R E V I S E D
D R A F T

FOR DISCUSSION ONLY

REVISED UNIFORM UNCLAIMED PROPERTY ACT

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

February 26 – 28, 2016 Drafting Committee Meeting

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NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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February 17, 2016

REVISED UNIFORM UNCLAIMED PROPERTY ACT

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REVISED UNIFORM UNCLAIMED PROPERTY ACT

TABLE OF CONTENTS

[ARTICLE] 1
IN GENERAL

SECTION 101. SHORT TITLE. 1
SECTION 102. DEFINITIONS. 1
SECTION 103. APPLICABILITY TO FOREIGN TRANSACTIONS. 10

[ARTICLE] 2
PRESUMPTIONS OF ABANDONMENT

SECTION 201. WHEN SPECIFIC PROPERTY IS PRESUMED ABANDONED. 12
SECTION 202. WHEN A TAX DEFERRED OR CUSTODIAL ACCOUNT IS PRESUMED ABANDONED. 14
SECTION 203. WHEN CONTENTS OF SAFE DEPOSIT BOX PRESUMED ABANDONED. 15
SECTION 204. WHEN STORED-VALUE CARD PRESUMED ABANDONED. 15
[SECTION 205. WHEN GIFT CARD PRESUMED ABANDONED.] 16
SECTION 206. WHEN OTHER PROPERTY PRESUMED ABANDONED. 16
SECTION 207. WHEN RELATED PROPERTY INTEREST PRESUMED ABANDONED. ..16
SECTION 208. INDICATION OF OWNER INTEREST IN PROPERTY. 16
SECTION 209. KNOWLEDGE OF DEATH OF AN INSURED OR ANNUITANT; INSURANCE COMPANY DUE DILIGENCE REQUIREMENTS; MASTER DEATH FILE SEARCHES. 18
SECTION 210. RETAINED ASSET ACCOUNT FOR INSURANCE POLICY OR ANNUITY CONTRACT. 21

[ARTICLE] 3.
PRIORITY OF CUSTODY OF ABANDONED PROPERTY

SECTION 301. PRIORITY RULES. 21
SECTION 302. ADDRESS OF APPARENT OWNER FOR THE PURPOSE OF ESTABLISHING PRIORITY 22
SECTION 303. CUSTODY IF ADDRESS OF APPARENT OWNER IN THIS STATE. 22
SECTION 304. CUSTODY WHEN RECORDS SHOW TWO OR MORE ADDRESSES OF APPARENT OWNER. 24
SECTION 305. CUSTODY IF TRANSACTION OCCURRED IN THIS STATE. 24
SECTION 306. CUSTODY OF TRAVELER'S CHECK AND MONEY ORDER. 24
SECTION 307. ADDRESS OF PERSON ENTITLED TO THE PROCEEDS OF AN INSURANCE POLICY OR ANNUITY CONTRACT. 25
SECTION 308. ADMINISTRATOR'S BURDEN OF PROOF. 25
SECTION 309. EVIDENCE OF UNPAID DEBT OR UNDISCHARGED OBLIGATION. 25

[ARTICLE] 4
REPORT BY HOLDER

SECTION 401. REPORT REQUIRED BY HOLDER. 26
SECTION 402. REQUIREMENTS FOR REPORT. 27
SECTION 403. WHEN REPORT TO BE FILED. 29
SECTION 404. RETENTION OF RECORDS BY HOLDER. 29

[ARTICLE] 5
NOTICE TO APPARENT OWNER OF UNCLAIMED PROPERTY

SECTION 501. NOTICE TO APPARENT OWNER BY HOLDER. 30
SECTION 502. CONTENTS OF NOTICE BY HOLDER TO APPARENT OWNER 32
SECTION 503. PROGRAM OF ADMINISTRATOR TO GIVE NOTICE TO APPARENT OWNER. 32
SECTION 504. COOPERATION AMONG AGENCIES TO LOCATE APPARENT OWNER. 34

[ARTICLE] 6
TAKING CUSTODY OF PROPERTY BY ADMINISTRATOR

SECTION 601. DEFINITION OF GOOD FAITH. 34
SECTION 602. DORMANCY CHARGE. 35
SECTION 603. PAYMENT OR DELIVERY OF PROPERTY TO ADMINISTRATOR. 35
SECTION 604. CUSTODY OF PROPERTY BY THE ADMINISTRATOR. 37
SECTION 605. HOLDER'S REIMBURSEMENT OR RECOVERY OF PROPERTY FROM ADMINISTRATOR. 37
SECTION 606. DEFENSE AND INDEMNITY OF HOLDER BY STATE. 38
SECTION 607. PROPERTY REMOVED FROM SAFE DEPOSIT BOX. 38
SECTION 608. CREDITING DIVIDENDS, INTEREST, AND INCREMENTS TO OWNER'S ACCOUNT. 38
SECTION 609. ADMINISTRATOR'S OPTIONS AS TO CUSTODY. 39
SECTION 610. DISPOSITION OF PROPERTY HAVING NO SUBSTANTIAL VALUE; IMMUNITY FROM LIABILITY. 39
SECTION 611. PERIODS OF LIMITATION AND REPOSE. 39

[ARTICLE] 7
SALE OF PROPERTY BY ADMINISTRATOR

SECTION 701. PUBLIC SALE OF PROPERTY. 40
SECTION 702. DISPOSAL OF SECURITIES. 41
SECTION 703. RECOVERY OF SECURITIES OR VALUE BY OWNER. 41
SECTION 704. PURCHASER OWNS PROPERTY AFTER SALE. 42
SECTION 705. CUSTODY OF MILITARY MEDALS. 42

ARTICLE 8
DEPOSIT OF FUNDS RECEIVED BY ADMINISTRATOR

SECTION 801. DEPOSIT OF FUNDS BY ADMINISTRATOR. 43
SECTION 802. ADMINISTRATOR TO RETAIN RECORDS OF PROPERTY. 43
SECTION 803. EXPENSES OF ADMINISTRATOR....43
SECTION 804. ADMINISTRATOR HOLDS FUNDS AND PROPERTY AS CUSTODIAN FOR OWNER. 44

[ARTICLE] 9
CLAIM TO RECOVER PROPERTY FROM ADMINISTRATOR

SECTION 901. CLAIM OF ANOTHER STATE TO RECOVER PROPERTY....44
SECTION 902. WHEN PROPERTY SUBJECT TO RECOVERY BY ANOTHER STATE. ...45
SECTION 903. CLAIM FOR PROPERTY BY PERSON CLAIMING TO BE THE OWNER.46
SECTION 904. WHEN ADMINISTRATOR MUST HONOR CLAIM FOR PROPERTY. 47
SECTION 905. PAYMENT TO OWNER OF CLAIM FOR PROPERTY. 47
SECTION 906. WHEN HOLDER MAY RECOVER FOR INCREMENTS IN VALUE OF PROPERTY. 48
SECTION 907. COURT ACTION BY PERSON WHOSE CLAIM IS DENIED....48

[ARTICLE] 10
REPORT OF PROPERTY; EXAMINATION OF RECORDS

SECTION 1001. REQUEST FOR REPORT OF PROPERTY 49
SECTION 1002. EXAMINATION OF RECORDS TO DETERMINE COMPLIANCE WITH [ACT]. 49
SECTION 1003. PROCEDURES FOR CONDUCTING EXAMINATION. 50
SECTION 1004. RECORDS OBTAINED IN EXAMINATION. 50
SECTION 1005. FAILURE OF PERSON EXAMINED TO HAVE RECORDS. 51
SECTION 1006. REPORT TO PERSON WHOSE RECORDS EXAMINED. 51
SECTION 1007. COMPLAINT TO ADMINISTRATOR ABOUT CONDUCT OF EXAMINER. 52
SECTION 1008. ADMINISTRATOR MAY CONTRACT WITH ANOTHER TO CONDUCT EXAMINATION. 52
SECTION 1009. LIMIT ON FUTURE EMPLOYMENT. 54
SECTION 1010. REPORT BY ADMINISTRATOR TO STATE OFFICIAL[S 54
SECTION 1011. DETERMINATION OF LIABILITY FOR UNREPORTED REPORTABLE PROPERTY. 55
SECTION 1012. [INFORMAL CONFERENCE] [ADMINISTRATIVE REVIEW] AND JUDICIAL REVIEW 56

[ARTICLE] 11.
ENFORCEMENT BY ADMINISTRATOR

SECTION 1101. JUDICIAL ACTION TO ENFORCE LIABILITY. 59

SECTION 1102. INTERSTATE AND INTERNATIONAL AGREEMENT AND COOPERATION 59
SECTION 1103. JOINT AND RECIPROCAL ACTIONS WITH OTHER STATES OR FOREIGN COUNTRIES. 60
SECTION 1104. INTEREST AND PENALTY FOR FAILURE TO REPORT 61
SECTION 1105. CIVIL PENALTY FOR INTENTIONAL EVASION OF OBLIGATION. 62
SECTION 1106. CIVIL PENALTY FOR FRAUDULENT REPORT. 62
SECTION 1107. WHEN ADMINISTRATOR MAY WAIVE INTEREST AND PENALTY. ..62

[ARTICLE] 12.
AGREEMENT TO LOCATE PERSON'S PROPERTY

SECTION 1201. WHEN AGREEMENT TO LOCATE PROPERTY IS ENFORCEABLE. 63
SECTION 1202. WHEN AGREEMENT TO LOCATE PROPERTY IS UNENFORCEABLE. 63
SECTION 1203. RIGHT OF OWNER'S AGENT TO RECOVER PROPERTY HELD BY ADMINISTRATOR. 64

[ARTICLE] 13
CONFIDENTIALITY OF INFORMATION

SECTION 1301. PERSONS SUBJECT TO CONFIDENTIALITY RULES. 65
SECTION 1302. WHAT INFORMATION IS CONFIDENTIAL. 65
SECTION 1303. WHEN CONFIDENTIAL INFORMATION MAY BE DISCLOSED. 66
SECTION 1304. CONFIDENTIALITY AGREEMENT. 67
SECTION 1305. NO CONFIDENTIAL INFORMATION IN NOTICE. 67
SECTION 1306. CONFIDENTIAL INFORMATION IN REPORT TO BE SECURE. 67

[ARTICLE] 14
MISCELLANEOUS PROVISIONS

SECTION 1401. ADDITIONAL RULES. 67
SECTION 1402. UNIFORMITY OF APPLICATION AND CONSTRUCTION. 67
SECTION 1403. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. 68
SECTION 1404. TRANSITIONAL PROVISION. 68
SECTION 1405. SEVERABILITY. 68
SECTION 1406. REPEALS; CONFORMING AMENDMENTS. 69
SECTION 1407. EFFECTIVE DATE. 69

REVISED UNIFORM UNCLAIMED PROPERTY ACT

[ARTICLE] 1

IN GENERAL

SECTION 101. SHORT TITLE. This [act] may be cited as the Revised Uniform Unclaimed Property Act.

SECTION 102. DEFINITIONS. In this [act]:

Reporter's Note

The definition of "address" has been located when used in the Act. See Sections 302 and 501.

(1) "Administrator" means [insert name of the state official with responsibility to administer this [act] [and includes, as appropriate, any agent acting on behalf of the administrator].

(2) "Apparent owner" means a person whose name appears on the records of a holder as the person entitled to property held, issued, or owing by the holder.

(3) "Business association" means a for profit or nonprofit corporation, joint stock company, investment company, partnership, unincorporated association, joint venture, limited liability company, business trust, trust company, [land bank], [safe deposit company,] [safekeeping depository,] financial organization, insurance company, federally chartered entity, utility, sole proprietorship, or other business entity.

[Depository Trust Clearing Corporation was (28), is now within (18).]

(4) "Domicile" means:

(A) for a corporation, the state of its incorporation;

(B) for a business association, other than a corporation, whose formation requires

a filing with a state, the state of its filing;

(C) for a federally chartered entity [or federally registered entity], the state of its home office; and

(D) for any other business association, the state of its principal place of business.

(5) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

Reporter's Note

Standard ULC definition used in other Acts.

(6) "Electronic mail" means any communication of information by electronic means that is automatically retained and stored and may be readily accessed or retrieved.

(7) "Financial organization" means a savings and loan association, building and loan association, savings bank, industrial bank, bank, banking organization, or credit union.

["529 Plan" deleted – See § 202(c)]

(8) "Game-related digital content" means digital content that exists only in an electronic game or electronic game platform. The term does not include an item that may be redeemed for money or another thing of reasonably ascertainable value, or otherwise monetized by the issuer. The term includes:

(A) game-play currency with names such as a virtual wallet, even if denominated in United States currency; and

(B) points such as gems, tokens, gold, and similar names, and digital codes that can be redeemed only for digital items or points which can be used only within the game.

Reporter's Note

The Entertainment Software Association has suggested modifying this definition to provide instead:

"(8) Game-related digital content means paid for and non-paid for digital content that may be accessed by customers within a video game or on a video game platform.

The term includes:

(i) game play currency with names such as virtual wallets even if denominated in United States currency;

(ii) points such as gems, tokens, gold and similar names;

(iii) digital codes; and

(iv) virtual items used in game play unrelated to currency or points.

(B) The term does not include items that:

(i) may be redeemed for money under the applicable rules governing the video game or platform, or

(ii) may be monetized by the issues for use outside of the video game or platform environment."

The point is that items excluded under this definition have no value to an administrator and have no practical means of being transferred to or used by an administrator.

(9) "Gift card" means a stored-value card the value of which does not expire and may be decreased in value only by redemption for merchandise, goods, or services, and that may not be redeemed for or converted into money or otherwise monetized by the issuer, unless required by law, and includes a prepaid commercial mobile radio service, as defined in 47 C.F.R. 20.3.

(10) "Holder" means a person obligated to hold for the account of, or to deliver or pay to, the owner property that is subject to this [act]. The term includes a financial intermediary that holds the property in the name of the owner if the property is a securities distribution or a security that is not held in the name of the owner on the records of the issuer.

(11) "Insurance company" means an association, corporation, or fraternal or mutual benefit organization, whether or not for profit, engaged in the business of providing life

endowments, annuities, or insurance, and includes accident, burial, casualty, credit life, contract performance, dental, disability, fidelity, fire, health, hospitalization, illness, life, malpractice, marine, mortgage, surety, wage protection, and workers' compensation insurance.

(12) "Loyalty card" means a record given to a person in exchange for no direct monetary consideration under an award, reward, benefit, loyalty, incentive, rebate, or promotional program which may be used or redeemed only to obtain goods or services. The term does not include a record that may be redeemed for money or otherwise monetized by the issuer.

(13) "Mineral" means gas, oil, coal, other gaseous liquid or solid hydrocarbon; oil shale, cement material, sand and gravel, road material, building stone, chemical raw material, gemstone, fissionable and nonfissionable ores, colloidal and other clay, steam and other geothermal resources, and any other substance defined as a mineral by law of this state other than this [act].

Reporter's Note

This will need a legislative note that states may change the list to conform to their state law.

(14) "Mineral proceeds" means an amount payable for extraction, production, or sale of minerals, or, on the abandonment of the amount, the amount that becomes payable after abandonment. The term includes an amount payable:

(A) for the acquisition and retention of a mineral lease, including a bonus, royalty, compensatory royalty, shut-in royalty, minimum royalty, and delay rental;

(B) for the extraction, production, or sale of minerals, including a net revenue interest, royalty, overriding royalty, extraction payment, and production payment; and

(C) under an agreement or option, including a joint operating agreement, unit agreement, pooling agreement, and farm out agreement.

(15) "Money order" means a payment order for a pre-specified amount of money and includes an express money order and a personal money order [on which the remitter is the purchaser][purchased by an individual]. The term does not include:

(A) a bank money order; or

(B) other instrument sold by a financial organization; or

(C) any other instrument [on which a financial organization or insurance company is the remitter.] [sold by a financial organization if the seller has obtained the name and address of the payee.]

Reporter's Note

Changed from 1995 Act, needs to be revisited per Style Committee.

(16) "Municipal bond" means a bond or evidence of indebtedness issued by a municipality or other political subdivision of a state.

(17) "Net card value" means the original purchase price or original issued value of a stored-value card, plus any amounts subsequently added to its original value, less amounts used and any service charge, fee, or dormancy charge permitted by law.

(18) "Non-freely transferable security" means a security that cannot be delivered to the administrator by the Depository Trust Clearing Corporation or a similar custodian of securities providing post-trade clearing and settlement services to financial markets, or cannot be delivered because there is no agent to effect transfer. The term includes a worthless security.

(19) "Owner" means a person that has a legal, beneficial, or equitable interest in property subject to this [act], or the person's legal representative when acting on behalf of the owner. The term includes a depositor, for a deposit, a beneficiary, for a trust other than a deposit in trust, and a creditor, claimant, or payee, for other property, and includes the lawful bearer of a record

which may be used to obtain money, reward, or things of value.

Reporter's Note

Is the trustee or the beneficiary the "owner" of trust assets?

(20) "Payroll card" means a stored-value card that:

(A) is issued to or held by an employee by or at the direction of the employer, into which monetary value has been placed to pay wages, commissions, bonuses, or reimbursements to the employee;

(B) evidences an account over which the employer retains control; and

(C) does not discharge the employer's obligation to the employee until withdrawn by the employee.

(21) "Person" means an individual, estate, business association, public corporation, government or governmental subdivision, agency, or instrumentality,] or other legal entity.

(22) "Property" means a fixed and certain interest in intangible property held, issued, or owed in the course of a holder's business, or by a government, governmental subdivision, agency, or instrumentality, and all income or increments therefrom, and includes tangible property described in Section 203. The term:

(A) includes property referred to as or evidenced by:

(i) money, virtual currency, a check, draft, deposit, payroll card, interest, or dividend;

(ii) a credit balance, customer's overpayment, stored-value card, [other than a gift card,] security deposit, refund, credit memorandum, unpaid wage, unused ticket, mineral proceeds, or unidentified remittance;

(iii) a security except for:

(I) a worthless security; or

(II) a security that is subject to a lien, legal hold, or restriction evidenced on the records of the holder or imposed by operation of [federal law] which restricts the holder's or owner's ability lawfully to receive, transfer, sell, or otherwise negotiate the security; or

(iv) a bond, debenture, note, or other evidence of indebtedness, except for a bond issued by the United States;

(v) money deposited to redeem a security, make a distribution, or pay a dividend;

(vi) an amount due and payable under the terms of an annuity or insurance policy, including a policy providing life insurance, property and casualty insurance, workers' compensation insurance, or health and disability insurance; and

(vii) an amount distributable from a trust or custodial fund established under a plan to provide health, welfare, [pension,] vacation, severance, [retirement,] death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefits; and

(B) does not include:

(i) game-related digital content[;] [[and]

(ii) loyalty cards[.][;] [and]

(iii) in store credits for returned merchandise [and]

[(iv) a gift card].

(23) "Putative holder" means a person believed by the administrator to be a holder until the person pays or delivers to the administrator property subject to this [act] or a determination

whether the person is a holder is final.

(24) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(25) "Security"[:]

Alternative A

(A) means:

(i) a share, participation, debt-obligation, or similar interest issued by a corporation, business trust, joint-stock company, or similar entity;

(ii) a share or similar equity interest issued by an entity registered as an investment company under the federal investment company laws;

(iii) an interest in a unit investment trust registered under clause (ii);

(iv) a face-amount certificate issued by a face-amount certificate company registered under clause (ii); and

(v) an interest in a partnership or limited liability company dealt in or traded on a securities exchange or in a securities market; and

(B) includes:

(i) a financial asset maintained in a securities account, but does not include physical securities held in a safe deposit box or other safekeeping repository.]; and

(ii) an instrument, whether certificated or uncertificated, that represents an ownership position or right to ownership in a corporation, trust, plan, or other legal entity, customer securities account held by a broker-dealer, and an interest in an investment company under the Investment Company Act of 1940.

Alternative B

means a security as defined in [cite to Article 8 of the Uniform Commercial Code].

Reporter's Note

These alternative provisions A and B need a Legislative Note.

(26) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(27) "Stored-value card":

(A) means a record evidencing a promise, made for consideration, by the seller or issuer of the record, that goods, services, or money will be provided to the owner of the record to the value or amount shown in the record; and

(B) includes:

(i) a record that contains or consists of a microprocessor chip, magnetic strip, or other means for the storage of information, which is prefunded and for which the value or amount is decreased on each use or may be increased by payment of additional consideration; and

(ii) [a gift card] [and] a payroll card; and

(C) does not include a loyalty card or game-related digital content.

Reporter's Note

"Under protest" was deleted as it is not used in the act.

(28) "Utility" means a person that owns or operates for public use a plant, equipment, real property, franchise, or license for essential public services such as:

(A) transmission of communications or information;

(B) the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas, or

(C) provision of sewage and septic services, trash, garbage, or recycling disposal.

Reporter's Note

The changes made to this definition were suggested by the Style Committee.

(29) "Virtual currency" means electronically stored and denominated value used as a means of payment or exchange of value that is not measured or denominated in United States currency or currency convertible into United States currency, but which may be used to trade for, purchase, acquire, or exchange for things of value, including United States currency or currency, convertible into or which may be exchanged for United States currency. The term does not include game-related digital content [or loyalty cards.]

Reporter's Note

Definition is to be coordinated with Committee on Regulation of Virtual Currency.

(30) "Worthless security" means a security for which the cost of liquidation and delivery would exceed the value of the security on the date a report is due under this [act].

SECTION 103. APPLICABILITY TO FOREIGN TRANSACTIONS.

(a) Except as provided in subsections (b), (c) and (e), this [act] does not apply to property held, due, and owing to a person whose last-known address is in a foreign country or to property arising out of a foreign transaction in which the property is held in a foreign country or location outside the United States, if the foreign country, or a subordinate governmental unit of the foreign country, has laws that entitle the foreign country to take and hold unclaimed property of its citizens and residents which in the judgment of the administrator are essentially equivalent to the laws of this state relating to unclaimed property

(b) If the last-known address of an owner of property described in subsection (a) is in a foreign country that has laws relating to custody of unclaimed property which are determined by the administrator to be essentially equivalent to this [act], and the domicile of the holder is in this state, the holder may pay or delivery the property to:

(1) the administrator of the foreign country of the last-known address of the owner and notify the administrator of this state of the payment or delivery; or

(2) the administrator of this state and advise the administrator that the property may be subject to a claim by the administrator in the foreign country of the owner's last-known address.

(c) If property described in subsection (b) has been voluntarily reported and paid to the administrator of this state by the holder under Section 303(4), the administrator may deliver the property to the unclaimed property administrator in the foreign country or subordinate government unit of the foreign country on receipt of a record from the other administrator requesting its payment or delivery.

(d) A holder that delivers property to the administrator under this section is relieved from all liability with respect to the property arising under the laws of this state. This state shall defend, and indemnify the holder, to the extent provided by Sections 603(g) and 606, against a claim made by a foreign country up to the amount of the property paid or delivered to the administrator.

(e) This section does not apply to an employee of the United States temporarily stationed outside the United States or a family member residing with the employee outside the United States. The last-known address of the employee or family member is the last-known address of the employee or family member in the United States.

[ARTICLE] 2

PRESUMPTIONS OF ABANDONMENT

SECTION 201. WHEN SPECIFIC PROPERTY IS PRESUMED ABANDONED.

(Sec. 3) Property is presumed abandoned if it is unclaimed by the apparent owner at the time specified for the following property:

(1) a traveler's check, 15 years after issuance; **3(a)(1)**

(2) a money order, seven years after issuance; **3(a)(2)**

(3) a security: **3(a)(3)**

(A) for an owner receiving communications from the holder by First-Class United States mail, three years after the date a mailing to the apparent owner is returned to the holder as undeliverable by the United States Postal Service, unless a mailing by First-Class United States mail during the three year period is made by the holder to the apparent owner and is not returned as undeliverable during the period;

(B) for an apparent owner not receiving communications from the holder by First-Class United States mail, five years after the last indication to the holder by the apparent owner of interest in the security.

Reporter's Note

Needs a comment regarding when mail is returned marked as "undeliverable."

(4) a state or municipal bond, a bearer bond, or an original-issue-discount bond, three years after the earlier of the date the bond matures or is called or the obligation to pay arises; **3(a)(4)**

(5) a debt of a business association, three years after the obligation to pay arises.

(6) a demand, savings, or time deposit, including a deposit that is automatically

renewable three years after the earlier of maturity or the date of the last indication to the holder by the apparent owner of an interest in the property, except a deposit that is automatically renewable is deemed matured on its initial date of maturity unless the apparent owner consented in a record on file with the holder to a renewal at or about the time of the renewal; **3(a)(5)**

(7) money or credits owed to a customer as a result of a retail business transaction, other than in-store credit for returned merchandise, three years after the obligation accrued; **3(a)(6)**

(8) an amount owed by an insurance company on a life or endowment insurance policy or an annuity contract that has matured or terminated, three years after the obligation to pay arose by receipt of due proof of death as established by the records of the insurance company or, if a policy or contract has not matured by such proof of the death of the insured or annuitant, then three years after;

(A) the insurance company has knowledge of the death of the insured or annuitant; or

(B) the insured has attained, or would have attained if living, the limiting age under the mortality table on which the company's reserve for the policy or contract is based;

(9) property distributable by a business association in the course of dissolution one year after the property becomes distributable; **3(a)(9)**

(10) property held by a court, including property received as proceeds of a class action, government, governmental subdivision, agency, or instrumentality, including municipal bond interest and unredeemed principal under the administration of a paying agent or indenture trustee, one year after the property becomes distributable; **3(a)(11)**

(11) wages, commissions, bonuses, or reimbursements to which an employee is entitled, or other compensation for personal services, including amounts held in a payroll card, one year

after the amount becomes payable; **3(a)(12)**

(12) a deposit or refund owed to a subscriber by a utility, one year after the deposit or refund becomes payable; and **3(a)(13)**

(13) all other property not specified in this [article] or [articles] 202, 203, [and] 204, [and 205], the earlier of three years after the owner first has a right to demand the property, or after the obligation to pay or distribute the property arises. **3(a)(15)**

SECTION 202. WHEN A TAX DEFERRED OR CUSTODIAL ACCOUNT IS PRESUMED ABANDONED. 3(a)(14)

(a) Property held in an individual retirement account or retirement health savings account that qualifies for tax deferral under the income tax laws of the United States is presumed abandoned if it is unclaimed by the apparent owner three years after the later of:

(1) the date a second consecutive item sent to the owner by First-Class United States mail was returned as undeliverable by the United States Postal Service, unless a subsequent item mailed to the owner by First-Class United States mail was not returned as undeliverable; or

(2) the date the owner becomes 70.5 years of age, if determinable by the holder, or two years after the date the holder receives proof of death of the owner in the form of a claimant's presentation of a certified death certificate, but only if the death of the owner requires mandatory distribution under the Internal Revenue Code. A holder is not required under subsection (a) to solicit a death certificate or otherwise attempt to confirm whether the apparent owner is deceased.

(b) Property, other than property described in subsection (a) and property held in a plan described in Section 529A of the Internal Revenue Code, held in an account or plan that qualifies

for tax deferral under the income tax laws of the United States is presumed abandoned if it is unclaimed by the owner three years from the later of:

(1) the date a second item sent to the owner by First-Class United States mail was returned as undeliverable by the United States Postal Service, unless a later mailing by First-Class United States mail to the apparent owner was not returned as undeliverable; or

(2) 30 years have elapsed after the date the account was opened.

SECTION 203. WHEN CONTENTS OF SAFE DEPOSIT BOX PRESUMED ABANDONED. Sec. 4 Tangible property held in a safe deposit box and proceeds from the sale of the property by the holder permitted by other [state] law are presumed abandoned if the property remains unclaimed by the apparent owner for more than five years after the earlier of the:

(1) expiration of the lease or rental period for the box; or

(2) earliest date when the lessor of the safe deposit box is authorized by law of this state other than this [act] to enter the box and remove or dispose of the contents without consent or authorization of the lessee.

SECTION 204. WHEN STORED-VALUE CARD PRESUMED ABANDONED. 3(a)(7)

(a) A stored-value card, other than a [gift card or] payroll card, is presumed abandoned on the latest of three years after:

(1) December 31 of the year in which the card is issued or additional funds are deposited into it;

(2) the most recent indication by the apparent owner of an interest in the card; or

(3) a verification or review of the balance by or on behalf of the apparent owner.

(b) The amount abandoned by the owner in a stored-value card is the net card value at the time it is presumed abandoned.

[SECTION 205. WHEN GIFT CARD PRESUMED ABANDONED. 3(a)(16)

[A gift card is presumed abandoned if it is unclaimed by the apparent owner during the later of five years after the date of purchase or its most recent use.]

SECTION 206. WHEN OTHER PROPERTY PRESUMED ABANDONED. 3(c)

[Unless provided otherwise in this [article] for specific property,] property is not presumed abandoned if during the applicable period in this [article], the apparent owner has indicated an interest in the property.

Reporter's Note

Style asked if this Section is needed.

SECTION 207. WHEN RELATED PROPERTY INTEREST PRESUMED ABANDONED. 3(b) At the time property is presumed abandoned under this [article], any related property right accrued or accruing to the apparent owner as a result of the property not previously presumed abandoned is also presumed abandoned.

Reporter's Note

Style asked if this Section is needed.

SECTION 208. INDICATION OF OWNER INTEREST IN PROPERTY. 3(d) See 206

(a) An indication under this [act] of an apparent owner's interest in property includes:

(1) a record communicated by the owner to the holder or agent of the holder concerning the property or the account in which the property is held;

(2) an oral communication by the owner to the holder or agent of the holder

concerning the property or the account in which the property is held, if the holder or its agent contemporaneously makes and preserves a record of the fact of the owner's communication;

(3) presentment of a check or other instrument of payment of a dividend, interest payment, or other distribution, including evidence of a distribution made by electronic or similar means, with respect to an:

(A) account;

(B) underlying security; or

(C) interest in a business association;

(4) owner-directed activity in the account in which the property is held, including accessing the account, or a direction by the owner to increase, decrease, or otherwise change the amount or type of property held in the account;

(5) making a deposit into or withdrawal from an account in which the property is held, including [an automatic deposit or withdrawal previously authorized by the owner] [and] [any automatic reinvestment of dividends or interest];

(6) payment of a premium on an insurance policy, except that application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent a policy from maturing or terminating if the insured has died or the insured or the beneficiary of the policy otherwise has become entitled to the proceeds before depletion of the cash surrender value of the policy by application of the provisions; and

(7) any other action by the owner which reasonably demonstrates to the holder that the owner is aware that the property exists.

(b) An action by an agent or other representative of an owner, other than the holder acting as the owner's agent, is presumed to have been done on behalf of the owner, and is considered an

action by the owner.

(c) A communication with an apparent owner by a person other than the holder or the holder's representative which has not in a record identified the property to the owner is not an indication of interest in the property by the owner. **3(e)**

SECTION 209. KNOWLEDGE OF DEATH OF AN INSURED OR ANNUITANT; INSURANCE COMPANY DUE DILIGENCE REQUIREMENTS; MASTER DEATH FILE SEARCHES. With respect to an amount owed by an insurance company on a life or endowment insurance policy, the following rules apply:

(1) An insurance company has knowledge of death of the insured or annuitant when:

(A) the insurance company receives a death certificate or a court order determining that an insured or annuitant has died;

(B) due-diligence required under [other applicable state law or regulations relating to the business of insurance] to maintain contact with, or determine whether an insured or annuitant has died, provides an insurance company with notice and validation of the death of an insured or annuitant;

(C) Comparisons are conducted by an insurance company for any purpose between a death master file and the names of some or all of its insureds or annuitants and a match indicating that an insured or annuitant has died is found and the insurance company validates the death; or

(D) The insurer receives notice of the death of the insured or annuitant from a beneficiary, policy owner, relative of the insured, or trustee; or from a [personal representative], [executor], or other legal representative of the insured's or annuitant's estate, and validates the death of an insured or annuitant.

(2) For purposes of a death master file comparison subject to this subsection:

(A) A death master file match occurs if the criteria for an exact or partial match are satisfied as provided by the law of this state; a regulation or policy adopted by the state insurance department; or, in lieu of any law, regulation or policy, standards contained in the National Conference of Insurance Legislators Model Unclaimed Life Insurance Benefits Act of 2014.

Reporter's Note

The National Association of Insurance Commissioners is in the process of developing a new model act that may contain standards that differ from those contained in the NCOIL Model Act. If these standards are adopted, it may be appropriate to substitute a reference to standards promulgated by the NAIC.

(B) A death master file match does not constitute proof of death for purposes of the submission of claims to an insurance company for amounts due under an insurance policy or annuity contract. Neither a death master file match nor validation of the insured's or annuitant's death alters the requirements for a beneficiary, annuitant, or owner of the policy or contract to make a claim to receive proceeds under the terms of the policy or contract.

Reporter's Note

This paragraph applies to claims made by a beneficiary, annuitant or policy owner to an insurance company and does not apply to claims made by an unclaimed property administrator.

(C) In the absence of a provision in [state insurance laws or regulations] which sets forth a time frame for the validation of a death, a good faith effort to validate the death must be conducted and documented by the insurance company using other available records and information within [90] days after the insurance company has knowledge of the death of an insured or annuitant.

(D) A comparison between a death master file and the names of an insurance

company's insureds or annuitants may be conducted by the [administrator] or its agent for policies or contracts in force or terminated, within the period for which a report is required by Section [8], only when:

(i) an insurance company fails to produce evidence that it has conducted any comparisons required by the law of this state, or regulations or standards adopted by the state insurance commissioner, in the manner, frequency and time period prescribed; or

(ii) an insurance company conducts a comparison, but an analysis of a reasonable sample of the insurance company's insureds or annuitants indicates that the insurance company failed to find a significant percentage of the matches that should have been found using the standards set forth in paragraph (2)(A). What constitutes a significant percentage of claims shall be determined based on standards promulgated jointly by the [administrator] and the [state insurance commissioner] taking into consideration recommendations of national associations of unclaimed property administrators and insurance commissioners in a manner that will promote uniformity of practice among the states.

(E) Before the [administrator] conducts any comparison between a death master file and the names of an insurance company's insureds or annuitants, it must:

(i) provide the insurance company with evidence that it , and any of its agents involved in conducting a comparison, have all data security protections in place as required by 15 CFR Part 1110, as amended, and as needed to otherwise reasonably provide for the security and confidentiality of protected information, including the names, addresses, social security numbers, or other personally identifiable information regarding the insureds, annuitants, or policy or contract owners, or their beneficiaries; and;

(ii) require any agent conducting a comparison to provide both the

[administrator] and the insurance company with notice of any unauthorized access, use, or disclosure of or any unauthorized access, use, disclosure, modification or destruction of any protected information or interference with system operations in any system hosting or housing the protected Information.

(F) An insurance company that provides or makes available protected information requested by the Administrator or its agent is relieved from any liability resulting from claims made against the insurance company as a result of any unauthorized access, use, disclosure, modification, or destruction of the protected information, that occurs when the information is within the possession or control of the administrator or its agents.

(3) This [act] does not affect the extent to which an insurance company was or was not deemed to have knowledge of the death of an insured or annuitant or was required to conduct a death master file comparison to determine whether amounts owed by the insurance company on a life or endowment insurance policy or an annuity contract were presumed abandoned or unclaimed before [the effective date of this [act].

SECTION 210. RETAINED ASSET ACCOUNT FOR INSURANCE POLICY OR ANNUITY CONTRACT. 3(h)(5) If proceeds payable under a life or endowment insurance policy or annuity contract are deposited into an account with check or draft writing privileges for the beneficiary of the policy or contract and the proceeds are retained by the insurance company or its agent under a supplementary contract not involving annuity benefits other than death benefits, the policy or contract under Section 201(7) and 211 includes the assets in the account.

[ARTICLE] 3.

PRIORITY OF CUSTODY OF ABANDONED PROPERTY

SECTION 301. PRIORITY RULES. For the purposes of determining which state has

priority for taking custody of unclaimed property that is presumed abandoned, each rule in a lower-numbered section of this [article] has priority over a rule in a higher-numbered section.

Reporter's Note

This provision was suggested by Style.

SECTION 302. ADDRESS OF APPARENT OWNER FOR THE PURPOSE OF ESTABLISHING PRIORITY.

(a) To determine the first priority state of property held for an apparent owner under this [Article] the address of an apparent owner is any description, code, or other indication of the location of the apparent owner which sufficiently identifies the state that was the last-known address of the apparent owner, regardless of whether the description, code, or indication of location is sufficient to direct the delivery of First-Class United States mail to the apparent owner. **2(1)**

(b) If the United States postal ZIP code associated with the apparent owner is for a post office located in this state, this state is deemed to be the state of the last-known address of the apparent owner unless other records associated with the apparent owner specifically identify the physical address of the apparent owner to be in a different state. If the address is in a different state, the different state is deemed to be the state of the last-known address of the apparent owner. **5(2)**

SECTION 303. CUSTODY IF ADDRESS OF APPARENT OWNER IN THIS STATE. 5(1)(2) The administrator of this state may take custody of unclaimed property that is presumed abandoned, whether located in this or another state, or a foreign country, if:

(1) the last-known address of the apparent owner, as shown on the records of the holder, is in this state; **5(1)**

(2) the records of the holder do not reflect the identity of the apparent owner, but it is otherwise determinable by the administrator that the last-known address of the apparent owner is in this state; **5(2)**

(3) the records of the holder do not reflect the last-known address of the apparent owner, but it is otherwise determinable by the administrator that:

(A) the last-known address of the apparent owner in this state; or

(B) the holder:

(i) is domiciled in this state or is a government or governmental subdivision, agency, or instrumentality of this state if the state of domicile of the holder has changed, the holder's state of domicile is the state where the holder was domiciled at the time the property was presumed abandoned;

(ii) has not previously paid or delivered the property to the state of the last-known address of the apparent owner or other person entitled to the property; and

(iii) is not obligated to pay or deliver the property to that state;

(4) the holder voluntarily remits property to the administrator for which the last-known address of the apparent owner, as shown on the records of the holder, is a foreign country or a state that does not provide custodial taking of the property, and the holder is domiciled in this state; or] **5(4)**

(5) the last-known address of the apparent owner, as shown on the records of the holder, is in a state that does not provide for the custodial taking of the property, or is in a foreign country, and the holder is domiciled in this state or is a government or governmental subdivision, agency, or instrumentality of this state, except that if the property is specifically exempt from custodial taking under the law of the state of the last-known address of the apparent owner, or if

not, the state of domicile of the holder, the property is not subject to the custody of this state.

5(5)

SECTION 304. CUSTODY WHEN RECORDS SHOW TWO OR MORE ADDRESSES OF APPARENT OWNER. 5(2) If records of a holder reflect two or more addresses for an apparent owner, the state of the most recently recorded address may take custody of property that is presumed abandoned, whether located in this or another state unless it appears from the records of the holder that the most recently recorded address of the apparent owner is a temporary address, in which case the other address governs.

SECTION 305. CUSTODY IF TRANSACTION OCCURRED IN THIS STATE. 5(6) The administrator of this state may take custody of property that is presumed abandoned, whether located in this or another state if:

(1) the transaction out of which the property arose occurred in this state;

(2) the holder is domiciled in a state that does not provide for the custodial taking of the property; and

(3) the last-known address of the apparent owner or other person entitled to the property is unknown or is in a state that does not provide for the custodial taking of the property, unless the property is exempt from custodial taking under the law of the other state.

SECTION 306. CUSTODY OF TRAVELER'S CHECK AND MONEY ORDER. 5(7) The administrator of this state may take custody of a traveler's check or money order that is presumed abandoned, whether located in this or another state if the:

(1) check or money order was purchased in this state; or

(2) the issuer of the check or money order has its principal place of business in this state and the issuer's records:

(A) show that the check or money order was purchased in a state that does not provide for the custodial taking of the property; or

(B) do not show the state in which the check or money order was purchased.

SECTION 307. ADDRESS OF PERSON ENTITLED TO THE PROCEEDS OF AN INSURANCE POLICY OR ANNUITY CONTRACT. The address of the apparent owner of a life or endowment insurance policy or annuity contract or its proceeds is presumed to be the address of the insured or annuitant if a person other than the insured or annuitant is entitled to the amount owed under the policy or contract and the address of the other person entitled to the amount owed is not known by the [insurer] [insurance company] or cannot be determined from the records of the [insurer] [insurance company].

SECTION 308. ADMINISTRATOR'S BURDEN OF PROOF. Sec. 7 In asserting a right of this state to take custody of unclaimed property, the administrator has the burden of proving the existence and amount of the unclaimed property and its presumed abandonment.

SECTION 309. EVIDENCE OF UNPAID DEBT OR UNDISCHARGED OBLIGATION. Sec. 7

(a) A record of a putative holder showing an unpaid debt or undischarged obligation is prima facie evidence of the debt or obligation and, subject to subsection (b), is prima facie evidence of the existence and amount of the debt or obligation.

(b) A putative holder may establish that there is no unpaid debt or undischarged obligation with respect to the debt or obligation described in subsection (a) or otherwise show that the debt or obligation was not or no longer is a fixed and certain obligation of the putative holder by presenting evidence sufficient to overcome the prima facie evidence in subsection (a).

(c) The putative holder may overcome prima facie evidence under subsection (a) by

showing that the check, draft, or similar instrument:

(1) was issued as an unaccepted offer in settlement of an unliquidated amount;

(2) was issued but was later replaced with another instrument because the earlier instrument was lost or contained errors that were later corrected;

(3) was issued to a party affiliated with the issuer;

(4) was paid, satisfied, or discharged;

(5) was issued in error;

(6) was issued without consideration;

(7) was issued but there was a failure of consideration;

(8) was voided within a reasonable time after issuance with a contemporaneous record that indicates the reason for the voidance; or

(9) was issued but was not delivered to the third-party payee for a sufficient reason recorded within a reasonable time after issuance.

(d) In asserting a defense to an assertion by the administrator of the right of this state to take custody of property under subsection (c), a putative holder may present evidence of a course of dealing between the putative holder and the apparent owner, or of custom and practice.

[ARTICLE] 4

REPORT BY HOLDER

SECTION 401. REPORT REQUIRED BY HOLDER. 8(a)

(a) A holder of property presumed abandoned and subject to the custody of this state shall report in a record to the administrator concerning the property. The administrator may not require a holder to submit a paper report.

(b) A holder may contract with a third party to report for the holder unclaimed property

that is presumed abandoned under this [act]. A holder is:

(1) responsible to the administrator for the complete, accurate, and timely reporting of unclaimed property which is presumed abandoned; and

(2) liable for paying or delivering the reported property to the administrator. **3(f)**

(c) Property is reportable and payable or deliverable under this [act] even if the owner fails to make demand or present an instrument or document otherwise required to obtain payment.

Reporter's Note

Is this the right place for this provision?

SECTION 402. REQUIREMENTS FOR REPORT. 8(a)(b)

(a) The report required under Section 401 must:

(1) be signed by or on behalf of the holder and verified as to its completeness and accuracy;

(2) be in an encrypted or password-protected electronic format approved by the administrator;

(3) protect the apparent owner's confidential information contained in the report to the extent it is required to be protected under [Article 13];

(4) describe the property;

(5) [except for a traveler's check or money order,] contain the name, if known, and last-known address, if known, and the Social Security number or taxpayer identification number, if known or readily ascertainable, of the apparent owner of property with a value of $[50] or more;

Reporter's Note

Are there different reporting requirements under federal law for traveler's checks and money orders? The bracketed language is in the 1995 Act.

(6) in the case of an amount held or owing under life or endowment insurance policy, or annuity contract, contain the full name and last-known address of the insured or annuitant and of the beneficiary;

Reporter's Note

How is an endowment policy different from a life insurance policy?

(7) in the case of property held or which had been held in a safe deposit box, indicate where the property is held, where it may be inspected by the administrator, and any amounts owed to the holder under Section 605;

(8) contain the date, if any, on which the property became payable, demandable, or returnable, and the date of the last indication by the apparent owner of interest in the property;

(9) state that the holder has complied with the notice requirements of Section 501;

(10) contain other information the administrator by rule prescribes as necessary for the administration of this [act]; and

(11) identify the property that is a non-freely transferable security, and explain why it is a non-freely transferable security.

(b) A holder may report under subsection (a) items valued under $[50] each in the aggregate. If the holder reports items valued under $[50] each in the aggregate, the administrator may not require the holder to provide the name and address of an apparent owner of an item unless the information is necessary to verify or process a claim in progress by the owner.

(c) The report under Section 401 may include sensitive, nonpublic personal information about the owner or the owner's property. **8(b)**

(d) If a holder has changed its name while holding property presumed abandoned, or is a successor to another person who previously held the property for the apparent owner, the holder shall file with the report under Section 401 its former name, or the name of the former holder, if any, and the known name and address of each previous holder of the property. 8(c)

SECTION 403. WHEN REPORT TO BE FILED. 8(d)(e)

(a) Except as otherwise provided in subsection (b), and subject to subsection (c), the report under Section 401 must be filed before November 1 of each year and cover the 12 months immediately preceding July 1 of that year.

(b) Subject to subsection (c), the report required to be filed by an insurance company under Section 401 must be filed before May 1 of each year for the immediately preceding calendar year.

(c) Before the date for filing the report required under Section 401, the holder of property presumed abandoned may request the administrator to extend the time for filing. The administrator may grant an extension for good cause. If the extension is granted, the holder may pay or make a partial payment of the amount the holder estimates ultimately will be due. The payment or partial payment terminates accrual of interest on the amount paid. **8(e)**

SECTION 404. RETENTION OF RECORDS BY HOLDER. (21)

(a) Except as otherwise provided in subsection (b), a holder required to file a report under Section 401 shall maintain for [10] years after the later of the date the report was filed or the last date a timely report was due to be filed the records containing:

(1) the information required to be included in the report;

(2) the date, place, and nature of the circumstances that gave rise to the property right;

(3) the amount or value of the property; and

(4) the last address of the apparent owner, if known to the holder.

(b) If a holder sells, issues, or provides to others for sale or issue in this state traveler's checks, money orders, or similar instruments, other than third-party bank checks, on which the holder is directly liable, the holder shall maintain for 10 years after the holder files the report under Section 401 a record of the instruments while they remain outstanding, indicating the state and date of issue.

[ARTICLE] 5

NOTICE TO APPARENT OWNER OF UNCLAIMED PROPERTY

SECTION 501. NOTICE TO APPARENT OWNER BY HOLDER. 10(a)(1)

(a) Except as otherwise provided in subsection (b) and subject to subsections (c) and (d), the holder of unclaimed property which is presumed abandoned shall send notice that complies with Section 502 to the apparent owner in a format acceptable to the administrator, by First-Class United States mail, not more than 180 nor less than 60 days before filing the report required under Section 401 if:

(1) the holder has in its records an address for the apparent owner which the holder's records do not disclose to be not valid; [and]

(2) the value of the property is $[50] or more.

[(3) the claim of the apparent owner is not barred by a statute of limitations.]

(b) For the purpose of giving notice by United States mail to an apparent owner under this Section, the address of the apparent owner is a location of the apparent owner sufficient to direct the delivery of First-Class United States mail to the apparent owner. **2(1)**

(c) If an apparent owner has consented to receive information from the holder by

electronic mail, the holder may send the notice described in subsection (a) by electronic mail instead of First-Class United States mail if the holder does not have reason to believe that the apparent owner's electronic mail address is not valid. If the holder sends the notice by electronic mail and receives information indicating that the apparent owner's electronic mail address is not valid, the holder shall send the notice by First-Class United States mail to the apparent owner's last-known mailing address. **10(a)(5)**

(d) If an apparent owner of a security does not receive communications from the holder by First-Class United States mail, the holder shall send the notice described in subsection (a) by electronic mail not later than two years after the apparent owner's last indication of interest in the security. If the holder receives notification that the electronic mail communication was not received, or if the apparent owner does not respond to the electronic mail within [30] days, the holder shall promptly send the notice under subsection (a) to the apparent owner by First-Class United States mail, unless the apparent owner otherwise indicates an interest in the security after the electronic mail or the holder has in its records an address for the apparent owner which the holder's records disclose to be not valid. **10(a)(6)**

(e) If the apparent owner of a security receives communications from the holder by First-Class United States mail, the holder of a security shall give notice under section 502 if:

(1) two consecutive First-Class mailings to the apparent owner were returned to the holder as undeliverable by the United States Postal Service, unless a subsequent First-Class mailing to the apparent owner was not returned as undeliverable; and

(2) the value of the property is $[50] or more. **10(a)(7)**

SECTION 502. CONTENTS OF NOTICE BY HOLDER TO APPARENT OWNER. 10(a)(2)-end

(a) The notice under Section 501 must contain a heading that reads substantially as follows: "The [State] of [insert name of state] requires us to notify you that your property may be transferred to the custody of the [state's unclaimed property administrator] if you do not contact us before [insert date that is 30 days after the date of this notice."]

(b) The notice under Section 501 must:

(1) state the circumstances under which the property will be turned over to the administrator;

(2) state that once the property is turned over to the administrator the apparent owner must file a claim with the administrator if the apparent owner seeks return of the property;

(3) identify the nature and except for property which does not have a fixed and readily ascertainable value, the value of the property that is the subject of the notice; [provided that no liability shall attach to the administrator for an inaccurate valuation made in good faith.];

(4) state that property that is not cash may be sold by the administrator; and

(5) provide instructions that the apparent owner must follow to prevent the holder from reporting and turning over the property to the administrator.

SECTION 503. PROGRAM OF ADMINISTRATOR TO GIVE NOTICE TO APPARENT OWNER. 10(b)

(a) The administrator shall establish and maintain a program to give notice to apparent owners that unclaimed property which is presumed abandoned and which appears to be owned by them is held by the administrator under this [act]. Under the program, the administrator must:

(1) except as provided in paragraph (2), send written notice by First-Class United

States mail to each apparent owner of property held by the administrator unless the administrator determines that a First-Class mailing would not be received by the apparent owner, and, in the case of a security held in electronic form, send notice by electronic mail if the electronic mail address of the apparent owner is known to the administrator and the administrator has been notified that the apparent owner has consented to receive notification by electronic mail instead of notification by First-Class United States mail;

(2) if the administrator does not have a valid United States postal mail address for an apparent owner, but has an electronic mail address that the administrator does not know to be not valid, send the notice to the owner's electronic mail address;

(3) publish notice:

(A) of property held by the administrator every [six] months in at least one newspaper of general circulation in this state; and

(B) which includes:

(i) the total number and value of property accounts received by the administrator during the preceding [six] month period taken from the reports;

(ii) the total number and value of claims to accounts paid by the administrator during the preceding [six] month period;

(iii) the Internet web address of the unclaimed property website maintained by the administrator;

(iv) a telephone number and electronic mail address a person may use to contact the administrator to inquire about or claim property; and

(v) a statement that a person may access the Internet by use of a computer to search for unclaimed property and a computer may be available as a service to the

public at a local public library; and

(4) maintain a website or database accessible by the public which sets forth in an electronically searchable manner the names reported to the administrator in an approved electronic format of all apparent owners for whom property is being held by the administrator. **10(b)(3)**

(b) The website or database maintained under subsection (a)(5) must include instructions for filing a claim to property with the administrator and a printable claim form with instructions for its use. **10(b)(3)**

(c) The administrator may undertake additional notification efforts through printed publication, telecommunication, the Internet, or other media to make the public aware of the existence of unclaimed property held by the administrator and the administrator's unclaimed property program. **10(d)**

SECTION 504. COOPERATION AMONG AGENCIES TO LOCATE APPARENT OWNER. 10(e) On the request of the administrator, each officer, agency, board, commission, division, and department of this state, any body politic and corporate created by this state for a public purpose, and each political subdivision of this state shall make its books and records available to the administrator and cooperate with the administrator to determine the current address of an apparent owner of property held by the administrator under this [act].

[ARTICLE] 6

TAKING CUSTODY OF PROPERTY BY ADMINISTRATOR

SECTION 601. DEFINITION OF GOOD FAITH. (Sec. 11) In this [article], payment or delivery of property is made in good faith if:

(1) a holder had a reasonable basis for believing, based on the facts then known, that the

property was required to be paid or delivered to the administrator under this [act];

(2) the records under which the payment or delivery was made do not show that the payment or delivery failed to meet reasonable commercial standards of practice; and

(3) the holder made payment or delivery:

(A) in response to a demand by the administrator or agent of the administrator; or

(B) pursuant to a guidance or ruling issued by the administrator which the holder reasonably believed required the property to be reported, paid or delivered. **11(b)**

SECTION 602. DORMANCY CHARGE. Sec. 6 A holder may deduct from property required to be paid or delivered to the administrator a dormancy charge imposed by reason of the apparent owner's failure to claim the property within a specified time if there is a valid and enforceable contract in a record between the holder and the apparent owner under which the holder may impose the charge, and the holder regularly imposes the charge and does not regularly reverse or otherwise cancel the charge. The amount of the deduction is limited to an amount that is not unconscionable considering all relevant factors, including the marginal transactional costs incurred by the holder in maintaining the apparent owner's property and any services received by the apparent owner.

SECTION 603. PAYMENT OR DELIVERY OF PROPERTY TO ADMINISTRATOR. (Sec. 9)

(a) Except as otherwise provided in this section, after filing a report under Section 401, the holder shall pay or deliver to the administrator the property described in the report.

(b) If property in a report under Section 401 is an automatically renewable deposit and a penalty or forfeiture in the payment of interest would result from paying the deposit to the administrator at the time of the report, the date for payment of the property to the administrator is

extended until a penalty or forfeiture no longer would result from payment, provided that the holder informs the administrator of the extended date.

(c) Tangible property held in a safe deposit box may not be delivered to the administrator until [120] days after filing the report under Section 401**.**

(d) If property reported to the administrator under Section 401 is a security [or security entitlement], the administrator may make an endorsement, instruction, or entitlement order on behalf of the apparent owner to invoke the duty of the issuer or its transfer agent or the securities intermediary to transfer the security, or may dispose of the security [or the security entitlement] under Section 702.

(e) If the holder of property reported to the administrator is the issuer of a certificated security, the administrator may obtain a replacement certificate in physical or book entry form under [Section 8-405 of the Uniform Commercial Code]. An indemnity bond is not required.

(f) The administrator shall establish procedures for the registration and issuance, method of delivery, transfer, and maintenance of securities [and security entitlements] delivered to the administrator by a holder.

(g) An issuer, a holder, and any transfer agent or other person acting under instructions of and on behalf of the issuer or holder in accordance with this section is not liable to the apparent owner for, and must be indemnified by the administrator against any claims arising with respect to the property after the property has been delivered to the administrator.

(h) The holder is not required to deliver to the administrator a security identified by a holder as a non-freely transferable security. Not later than 10 days after the administrator or holder determines that the security is no longer a non-freely transferable security, the holder must deliver the security to the administrator.

SECTION 604. CUSTODY OF PROPERTY BY THE ADMINISTRATOR. On payment or delivery of property to the administrator, the administrator as agent for the state assumes custody and responsibility for the safekeeping of the property. A holder who pays or delivers property to the administrator in good faith and in substantial compliance with Sections 501 and 502 of this [act] is relieved of liability arising thereafter with respect to payment and delivery of the property to the administrator. **11(a)**

SECTION 605. HOLDER'S REIMBURSEMENT OR RECOVERY OF PROPERTY FROM ADMINISTRATOR. 11(c)(d)(e)(f)(g)

(a) A holder that has made a payment to the administrator under this [act] may thereafter make payment of the property to a person reasonably believed by the holder to be the owner of the property, and having made the payment the holder may claim reimbursement from the administrator

(b) If a claim for reimbursement under subsection (a) is made for a payment made on a negotiable instrument, including a traveler's check or money order, the holder must submit proof that the instrument was presented and that payment was made to a person the holder reasonably believed to be entitled to payment. The holder may claim reimbursement even if the payment was made to a person whose claim was made after the expiration of a period of limitation on the owner's right to receive or recover property, whether specified by contract, statute, or court order.

(c) A holder that has delivered property other than money to the administrator under this [act] may claim the property still in the possession of the administrator, without paying a fee or other charge, by filing a claim under Section 903 together with evidence sufficient to establish that the apparent owner has claimed the property from the holder.

(d) The administrator may determine that an affidavit submitted by a holder is evidence sufficient to establish that the holder is entitled to reimbursement or to recover property under this section.

SECTION 606. DEFENSE AND INDEMNITY OF HOLDER BY STATE. 11(g)

If a holder pays or delivers property to the administrator in good faith and after payment or delivery a person claims the property from the holder, or if another state or foreign country claims the property from the holder under its law relating to unclaimed property, the administrator on receipt in a record of notice of the claim, shall defend the holder against the claim and indemnify the holder against any liability on the claim resulting from payment or delivery of the property to the administrator.

SECTION 607. PROPERTY REMOVED FROM SAFE DEPOSIT BOX. 11(h)

The administrator receives property removed from a safe deposit box under Section 203 subject to the holder's right to reimbursement for the cost of the opening and to any valid lien or contract providing reimbursement to the holder for unpaid rent charges for the box. The administrator shall reimburse the holder from the proceeds remaining after deducting the expense incurred by the administrator in selling the property.

SECTION 608. CREDITING DIVIDENDS, INTEREST, AND INCREMENTS TO OWNER'S ACCOUNT. (12) If property other than money is delivered to the administrator, the owner is entitled to receive from the administrator income or gain realized or accrued on the property before sale of the property. If the property was an interest-bearing demand, savings, or time deposit, the administrator shall pay interest at the lesser of the rate of [insert legal rate] or the rate the property earned while in the possession of the holder. Interest begins to accrue when the property is delivered to the administrator and ends on the earlier of the expiration of 10 years

after its delivery or the date on which payment is made to the owner.

SECTION 609. ADMINISTRATOR'S OPTIONS AS TO CUSTODY. (17)

(a) The administrator may decline to take custody of property reported under Section 401 if the administrator determines that the property has a value less than the estimated expenses of notice and sale of the property.

(b) With the consent in a record of the administrator, and on conditions and terms prescribed by the administrator, a holder may [report and] pay or deliver unclaimed property before the property is presumed abandoned. Property so delivered must be held by the administrator, but is not presumed abandoned until it otherwise would be presumed abandoned under this [act].

SECTION 610. DISPOSITION OF PROPERTY HAVING NO SUBSTANTIAL VALUE; IMMUNITY FROM LIABILITY. (18)

(a) If the administrator takes custody of property delivered under this [act] and later determines that the property has no substantial commercial value or that the costs of disposing of the property will exceed the value of the property, the administrator may return the property to the holder or destroy or otherwise dispose of the property.

(b) Except for intentional misconduct or malfeasance, an action or proceeding may not be maintained against this state or any agency of this state, or any officer, employee, or agent of this state, or against a holder for or because of an act of the administrator under this section.

SECTION 611. PERIODS OF LIMITATION AND REPOSE. (19)

(a) Expiration, before, on, or after the effective date of this [act], of a period of limitation on an owner's right to receive or recover property, whether specified by contract, statute, or court order does not prevent the property from being presumed abandoned or affect the duty of a

holder to file a report or to pay or deliver property to the administrator under this [act].

(b) The administrator may not commence an action or proceeding to enforce this [act] with respect to the reporting, payment, or delivery of property under this [act] more than five years after the holder specifically identified the property in a report under Section 401 filed with the administrator, or gave notice in a record to the administrator that specifically identified property was considered by the holder not to be subject to the provisions of this [act]. The parties may agree in a record to extend the limitation in this subsection.

(c) The administrator may not commence an action, proceeding, or examination with respect to a duty of a holder under this [act] more than 10 years after the duty arose.

[ARTICLE] 7

SALE OF PROPERTY BY ADMINISTRATOR

SECTION 701. PUBLIC SALE OF PROPERTY. (13(a)-(e))

(a) Subject to Section 702, not later than three years after receipt of property that has been presumed abandoned, the administrator shall sell the property to the highest bidder at public sale at a location in this state which the administrator determines to be the most favorable market for the property.

(b) The administrator may conduct the sale on the Internet or another forum the administrator determines is likely to yield the highest net proceeds of sale.

(c) The administrator may decline the highest bid and reoffer the property for sale if the administrator determines the highest bid to be insufficient.

(d) If a sale held under this section is to be conducted other than by electronic means, the administrator must publish not less than one notice of the sale at least [three] weeks but not more than [five] weeks before sale, in a newspaper of general circulation in the [county] in which the

property is sold.

SECTION 702. DISPOSAL OF SECURITIES. (13(f)(g))

(a) The administrator may not sell or otherwise liquidate a security until three years after the administrator has received the security and given the apparent owner notice under Section 503 that the administrator holds the security.

(b) The administrator may not sell a security listed on an established stock exchange for less than the price prevailing on the exchange at the time of sale. A security not listed on an established exchange may be sold by any other commercially reasonable method selected by the administrator.

SECTION 703. RECOVERY OF SECURITIES OR VALUE BY OWNER. 13(h)(i)

(a) If the administrator sells a security before the expiration of six years after delivery to the administrator, a person making, before the end of the six-year period, a claim of ownership of the security which the administrator determines to be valid under this [act], is entitled, at the option of the administrator, [and less a deduction for expenses of sale,] to receive:

(1) an equal number of shares; or

(2) the market value of the security at the time the owner made the claim, plus dividends, interest, and other increments on the security up to the time of the claim.

(b) The market value of the security under subsection (a) must be calculated in a manner that places the owner in the same or similar position as if the security had never been sold. The calculation must take into account a stock split, a reverse stock split, and stock dividend or other transaction that would have affected the value of the security. If the security was acquired by another company in exchange for:

(1) cash, the owner is entitled to the cash the owner would have received on

exchange of the security; or

(2) another security, the owner is entitled to the shares or market value of the security that the owner would have received on exchange of the security.

(c) A person making, after the expiration of the six-year period, a claim of ownership of a security determined under this [act] to be valid, is entitled to receive:

(1) the security the holder delivered to the administrator, if it is in the custody of the administrator, plus dividends, interest, and other increment on the security up to the time the payment is made; or

(2) the net proceeds of the sale of the security, plus dividends, interest, and other increments on the security up to the time the security is sold.

SECTION 704. PURCHASER OWNS PROPERTY AFTER SALE. 13(j) A purchaser of property at a sale conducted by the administrator under this [act] takes the property free of all claims of the owner, a previous holder, or of a person claiming through or under either of them, and the administrator shall indemnify the purchaser from any loss resulting from a successful claim. The administrator shall execute all documents necessary to complete the transfer of ownership to the purchaser.

SECTION 705. CUSTODY OF MILITARY MEDALS. 13(k) The administrator may not sell a medal or decoration for military service in the armed forces of the United States. The administrator may deliver the medal or decoration to a military veteran's organization qualified under Section 501(c)(19) of the Internal Revenue Code to hold as custodian for the owner.

ARTICLE 8

DEPOSIT OF FUNDS RECEIVED BY ADMINISTRATOR

SECTION 801. DEPOSIT OF FUNDS BY ADMINISTRATOR. 14(a)

(a) Except as otherwise provided in this section, the administrator shall deposit in the general fund of this state all funds received under this [act], including the proceeds from the sale of property under [Article] 7.

(b) The administrator shall maintain an account with an amount of funds the administrator reasonably estimates to be sufficient to pay claims allowed under this [act] [in each calendar [quarter]]. If the aggregate amount of claims by owners allowed at any time exceeds the amount held in the account, excess claims must be paid as priority claims out of the general funds of this state.

SECTION 802. ADMINISTRATOR TO RETAIN RECORDS OF PROPERTY. 14(b) The administrator shall:

(1) record and retain the name and last-known address of each person shown on a holder's report filed under Section 401 to be the apparent owner entitled to the property delivered to the administrator;

(2) record and retain the name and last-known address of each insured or annuitant and beneficiary shown on a report; and

(3) with respect to each policy of insurance or annuity contract listed in the report of an insurance company, its number, the name of the company, and the amount [due] [paid].

SECTION 803. EXPENSES OF ADMINISTRATOR. 14(c) Before making a deposit of funds received under this [act] to the general fund, the administrator may deduct:

(1) expenses of sale of abandoned property;

(2) costs of mailing and publication in connection with abandoned property;

(3) reasonable service charges; and

(4) expenses incurred in examining records of putative holders of property and collecting the property from putative holders determined to hold property required to be delivered to the administrator under this [act].

SECTION 804. ADMINISTRATOR HOLDS FUNDS AND PROPERTY AS CUSTODIAN FOR OWNER. (14)(d) Funds and other property received by the administrator under this [act] are held in custody for the benefit of the owner and do not belong to the state. This state waives any right to assert sovereign immunity to avoid payment of a claim to the funds or property.

Reporter's Note

This section will need a legislative note to the effect that the bill drafter should consider also amending any separate or catch-all sovereign immunity provision the state may have.

[ARTICLE] 9

CLAIM TO RECOVER PROPERTY FROM ADMINISTRATOR

SECTION 901. CLAIM OF ANOTHER STATE TO RECOVER PROPERTY. 15(a)(b)

(a) If the administrator knows that property held by the administrator under this [act] is subject to a superior claim of another state, the administrator shall:

(1) report and deliver the property to the other state; or

(2) return the property to the holder so that the holder may pay or deliver the property to the other state.

(b) The administrator is not required to enter into a formal agreement or record to transfer the property to the correct state.

SECTION 902. WHEN PROPERTY SUBJECT TO RECOVERY BY ANOTHER STATE. 15(c)(d)(e)

(a) Property held in the custody of the administrator of this state under this [act] may be subject to the right of another state to take custody of the property if:

(1) the property was paid or delivered to the custody of the administrator of this state because the records of the holder did not reflect a last-known address in the other state of the apparent owner and:

(A) the other state later establishes that the last-known address of the apparent owner or other person entitled to the property was in the other state; or

(B) under the law of the other state the property has become subject to a claim by the other state of abandonment;

[(2) the property was paid or delivered to the custody of this state because the law of the other state did not provide for a custodial taking of the property, but under law of the other state subsequently enacted, the property has become subject to a claim of abandonment by the other state;]

Reporter's Note

Is this paragraph appropriate?

(3) the records of the holder did not accurately identify the owner of the property and the last-known address of the owner was in another state, and under the law of the other state the property has become subject to a claim by the other state of abandonment;

(4) the property was subject to the custody of the administrator of this state under Section 304 and under the law of the state of domicile of the holder, the property has become subject to a claim of abandonment by the administrator of the state of domicile of the holder; or

(5) the property is a sum payable on a traveler's check, money order, or similar instrument that was purchased in the other state and delivered into the custody of the administrator of this state under Section 305, and under the law of the other state has become subject to a claim of abandonment by the other state.

(b) A claim by another state to recover property under this section must be presented in a form prescribed by the administrator of this state unless the administrator allows otherwise.

(c) The administrator shall decide the claim not later than [90] days after it is made. If the administrator determines that the other state is entitled under subsection (a) to custody of the property, the administrator shall allow the claim and pay or deliver the property to the administrator of the other state.

(d) The administrator may require another state, before recovering property under this section, to agree to indemnify this state and its officers and employees against any liability on a claim to the property.

SECTION 903. CLAIM FOR PROPERTY BY PERSON CLAIMING TO BE THE OWNER. 16(a and b)

(a) A person claiming to be the owner of property or otherwise lawfully entitled to recover the property held by the administrator may file a claim for the property on a form prescribed by the administrator and verified by the claimant.

(b) The administrator may waive the requirement in subsection (a) to file a claim and pay or deliver property directly to a person if:

(1) the person receiving the property or payment is shown to be the same person as the apparent owner included on a report filed under Section 401;

(2) the administrator reasonably believes the person is entitled to receive the

property or payment; and

(3) the property has a value of less than $[250].

SECTION 904. WHEN ADMINISTRATOR MUST HONOR CLAIM FOR PROPERTY. 16(c and d)

(a) The administrator must pay or deliver property to a claimant under Section 903 if the administrator has received evidence sufficient to establish to the reasonable satisfaction of the administrator that the claimant is the owner of the property.

(b) Not later than 90 days after a claim is filed, the administrator shall allow or deny the claim and give written notice of the decision to the claimant. If the claim is denied, the administrator shall inform the claimant of the reason for the denial and specify what additional evidence, if any, is required before the claim will be allowed. The claimant may thereafter file an amended claim with the administrator or maintain an action under Section 907. In this section, an amended claim is treated as an initial claim.

SECTION 905. PAYMENT TO OWNER OF CLAIM FOR PROPERTY. 16(e and f)

(a) Not later than 30 days after a claim is allowed by the administrator under Section 904(b), the administrator shall pay or deliver the property or the net proceeds of a sale of the property to the claimant, together with dividends, interest, or other increments to which the claimant is entitled under Section 608.

(b) Before making delivery or payment to the claimant under subsection (a), the administrator shall:

(1) determine, by making inquiry of appropriate agencies in this state, whether there are legally enforceable debts that the claimant owes for:

(A) child support arrearages, including child support collection costs and child support arrearages that are combined with maintenance;

(B) civil or criminal fines, court costs, surcharges, or restitution imposed by final court judgment; or

(C) state or local taxes, penalties, and interest that have been determined to be deficient and are delinquent, or as to which notice has been recorded with the [Secretary of the State]; and

(2) withhold from delivery or payment to the claimant and deliver to the appropriate agency an amount sufficient to discharge the debts the administrator determines to be owed by the claimant.

SECTION 906. WHEN HOLDER MAY RECOVER FOR INCREMENTS IN VALUE OF PROPERTY. 16(g) A holder that pays the owner for property that has been delivered to the administrator and that, if claimed from the administrator by the owner, would be subject to payment of any dividends, interest, or other increments under Section 608, may recover from the administrator the amount thereof.

SECTION 907. COURT ACTION BY PERSON WHOSE CLAIM IS DENIED. 16(h) Not later than one year after filing a claim with the administrator under Section 903, the claimant may maintain an action in the [appropriate court], against the administrator as a defendant to establish a claim that has been denied or on which the administrator has not acted within 90 days after the filing of the claim. [On final determination of an action brought under this subsection, the court may award the reasonable attorney's fees and expenses of litigation incurred by the [claimant] [prevailing party].]

[ARTICLE] 10

REPORT OF PROPERTY; EXAMINATION OF RECORDS

SECTION 1001. REQUEST FOR REPORT OF PROPERTY. 20(a) If a person has not submitted a report required by Section 401, or if the administrator believes that a person may have filed an inaccurate, incomplete, or false report, the administrator may require the person to file a verified report in a form prescribed by the administrator. The verified report must:

(1) state whether the person is holding property reportable under this [act];

(2) describe property not previously reported or as to which the administrator has made inquiry; and

(3) specifically identify, and state the amount described under subparagraph (2) of property as to which there is a dispute whether it is reportable under this [act].

SECTION 1002. EXAMINATION OF RECORDS TO DETERMINE COMPLIANCE WITH [ACT]. 20(b) The administrator, at reasonable times and on reasonable notice, may:

(1) examine the records of a person to determine whether the person has complied with this [act];

(2) issue an administrative subpoena requiring that records of the person be made available for examination;

(3) bring an action seeking judicial enforcement of the subpoena; and

(4) conduct the examination even if the person subject to the examination believes it is not in possession of property that must be reported, paid, or delivered under this [act].

SECTION 1003. PROCEDURES FOR CONDUCTING EXAMINATION. 20(k)(l)(o)

(a) The administrator shall promulgate rules governing procedures and standards for an examination under Section 1002, including rules for use of estimations, extrapolations, and statistical sampling in conducting an examination.

(b) An examination under this [Article] must be performed in accordance with generally accepted examination practices and standards applicable to unclaimed property examinations.

(c) If the person subject to examination under Section 1002 has filed all reports required by Section 401 and has maintained the records required by Section 404, the following rules apply:

(1) The examination must include a review of the person's records.

(2) The examination may not be based on an estimate unless the person expressly consents in a record to the use of an estimate.

(3) The examiner shall consider all evidence presented in good faith by the person to remediate the findings of the examination. **20(o)**

SECTION 1004. RECORDS OBTAINED IN EXAMINATION. 20(j)

(a) Records obtained and records, including work papers compiled by the administrator in the course of conducting an examination under Section 1002:

(1) are subject to the confidentiality provisions of [Article] 13, and are not public records;

(2) may be used by the administrator in the course of an action to collect property or otherwise enforce this [act];

(3) may be used in a joint examination conducted with or pursuant to an

agreement with another state, the federal government, a foreign country or subordinate governmental unit of a foreign country or any other governmental subdivision, agency, or instrumentality if the other governmental entity is legally bound to maintain the confidentiality of information obtained from a person subject to examination in a manner substantially equivalent to [Article] 13;

(4) must be disclosed to the administrator of another state for that state's use in circumstances equivalent to circumstances described in this [Article], if the other state is required to maintain the confidentiality of information obtained in a manner substantially equivalent to [Article] 13;

(5) must be produced by the administrator pursuant to an administrative or judicial subpoena or administrative or court order; and

(6) must be produced by the administrator on request of the holder in an administrative or judicial proceeding relating to the property.

SECTION 1005. FAILURE OF PERSON EXAMINED TO HAVE RECORDS. 20(n) If a person subject to examination under Section 1002 has not maintained the records required by Section 404, the administrator may determine the amount, if any, of property due using a reasonable method of estimation based on all information available to the administrator, including extrapolation and the use of statistical sampling when appropriate and necessary, consistent with examination procedures and standards promulgated by rule under Section 1003.

SECTION 1006. REPORT TO PERSON WHOSE RECORDS EXAMINED. 20(m) At the conclusion of an examination under Section 1002, the administrator must provide to the person whose records were examined a complete and unredacted record of the examination report, which must identify in detail:

(1) the work performed;

(2) the property types reviewed;

(3) the methodology of any estimation technique, extrapolation, and statistical sampling methods used in conducting the examination;

(4) each calculation showing the amount of property determined to be due; and

(5) the examiner's findings.

SECTION 1007. COMPLAINT TO ADMINISTRATOR ABOUT CONDUCT OF EXAMINER. 20(p) If a person subject to examination under this [article] believes the person conducting the examination is making unreasonable or unauthorized requests, or is not proceeding expeditiously to complete the examination, the person in a record may ask the administrator to intervene and take such remedial action as the circumstances require, including countermanding the requests of the examiner, imposing a time limit for completion of the examination, or reassigning the examination to another person. If the person in a record seeks a conference with the administrator to present matters that are the basis of the request for interventions, the administrator must hold the conference. The conference may be held in person, telephonically, or by other electronic means.

SECTION 1008. ADMINISTRATOR MAY CONTRACT WITH ANOTHER TO CONDUCT EXAMINATION. 20(c)(d)

(a) In this section, "related to the administrator" includes the administrator's spouse, partner in a civil union, child, stepchild, grandchild, parent, stepparent, sibling, step-sibling, half-sibling, aunt, uncle, niece, or nephew, spouse or partner in a civil union of any of them, or any other person residing in the administrator's home.

(b) The administrator may contract with a person to conduct an examination under this

[article].

(c) If the person with whom the administrator contracts under subsection (b) is:

(1) an individual, the individual may not be related to the administrator; or

(2) a business entity, the entity may not be owned in whole or in part by the administrator or a person related to the administrator.

(d) Not less than 60 days before contracting with a person to conduct an examination for the administrator under subsection (b), the administrator shall give the person to be examined a demand in a record to submit a report and deliver property that may be subject to this [act].

(e) If the administrator contracts with another person under this section:

(1) the terms of the contract may provide for compensation of the person based on a fixed fee, hourly fee, or contingent fee;

(2) a contingent fee arrangement may not provide for a payment that exceeds [10] percent of the amount or value of property paid or delivered as a result of an examination; and

(3) on request by a person subject to examination by a contractor, the administrator must deliver to the person a complete unredacted copy of the contract between the administrator and the contractor relating to the examination and between the contractor and a person participating in conducting the examination employed or engaged by the contractor to conduct the examination.

(f) A contract between the administrator and another person under this section may be awarded only under [insert reference to statute regarding this state's competitive procurement of services by private contractors].

(g) A contract entered into under subsection (b) is subject to public disclosure without redaction under [the state's freedom of information act].

SECTION 1009. LIMIT ON FUTURE EMPLOYMENT. 20(h) The administrator or an individual employed by the administrator who participates in, recommends, or approves the award of a contract under this [Article] [on or after the effective date of this [act,]] may not be employed by, contracted with, or compensated in any capacity by the contractor, or an affiliate of the contractor whose contract the administrator or other employee of the administrator participated in, recommended, or approved, for [two] years after the later of participation in, recommendation of, or approval of the award or conclusion of the contract.

SECTION 1010. REPORT BY ADMINISTRATOR TO STATE OFFICIAL[S]. 20(f)(g)

(a) Not later than three months after the end of the state's fiscal year, the administrator shall compile and submit a report to the [Governor,] [Treasurer,] [Comptroller,] [Speaker of the Senate,] [and] [Speaker of the House] which must contain the following information about unclaimed property for the preceding fiscal year:

(1) the total amount and value of all property paid or delivered to the administrator, separated into:

(A) the part voluntarily paid or delivered, and

(B) the part paid or delivered as a result of an examination under this [Article], which amount must be separated into the:

(i) part recovered as a result of an examination conducted by a state employee; and

(ii) part recovered as a result of an examination conducted by a person under contract under Section 1008;

(2) the name and amount paid to each contractor and the percentage the total

compensation paid to all contractors bears to the total amount paid or delivered to the administrator as a result of the examinations;

(3) the total amount and value of all property paid or delivered by the administrator to persons that made claims for property held by the administrator and the percentage the total payments made or value of property delivered bears to the total amounts paid or value delivered to the administrator; and

(4) the total amount of:

(A) claims made by persons claiming to be owners which were denied;

(B) claims made by persons claiming to be owners which were allowed; and

(C) funds received and value of property held by the administrator subject to claims of owners.

(b) The report compiled by the administrator under subsection (a) is a public record subject to public disclosure without redactions under [the state's freedom of information act].

SECTION 1011. DETERMINATION OF LIABILITY FOR UNREPORTED REPORTABLE PROPERTY. (22)(a) If the administrator finds from an examination conducted under Section 1002 that a putative holder has failed or refused to pay or deliver property to the administrator which the administrator determines is reportable under this [act], the administrator shall issue a determination of the putative holder's liability to pay or deliver and provide to the putative holder notice in a record of the determination.

SECTION 1012. [INFORMAL CONFERENCE] [ADMINISTRATIVE REVIEW] AND JUDICIAL REVIEW. 22(c) to end.

Alternative A

(a) Not later than [30] days of receipt of a notice of determination of liability under Section 1011, the putative holder may request an informal conference with the administrator to review the determination. The conference is not an administrative remedy and is not a contested case subject to the [state administrative procedures act].

(b) At a conference under subsection (a), the putative holder must be given an opportunity to confer informally with the administrator or employee designated under subsection (d)(3) and the person who examined the records of the putative holder to discuss the determination made under Section 1011 and present any matters for consideration that the putative holder and examiner may consider relevant to any issue raised by the putative holder concerning the validity of the determination.

(c) An oath shall not be required and rules of evidence do not apply in a conference under this section.

(d) If a timely request under subsection (a) for an informal conference has been made:

(1) the administrator must set a time and place for the conference, which must be held not later than [20] days after the date of the request;

(2) the administrator must give the putative holder requesting the conference notice of when and where the conference will be held;

(3) the administrator may designate an employee of the administrator's office to conduct the conference;

(4) the conference may be held in person, by telephone, or by other electronic

means, as determined by the administrator;

(5) the request tolls the 90-day period under paragraph (g)(1) until notice of a decision under paragraph (8) has been given to the putative holder or the putative holder withdraws the request for the conference;

(6) the conference may be postponed, adjourned, and reconvened by the administrator or designee made under paragraph (3);

(7) the administrator or designee with the approval of the administrator may adjust a determination under Section 1011 in part or withdraw it in its entirety; and

(8) the administrator or designee shall issue a decision in a record and provide a copy of the record to the putative holder and examiner not later than [20] days after conclusion of the conference.

(e) Failure of the administrator to act within a period prescribed in subsection (c) does not affect a right of the administrator, except that interest does not accrue on any amount determined to be reportable property during a period in which the administrator or designee has not acted within a period prescribed in subsection (c) until the earlier of:

(1) the time a suit under subsection (f) is filed by the putative holder; or

(2) the 90-day period for filing suit under paragraph (g)(1) has expired.

(f) At any time before a putative holder files suit under subsection (g), the administrator may hold a conference with the putative holder without a timely request for a conference being made by the putative holder.

(g) If the putative holder does not request an informal conference under subsection (a) or is not satisfied with the outcome of the conference, the putative holder may:

(1) within ninety (90) days after receipt of a determination of liability to pay or

deliver reportable property, initiate an action against the administrator in the [court] challenging all or part of the administrator's determination of liability and seek a declaration that the determination is invalid, unlawful, or unenforceable, in whole or in part; or

(2) pay the amount or deliver the property determined to be paid or delivered to the administrator and, not later than six months after payment or delivery, initiate an action against the administrator in the [court] for a refund of all or part of the amount paid or return of all or part of the property delivered.

(h) If the putative holder pays or is required to pay the amount or delivers the property determined to be reportable property to the administrator at any time after initiating an action for a declaratory judgment under subsection (g)(1), the action will continue as if it had been originally filed as an action for refund or return of property under subsection (g)(2).

(h) On the final determination of a suit brought under subsection (g)(1) or (2), the court [may] [shall], on application, award to the [plaintiff] [prevailing party] its reasonable attorney's fees and expenses of litigation.

Alternative B

[(c) If a putative holder against which a determination of liability to pay or deliver property has been made under Section 1011 believes the determination is illegal, unjust, incorrect, or in error, in whole or in part, the putative holder, not later than [90] days after the [delivery][mailing] of the notice required under Section 1011, may initiate a proceeding for review of the determination under the [state administrative procedures act]. A final decision in the administrative proceeding is subject to judicial review by the [court] as a matter of right in a *de novo* proceeding on the record in which either party is entitled to introduce evidence in addition to or as a supplement to the record].

End of alternatives

[d][i] A putative holder that is the prevailing party in an action for refund of money paid to the administrator [is entitled to] [may be awarded] interest on the amount refunded from the date paid to the administrator at the same rate a holder is required to pay to the administrator under Section 1104(a).

Reporter's Note

This will require a legislative note regarding choices A and B.

[ARTICLE] 11.

ENFORCEMENT BY ADMINISTRATOR

SECTION 1101. JUDICIAL ACTION TO ENFORCE LIABILITY. 22(b)

(a) After a determination made under Section 1011 becomes final and is no longer subject to administrative or judicial review, the administrator with the approval of the Attorney General of this state may maintain an action in the [court], or in an appropriate court of another state to enforce the determination and secure payment or delivery of past due, unpaid, or undelivered property. The action must be brought not later than [one] year after the date the determination becomes final.

(b) In an action under Subsection (a), if no court in this state has jurisdiction over the defendant, the administrator, with the approval of the Attorney General of this state, may commence an action in a federal court or a court of any other state having jurisdiction over the defendant.

SECTION 1102. INTERSTATE AND INTERNATIONAL AGREEMENT AND COOPERATION. 23(a)

(a) Subject to subsection (b), the administrator may exchange information with another

state or foreign country relating to unclaimed property which is presumed abandoned or its possible existence, and the administrator may in a record authorize another state or foreign country, or a person acting on behalf of another state or foreign country, to examine its records of a putative holder as authorized in [Article] 10.

(b) An exchange or examination under subsection (a) may be done with another state or foreign country if the state or foreign country has statutory confidentiality requirements substantially equivalent to those in [Article] 13, or agrees in a record to be bound by this state's confidentiality requirements.

SECTION 1103. JOINT AND RECIPROCAL ACTIONS WITH OTHER STATES OR FOREIGN COUNTRIES. 23(b)(c)(d)

(a) The administrator may join with one or more other states or foreign countries to examine and seek enforcement of this [act] against any person believed to be holding property reportable under this [act].

(b) At the request of another state or foreign country, the Attorney General of this state may maintain an action on behalf of the other state or foreign country to enforce, in this state, the law of the other state or foreign country against a putative holder of unclaimed property which is presumed abandoned and therefore subject to a claim by the other state or foreign country, if the other state or foreign country agrees to pay expenses incurred by the Attorney General in maintaining the action.

(c) With the approval of the Attorney General of this state, the administrator may request the Attorney General of another state or foreign country to commence an action to recover property in the other state or foreign country on behalf of the administrator. With the approval of the Attorney General, the administrator may retain a private attorney in this state or another state

or foreign country to commence an action to recover property in this state on behalf of the administrator.

(d) This state shall pay all expenses, including reasonable attorney's fees and expenses of litigation incurred in maintaining an action under subsection (c). The expenses may be paid from money received under this [act]. With the approval of the Attorney General, the administrator may agree to pay attorney's fees based in whole or in part on a percentage of the amount or value of property recovered in the action. Expenses paid under this subsection to recover property may not be deducted from the amount that is subject to a claim by the owner under this [act].

SECTION 1104. INTEREST AND PENALTY FOR FAILURE TO REPORT. 24(a)(b)

(a) A holder that fails to report, pay, or deliver property within the time prescribed by this [act] shall pay to the administrator interest at an annual rate of [[_]% percent] [two percentage points above the annual rate of discount in effect on the date the property should have been paid or delivered for the most recent issue of 52-week United States Treasury bills] [the rate of interest payable to the department of revenue of this state on delinquent taxes] on the property or value of the property from the date the property should have been reported, paid, or delivered to the administrator until paid or delivered.

(b) Except as otherwise provided in Section 1105 or 1106, the administrator may require a holder who fails to report, pay, or deliver property within the time prescribed by this [act] or perform other duties imposed on the holder under this [act], may be required to pay to the administrator, in addition to interest that may be included under subsection (a), a civil penalty of $[200] for each day the duty is not performed, up to a cumulative maximum amount of $[5,000].

SECTION 1105. CIVIL PENALTY FOR INTENTIONAL EVASION OF OBLIGATION. 24(c) The administrator may require a holder who enters into a contract or other arrangement for the purpose of evading an obligation under this [act], or willfully fails to perform a duty imposed on the holder under this [act], to pay to the administrator, in addition to interest as provided in Section 1104(a), a civil penalty of $[1,000] for each day the report, payment, or delivery is withheld or the duty is not performed, up to a cumulative maximum amount of $[25,000], plus [25] percent of the amount or value of any property that should have been but was not reported.

SECTION 1106. CIVIL PENALTY FOR FRAUDULENT REPORT. 24(d) the administrator may require a holder who makes a fraudulent report under this [act] to pay to the administrator, in addition to interest as provided in Section 1004(a), a civil penalty of $[1,000] for each day from the date the report was made, up to a cumulative maximum of $[25,000], plus [25] percent of the amount or value of any property that should have been but was not included in the report.

SECTION 1107. WHEN ADMINISTRATOR MAY WAIVE INTEREST AND PENALTY. 24(e) The administrator for good cause:

(1) may waive, in whole or in part, [interest under Section 1104(a) and] penalties under Section 1104(b), 1105, and 1106; and

(2) must waive penalties under Section 1104(b) if the administrator determines that the holder acted in good faith and without negligence.

[ARTICLE] 12.

AGREEMENT TO LOCATE PERSON'S PROPERTY

SECTION 1201. WHEN AGREEMENT TO LOCATE PROPERTY IS ENFORCEABLE. 25(b) An agreement between an apparent owner and another person, the primary purpose of which is to locate, deliver, recover, or assist in the location, delivery, or recovery of property that is held by the administrator is enforceable only if the agreement:

(1) is in a record that clearly sets forth the nature of the property and the services to be rendered;

(2) is signed by or on behalf of the apparent owner; and

(3) states the amount or value of the property reasonably estimated or expected to be recovered both before and after the fee or other compensation has been deducted.

SECTION 1202. WHEN AGREEMENT TO LOCATE PROPERTY IS UNENFORCEABLE. 25(a)(c)(d)(e)

(a) Subject to subsection (b), an agreement by an owner with a person, the primary purpose of which is to locate, deliver, recover, or assist in the location, delivery, or recovery of property that is held by the administrator is void and unenforceable if it was entered into during the period commencing on the date the property was paid or delivered to the administrator and extending 24 months after the payment or delivery. This subsection does not apply to an owner's agreement with an attorney to pursue a claim for recovery of specifically identified property held by the administrator or to contest the administrator's denial of a claim for recovery of the property.

(b) Notwithstanding the time limits in subsection (a), if a provision in an agreement in subsection (a) applies to mineral proceeds for which compensation is to be paid to the other

person based in whole or in part on a part of the underlying minerals or any mineral proceeds not then presumed abandoned, the provision is void and unenforceable.

(c) An agreement under subsection (a) which provides for compensation in an amount that is unconscionable is unenforceable except by the owner. An owner that believes the compensation the owner has agreed to pay is unconscionable, or the administrator, acting on behalf of an owner, or both, may maintain an action to reduce the compensation to the maximum amount that is not unconscionable. [The court may award reasonable attorney's fees and expenses of litigation to the prevailing party in the action.]

(d) An owner or the administrator may assert that an agreement covered by this section is invalid on the ground other than it provides for payment of unconscionable compensation.

SECTION 1203. RIGHT OF OWNER'S AGENT TO RECOVER PROPERTY HELD BY ADMINISTRATOR. 25(f)

(a) An owner that contracts with a person to locate, deliver, recover, or assist in the recovery, the location, or delivery of property of the owner that is held by the administrator may appoint or designate the person as the owner's agent. The appointment or designation must be in a record signed by the owner.

(b) An owner's agent is entitled to receive from the administrator all information concerning the property which the owner would be entitled to receive, including information that would otherwise be confidential.

(c) If authorized by the owner, the owner's agent may bring and maintain an action against the administrator on behalf of and in the name of the owner.

[ARTICLE] 13

CONFIDENTIALITY OF INFORMATION

SECTION 1301. PERSONS SUBJECT TO CONFIDENTIALITY RULES. 27(e)(f)

(a) This [article] applies to the administrator and to the employees of the administrator and to any person with whom the administrator contracts under this [act] to conduct an examination on behalf of the administrator, and to each affiliate, officer, director, owner, employee, and independent contractor of the person.

(b) A person subject to this [article] is subject to [the statute of the state imposing criminal penalties for violation of a requirement of maintaining confidentiality of information].

SECTION 1302. WHAT INFORMATION IS CONFIDENTIAL. 27(a)(b)

(a) Except as otherwise provided in this [act], the following are confidential and exempt from public inspection or disclosure:

(1) records of the administrator and a contractor of the administrator;

(2) reports and records of holders; and

(3) information derived or otherwise obtained by or communicated to the administrator from an examination under this [act] of the records of a person.

(b) A record or other information that is confidential under law of this state, other than this [act], another state, or foreign country, where the property is located, or the United States, when in the possession of a person, continues to be confidential when disclosed or delivered under this [act] to the administrator or contractor of the administrator. A record or information that is confidential under law of another state or foreign country continues to be confidential when disclosed or delivered to the administrator or contractor of the administrator by that other state or foreign country or subordinate unit of the foreign country.

SECTION 1303. WHEN CONFIDENTIAL INFORMATION MAY BE DISCLOSED. 27(c)(d)

(a) Confidential information concerning property held by the administrator may be disclosed only to:

(1) an apparent owner or the apparent owner's personal representative, next of kin, attorney-at-law, or agent designated under Section 1203 to have the information;

(2) a person entitled to inherit from a now-deceased apparent owner or the deceased apparent owner's personal representative, next-of-kin, or attorney-at-law, or agent designated under Section 1203 of the deceased owner;

(3) another department or agency of this state or the federal government; and

(4) the administrator of another state, or of a foreign country or subordinate governmental unit of the foreign country, if the other state or foreign country or subordinate governmental unit of the foreign country accords substantially reciprocal privileges to the administrator of this state, and the administrator reasonably believes that the other state or foreign country or subordinate governmental unit of the foreign country has and enforces legal requirements of confidentiality of records substantially equivalent to those of this state;

(b) Except as otherwise provided in Section 1302(b), the administrator shall include in published notices and on a website or database under Sections 503(a)(4) and (a)(4) the name of each apparent owner of property held by the administrator. The administrator may include on the website or database additional information concerning the apparent owner's property if the administrator believes the information will assist in facilitating identification and return of property to the owner and does not disclose protected confidential information.

SECTION 1304. CONFIDENTIALITY AGREEMENT. 27(e) Before undergoing an examination under Section 1002 conducted by or on behalf of the administrator, the person to be examined may require, as a condition of disclosure of its records, that each person participating in the examination execute and deliver to the person to be examined a confidentiality agreement in a form reasonably satisfactory to the administrator.

SECTION 1305. NO CONFIDENTIAL INFORMATION IN NOTICE. 27(g) Except as otherwise provided in Section 501 and 502, a holder is not required under this [act] to include any confidential or nonpublic information or data in any notice it is required under this [act] to provide to an apparent owner of property.

SECTION 1306. CONFIDENTIAL INFORMATION IN REPORT TO BE SECURE. 27(g) If a holder is required to include confidential or nonpublic information or data in a report to the administrator, the administrator may require that the information or data be provided only by a secure means. The holder must provide the administrator with a means to access the information or data provided by a secure means.

[ARTICLE] 14

MISCELLANEOUS PROVISIONS

SECTION 1401. ADDITIONAL RULES. (29) In addition to the rules the administrator is required to adopt under this [act], the administrator may adopt under the [state administrative procedures act] rules necessary to carry out this [act].

SECTION 1402. UNIFORMITY OF APPLICATION AND CONSTRUCTION. (30) In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 1403. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

SECTION 1404. TRANSITIONAL PROVISION. (28)

(a) An initial report filed under this [act] for property that was not required to be reported before the effective date of this [act], but which is required to be reported under to this [act], must include all items of property that would have been presumed abandoned during the 10-year period next preceding the effective date of this [act] as if this [act] had been in effect during that period.

(b) This [act] does not relieve a holder of a duty that arose before the effective date of this [act] to report, pay, or deliver property. [Except as otherwise provided in Section 608(b),] a holder that did not comply with the law governing unclaimed property before the effective date of this [act] is subject to applicable provisions for enforcement and penalties in effect before the effective date.

(c) Interest on interest-bearing property is not payable for any period before the effective date of this [act], unless authorized by law superseded by this [act].

SECTION 1405. SEVERABILITY. (31) If any provision of this [act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [act] which can be given effect without the invalid provision or application, and to this end the provisions of this [act] are severable.

Legislative Note: *Include this section only if this state lacks a general severability statute or a decision by the highest court of this state stating a general rule of severability.*

SECTION 1406. REPEALS; CONFORMING AMENDMENTS.

(a) . . . .

(b) . . . .

(c) . . . .

SECTION 1407. EFFECTIVE DATE. This [act] takes effect….