

**AMENDED VERSION OF SENATE
BILL 258 PASSES DELAWARE SENATE
UNANIMOUSLY**

**LEGISLATION WOULD CREATE A THREE-YEAR
VOLUNTARY DISCLOSURE OPPORTUNITY FOR
HOLDERS, MANAGED BY THE SECRETARY OF
STATE, FEATURING “LOOK-BACK” PERIODS
SHORTENED BY UP TO 5 YEARS AND REDUCED
RISK OF AUDIT FOR PARTICIPANTS**

On June 21, 2012, legislation that would establish a three-year window for holders to enter into voluntary disclosure agreements (“VDA”) – with “look-back” periods shortened by up to five years – with the Delaware Secretary of State passed the Delaware State Senate, with amendments that clarify the state’s examination authority over participants in the new program. Senate Bill 258 passed the Senate unanimously, by a vote of 21-0. The bill will next be referred to committee for consideration by the House of Representatives.

Senate Bill 258 is supported by the administration of Delaware Governor Jack Markell and is expected to pass the House before the legislative session ends on June 30, 2012. The full text of the bill is available [here](#). Attorneys from Morris Nichols were consulted and provided input regarding both the legislation and the amendment, which is available [here](#).

As amended, Senate Bill 258 now requires both the Secretary of State and the State Escheator to waive any right to seek payment under 12 Del. C. §§ 1156 and 1158 after a holder has voluntarily disclosed such property under the Secretary of State’s VDA program, unless there is evidence of fraud or willful misrepresentation by the holder or a representative of the holder. Senate Amendment 1, which passed the Senate unanimously, by a vote of 21-0, also makes clear that the State Escheator will not have authority to audit any holder participating

in the Secretary of State’s VDA program prior to July 1, 2015, unless the Secretary of State refers that holder to the State Escheator for an examination.

The primary advantage for holders participating in the proposed program would be the ability to report less property, due to “look-back” periods – shortened by as much as five years from the current VDA “look-back” of 1991 to 1996 – that will be allowed only for the limited period between July 1, 2012 and June 30, 2015. Under the amended version of the bill, holders will also have less exposure to examination should they elect to participate and complete the VDA program administered by the Secretary of State. For a more detailed analysis of the legislation, please refer to a prior Client Alert issued by Morris Nichols, available [here](#).

We will continue to monitor and provide information to holders regarding this proposed legislation. Please contact Morris Nichols attorneys in the Unclaimed Property Counseling Group if you would like to discuss the status of this legislation or the implications of the proposed VDA program.

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Morris, Nichols, Arsht & Tunnell LLP combines a broad national practice of corporate, intellectual property, business reorganization and restructuring and commercial law and litigation with a general business, tax, estate planning and real estate practice within the State of Delaware. The firm’s clients include Fortune 500 companies, smaller firms and partnerships, financial institutions, government agencies, law firms and not-for-profit organizations.