition to the notices herein provided for, the treasurer of the city, town or district may initiate
52 any other notices or communications that are directed in good faith toward making final
53 disbursement of the funds to the corporation, organization, beneficiary or person entitled
54 thereto.

55 Prior to escheatment of the funds, the treasurer of the city, town or district shall hear all claims
56 on funds that may arise, and if it is clear, based on a preponderance of the evidence available to
57 the treasurer at the time the claim is made that the claimant is entitled to disbursement of the
58 funds, the treasurer shall disburse funds to the claimant upon receipt by the treasurer of a written
59 indemnification agreement from the claimant wherein the claimant agrees to hold the city, town
60 or district and the treasurer of the city, town or district harmless in the event it is later determined
61 that the claimant was not entitled to receipt of the funds. If it is not clear, based on a
62 preponderance of the evidence before the treasurer at the time of the claim that the claimant is

63 entitled to disbursement of the funds, the treasurer shall segregate the funds into a separate,
64 interest bearing, bank account and shall notify the claimant of such action within 10 days. A
65 claimant affected by this action may appeal within 20 days to the district, municipal or superior
66 court of the county in which the city, town or district is located. The claimant shall have a trial de
67 novo. An appeal shall be perfected by the claimant within 20 days after receiving notice of this
68 action by the city, town or district treasurer. A party adversely affected by a decree or order of
69 the district, municipal or superior court may appeal to the appeals court or the supreme judicial
70 court within 20 days from the date of the decree.

71 If the validity of the claim shall be determined in favor of the claimant or another party, the
72 treasurer shall disburse funds to the claimant in accordance with the order of the court, including
73 interest accrued. If the validity of the claim is determined to be not in favor of the claimant or
74 any other party, or if the treasurer does not receive notice that an appeal has been filed within
75 one year from the date the claimant was notified that funds were being withheld, then the funds,
76 plus accrued interest, shall escheat to the city, town or district in the manner herein provided.

77 If the claimant is domiciled in a country or state outside the United States or its territories and the
78 city, town or district determines that there is no reasonable assurance that the claimant will
79 actually receive the payment provided for in this section in substantially full value, the superior
80 court, in its discretion or upon a petition by the city, town or district may order that the city, town
81 or district retain such payment.

82 SECTION 2. The earlier Section 9A of chapter 200A herein repealed shall apply to funds
83 wherein the final instrument of disbursement was issued prior to the effective date of this act.