

CORRECTED DRAFT

FOR DISCUSSION ONLY

REVISED UNIFORM UNCLAIMED PROPERTY ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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February 18, 2015

REVISED UNIFORM UNCLAIMED PROPERTY ACT

The Committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in preparing this Act consists of the following individuals:

REX BLACKBURN, P.O. Box 70 (83707), 1221 W. Idaho St., Boise, ID 83702, *Co-Chair*

MICHAEL HOUGHTON, P.O. Box 1347, 1201 N. Market St., 18th Floor, Wilmington, DE 19899, *Co-Chair*

LYLE W. HILLYARD, 595 S. Riverwoods Pkwy., Suite 100, Logan, UT 84321

GENE N. LEBRUN, P.O. Box 8250, 909 St. Joseph St., Suite 900, Rapid City, SD 57709

CLAIRE LEVY, 4180 Greenbriar Blvd., Boulder, CO 80305

FLOYD M. LEWIS, Bill Drafting Division, North Carolina General Assembly, 300 N. Salisbury St., Suite 401, Raleigh, NC 27603

RAYMOND P. PEPE, 17 N. 2nd St., 18th Floor, Harrisburg, PA 17101-1507

ANITA RAMASASTRY, University of Washington School of Law, William H. Gates Hall, Box 353020, Seattle, WA 98195-3020

MICHAEL P. SULLIVAN, 80 S. 8th St., 500 IDS Center, Minneapolis, MN 55402-3796

HOWARD J. SWIBEL, 120 S. Riverside Plaza, Suite 1200, Chicago, IL 60606

ROBERT J. TENNESSEN, 2522 Thomas Ave. S., Minneapolis, MN 55405

CHARLES A. TROST, Nashville City Center, 511 Union St., Suite 2700, Nashville, TN 37219-1760, *Reporter*

EX OFFICIO

HARRIET LANSING, 1 Heather Pl., St. Paul, MN 55102-3017, *President*

NORA WINKELMAN, Office of Chief Counsel, House Democratic Caucus, Pennsylvania House of Representatives, Main Capitol Bldg., Room 620, Harrisburg, PA 17120, *Division Chair*

AMERICAN BAR ASSOCIATION ADVISORS

ETHAN D. MILLAR, 1201 W. Peachtree St. NW, Suite 1201, Atlanta, GA 30309-3471, *ABA Advisor*

ALEXANDRA DARRABY, 12100 Wilshire Blvd., Suite 800, Los Angeles, CA 90025-7140, *ABA Section Advisor*

SCOTT HEYMAN, One South Dearborn St., Chicago, IL 60603, *ABA Section Advisor*

CHAROLETTE NOEL, 2727 N. Harwood St., Dallas, TX 75201-1515, *ABA Section Advisor*

NATIONAL ASSOCIATION OF UNCLAIMED PROPERTY ADMINISTRATORS

CAROLYN C. ATKINSON, 1 Players Club Dr., Charleston, WV 25311, *Advisor*

BETH PEARCE, *Advisor*

EXECUTIVE DIRECTOR

John Sebert, 111 N. Wabash Ave., Suite 1010, Chicago, IL 60602

Copies of this draft may be obtained from:

UNIFORM LAW COMMISSION

111 N. Wabash Ave., Suite 1010

Chicago, Illinois 60602

312.450.6600

www.uniformlaws.org

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1 **REVISED UNIFORM UNCLAIMED PROPERTY ACT**

2 **PREFATORY NOTE**

3 *Statement of the History of the Act*

4 This Act is a revision of the Uniform Unclaimed Property Act (1995) which was
5 preceded by the 1954 Uniform Disposition of Unclaimed Property Act (1954), which was revised
6 in 1966, and the Uniform Unclaimed Property Act (1981). The 1954 Act was drafted during a
7 period of conflicting legislation among the various States and several Supreme Court decisions in
8 the late 1940's and early 1950's. In 1965, these conflicts were resolved by the decision in *Texas*
9 *v. New Jersey*, 379 U.S. 674 (1965), which established a set of priorities for claimant States.
10 These rules of priority were then adopted in the 1981 Act. They were re- examined and
11 reaffirmed in *Delaware v. New York*, 509 U.S. 470, 113 S.Ct. 1550, 123 L.Ed.2d 211 (1993).
12 Although the *Delaware* Court made no change in the rules of priority, it clarified the issue of
13 how to determine the identity of the "debtor"—the "holder" under this Act—when payments by
14 intermediaries are at stake. The "debtor" will be defined by reference to the State law that
15 creates the property interest; an intermediary which holds property in its own name will generally
16 be the debtor, and not the original obligor which has satisfied its obligation by transmitting
17 payment to the intermediary. *Delaware v. New York* also makes it clear that no State may
18 supersede the Court's priority rules by seeking to establish different priorities under State law.
19 See Comments to Section 1 and Section 4 for further discussion of these rules.

20
21 This Act retains the custodial features of the 1954, 1981, and 1995 Acts. Thus, the State
22 does not take title to unclaimed property, but takes custody only, and holds the property in
23 perpetuity for the owner.

24
25 A State may enforce its claim of custody in the courts of other jurisdictions, see
26 *Commonwealth of Pennsylvania v. Kervick*, 60 N.J. 289, 288 A.2d 289 (1972), or in its own
27 courts. Even if a holder does not do business in the State, that State should be able to require the
28 holder to report and deliver unclaimed property in the State, under the *Texas v. New Jersey*
29 rationale, based on the common law rule of *mobilia sequuntur personam*—the right of succession
30 to personal property is governed by the law of the owner's domicile. See also *Connecticut*
31 *Mutual Life Insurance Co. v. Moore*, 333 U.S. 541, 546-47 (1947), where the Supreme Court
32 described the State as a "conservator" when claiming property under a custodial unclaimed
33 property law. The Court in *Standard Oil Co. v. New Jersey*, 347 U.S. 428, 437 (1951),
34 characterized the *Moore* case as involving a "conservation statute." See generally Epstein,
35 McThenia and Forslund, "Unclaimed Property Law and Reporting Forms," Sections 2.01, 3.02,
36 4.01 (Matt. Bend. 1984).

1 **REVISED UNIFORM UNCLAIMED PROPERTY ACT**

2 **SECTION 1. SHORT TITLE.** This [Act] may be cited as the Revised Uniform
3 Unclaimed Property Act.

4 **SECTION 2. DEFINITIONS.** In this [Act]:

5 (1) “Address” means for the purpose of giving notice by mail to an apparent owner the
6 location of the apparent owner sufficient to direct the delivery of mail to the apparent owner;
7 however, for the purpose of determining the first priority jurisdiction of property held for an
8 apparent owner under Section 4 of this [Act], “address” means and includes any description,
9 code, or indication of the location of the apparent owner that identifies the State that was the last
10 known address of the apparent owner, regardless of whether such description, code or indication
11 of location is sufficient to direct the delivery of mail to the apparent owner. If the records of the
12 holder reflect two or more addresses for the apparent owner, the most recently recorded address
13 shall govern, or if recorded simultaneously, the address which is the apparent owner’s principal
14 or permanent address shall govern.

15 **Reporter’s Comment**

16
17 Issue #1 is whether there should be a definition of “address.” This is also raised in Issue #28.
18 This draft provides a two part definition. One is the address sufficient to direct the delivery of
19 mail to the apparent owner for the purpose of providing notice. The second part defines
20 “address” as any indication of the State of residence of the apparent owner sufficient for
21 purposes of establishing which State has priority. Its advantage over the alternate State of
22 domicile of the holder is that an owner is more likely to see notice of unclaimed property when it
23 is published in his or her State of residence, even he does not receive notice by mail.
24

25 (2) “Administrator” means [insert name of appropriate officer.]

26 (3) “Apparent owner” means a person whose name appears on the records of a holder as
27 the person entitled to property held, issued, or owing by the holder.

28 (4) “Business association” means a corporation, joint stock company, investment

1 company, partnership, unincorporated association, joint venture, limited liability company,
2 business trust, trust company, [land bank], safe deposit company, [safekeeping depository],
3 financial organization, insurance company, mutual fund, utility, or other business entity
4 consisting of one or more persons, whether or not for profit.

5 (5) “Domicile” means the State of incorporation of a corporation; the State of formation
6 of a limited partnership, limited liability company, business trust or other limited liability entity
7 authorized or created by State statute, the State of the home office or principal place of business
8 of a federally chartered entity, and unless otherwise provided, the principal place of business of a
9 sole proprietorship or other entity whose owners do not have limited liability [other than a
10 limited liability company which has adopted an obligated member amendment.]

11 **Reporter’s Comment**

12
13 Issue #6: The definition of “domicile” in the 1995 Act is limited to the State of incorporation of
14 a corporation which is a holder. Other types of businesses are domiciled where their principal
15 place of business is located. This was brought into the 1981 Act from the decision of the
16 Supreme Court in *Texas v. New Jersey*, which concluded that for reasons of certainty of location
17 the place of incorporation of a holder would be its domicile. In 1965 limited liability companies
18 did not exist, and in 1981 they only existed by virtue of a statutory provision enacted in
19 Wyoming in 1977. The situation today is entirely different and the limited liability company is
20 the more prevalent business form, particularly in smaller, privately held enterprises. Defining
21 domicile as the State in which a limited liability entity is created makes sense in today’s legal
22 climate and is consistent with the rationale of the Court behind using the State of incorporation
23 as domicile in *Texas v. New Jersey*.
24

25 (6) “Face value” means the original purchase price or original issued value of a gift
26 obligation, prefunded bank card or stored-value card if unused, plus any amounts subsequently
27 loaded into the card or otherwise added to its original value, and if used, the balance remaining
28 after deduction of amounts withdrawn, but prior to the deduction of any service charges, fees or
29 dormancy charges when not prohibited.

1
2
3 **Reporter's Comment**

4 Several issues deal with stored value cards of various types. There is no common definition of
5 "face value." This provision makes it clear that the amount of value in a stored value card
6 subject to becoming "unclaimed property" is the original maximum amount of value in the card,
7 less any amounts used or withdrawn from the card, prior to reduction for service or dormancy
8 fees, and includes additional amounts subsequently loaded into the card which have not been
9 withdrawn.

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

12 (8) "Gift card" means a record evidencing a promise, made for consideration, by the
13 seller or issuer of the record that goods or services will be provided to the owner of the record or
14 to a person to whom the owner has delivered the record as a gift, to the retail value shown in the
15 record and includes, but is not limited to, a record that contains a microprocessor chip, magnetic
16 stripe or other means for the storage of information that is prefunded and from which the value is
17 decremented upon each use, a gift card, an electronic or digital gift card; [including gift
18 certificates, but does not include prepaid calling cards regulated under section 42-370, prepaid
19 commercial mobile radio services, as defined in 47 CFR 20.3 or general-use prepaid cards, as
20 defined in section 42-460a;]

21 **Reporter's Comment**

22
23 Several issues deal with "gift cards." It was the consensus of the working group that a clear and
24 comprehensive definition of a gift card should be included in the Revised Act to take into
25 account the various ways in which a gift card can be issued and used. It is distinguished from a
26 stored value card in that unlike a stored value card a gift card is only redeemable in goods and
27 services provided or sold by the issuer, and not redeemable for cash.

28
29 (9) "Gift obligation" means an obligation of a business association arising from a
30 transaction between the business association and a consumer to provide goods or services at a
31 future date. This includes, but is not limited to, a gift certificate, gift card, on-line gift account or
32 other representation or evidence of the obligation.

1 **Reporter's Comment**

2
3 A "gift obligation" is the reciprocal of a gift card and defines the obligations of an issuer of a
4 "gift card."

5
6 (10) "Holder" means a person obligated to hold for the account of, or deliver or pay to,
7 the owner property that is subject to this [Act]; provided, however, except as otherwise
8 specifically provided in this [Act], a person is not a holder with respect to any property as to
9 which the person is not a legal debtor, and such person has no obligation to report or remit any
10 such property to the State.

11 **Reporter's Comment**

12
13 The revision to the definition was in response to Issue #5. The existing language in the 1995 Act
14 is taken from the 1992 decision of the Supreme Court in *Delaware v. Texas* and differs from the
15 language in the 1981 Act which was considered to be too broad. The revised language is
16 intended to limit who may be considered a "holder" to only one person to avoid there being two
17 "holders" of the same property. It does not address the concern of the securities industry that
18 there are circumstances where intangible securities might have multiple potential "holders," and
19 suggestion that the one with the legal duty to file federal income tax returns with respect to the
20 property be considered the "holder." More discussion is needed here. It also addresses Issue
21 #17, who should be the "holder" of a payroll card, but making it the bank or other account holder
22 and not the employer.

23
24 (11) "Insurance company" means an association, corporation, or fraternal or mutual
25 benefit organization, whether or not for profit, engaged in the business of providing life
26 endowments, annuities, or insurance, including accident, burial, casualty, credit life, contract
27 performance, dental, disability, fidelity, fire, health, hospitalization, illness, life, malpractice,
28 marine, mortgage, surety, wage protection, and workers' compensation insurance.

29 **Reporter's Comment**

30
31 Issue #4 addresses problems in the inclusion of the proceeds of life insurance policies in the
32 definition of "property" subject to the unclaimed property rules. It was decided at the November
33 2014 meeting that these issues be looked at by a working group. This issue will require
34 additional discussion.

35
36 (12) "Mineral" means gas; oil; coal; other gaseous, liquid, and solid hydrocarbons; oil

1 shale; cement material; sand and gravel; road material; building stone; chemical raw material;
2 gemstone; fissionable and nonfissionable ores; colloidal and other clay; steam and other
3 geothermal resource; or any other substance defined as a mineral by the law of this State.

4 (13) “Mineral proceeds” means amounts payable for the extraction, production, or sale of
5 minerals, or, upon the abandonment of those payments, all payments that become payable
6 thereafter. The term includes amounts payable:

7 (i) for the acquisition and retention of a mineral lease, including bonuses,
8 royalties, compensatory royalties, shut-in royalties, minimum royalties, and delay rentals;

9 (ii) for the extraction, production, or sale of minerals, including net revenue
10 interests, royalties, overriding royalties, extraction payments, and production payments; and

11 (iii) under an agreement or option, including a joint operating agreement, unit
12 agreement, pooling agreement, and farm-out agreement.

13 (14) “Money order” means an express money order and a personal money order
14 purchased by an individual. The term does not include a bank money order or any other
15 instrument sold by a financial organization or any instrument on which a business association,
16 financial organization, or insurance company is the remitter.

17 **Reporter’s Comment**

18
19 The changes to the definition of “money order” were suggested by NAUPA in response to Issue
20 #2 to prevent sophisticated issuers from creating instruments that technically fit the current
21 definition of a “money order” to allow a longer seven year dormancy period.

22
23 (15) “Municipal bond” means a bond or evidence of indebtedness issued by a
24 municipality, [county], [parish], or other political subdivision of a State.

25 **Reporter’s Comment**

26
27 A definition of municipal bond is included to differentiate these instruments from corporate
28 bonds and U.S. issued bonds, and relates to Issue #9 which deals with abandonment of

1 unclaimed bonds.

2
3 (16) “Owner” means a person who has a legal or equitable interest in property subject to
4 this [Act] or the person’s legal representative. The term includes a depositor in the case of a
5 deposit, a beneficiary in the case of a trust other than a deposit in trust, and a creditor, claimant,
6 or payee in the case of other property.

7 (17) “Payroll card” means a stored value card that has been issued to an employee by the
8 employer in payment of net wages payable to the employee.

9 **Reporter’s Comment**

10
11 A payroll card is simply the use of a stored value card to pay wages, usually to an employee who
12 does not have a bank account and discharges the employer’s obligations in the same way that
13 making a direct deposit into the employee’s bank account does.

14
15 (18) “Person” means an individual, business association, financial organization, estate,
16 trust, government, governmental subdivision, agency, or instrumentality, or any other legal or
17 commercial entity.

18 (19) “Property” means tangible property described in Section 3 or a fixed and certain
19 interest in intangible property that is held, issued, or owed in the course of a holder’s business, or
20 by a government, governmental subdivision, agency, or instrumentality, and all income or
21 increments therefrom. The term includes property that is referred to as or evidenced by:

22 (i) money, a check, draft, deposit, interest, or dividend;

23
24 (ii) credit balance, customer's overpayment, gift card, security deposit, refund,
25 credit memorandum, unpaid wage, unused ticket, mineral proceeds, or unidentified remittance;

26 (iii) stock or other evidence of ownership of an interest in a business association
27 or financial organization;

28 (iv) a bond, debenture, note, or other evidence of indebtedness; [but does not

1 include Savings Bonds or other bonds issued by the United States Government.]

2 **Reporter's Comment**

3
4 This relates to Issue #9 and treats corporate and municipal bonds alike. The exclusion of U.S.
5 Bonds is consistent with the decision of the Third Circuit in *Treasurer of New Jersey v. U.S.*
6 *Dept. of the Treasury*, 684 F.3d 382 (3d Cir. 2012). While NAUPA suggests that the Act use the
7 “Kansas” approach to include U.S. Bonds, it is difficult to see how the clear federal preemption
8 rule can be avoided to include U.S. Bonds within a State definition of unclaimed property.
9

10 (v) money deposited to redeem stocks, bonds, coupons, or other securities or to
11 make distributions;

12 (vi) an amount due and payable under the terms of an annuity or insurance policy,
13 including policies providing life insurance, property and casualty insurance, workers’
14 compensation insurance, or health and disability insurance; and

15 **Reporter's Comment**

16 [Can the 1981 Act language be correlated with the NCOIL Model Act – Reserve for working
17 group recommendations] This provision requires further consideration by the drafting
18 committee.
19

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

23 [(viii) It does not mean property owed to a person whose last address shown on
24 the records of the holder is in a foreign country or location outside the jurisdiction of the United
25 States [or an army, air or Fleet Post office], unless the holder voluntarily remits such property to
26 the custody of the State pursuant to Section 5(4).]

27 **Reporter's Comment**

28
29 Issue #29 asks should a revision retain the provision in the 1995 Act that allows the State of the
30 holder’s domicile or residence to take custody of foreign addressed unclaimed property.
31 NAUPA recommends leaving it as is. UPPO recommends that it be amended. The consensus of
32 the committee was to accept UPPO’s recommendation.

(20) “Putative Holder” means a person believed by the Administrator to be a holder until such time as the person has delivered or paid to the Administrator property subject to this Act, or such person has been determined by the Administrator to be a holder, and the determination has become final.

Reporter’s Comment

Later amended provisions dealing with remedies make it necessary to distinguish between persons who acknowledge or have been determined to be “holders” and persons an examiner or Administrator has merely asserted are holders, but the assertion is contested and has not yet been finally determined. This definition establishes a “putative holder” as one who may or may not be a holder, but at the present is merely said to be a holder.

(21) “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.

(22) “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.

(23) “Stored-value card” means a record evidencing a promise, made for consideration, by the seller or issuer of the record that goods, services, or cash will be provided to the owner of the record to the value shown in the record and includes, but is not limited to, a record that contains a microprocessor chip, magnetic stripe or other means for the storage of information, that is prefunded and for which the value is decreased upon each use, or increased by payment of additional consideration, and includes payroll cards.

Reporter’s Comment

A stored value card is similar to a gift card, but it differs in that it is redeemable for cash, or can be used as the equivalent of cash to purchase goods or services, and includes payroll cards. It essentially is a device evidencing that the owner has on deposit a credit which can be used as cash to make a purchase of goods or services, or redeemed in cash.

(24) “Under protest” means a notation on the face of an instrument of payment or

1 delivery, or in the body of any record transmitting or delivering the payment or delivery that it is
2 paid or delivered “under protest.”

3 (25) “Utility” means [a person who owns or operates for public use any plant, equipment,
4 real property, franchise, or license for the transmission of communications or the production,
5 storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas] [insert
6 cross reference to statute defining public utility].

7 **SECTION 3. PRESUMPTIONS OF ABANDONMENT.**

8 (a) Property is presumed abandoned if it is unclaimed by the apparent owner during the
9 time set forth below for the particular property:

10 (1) traveler’s check, 15 years after issuance;

11 (2) money order, seven years after issuance;

12 (3) stock or other equity interest in a business association or financial
13 organization, including a security entitlement under [Article 8 of the Uniform Commercial
14 Code], upon (i) the completion of the mandated SEC 17-Ad-17 searches after an apparent owner
15 is identified as a “lost securityholder” for owners who receive communications from the holder
16 by United States mail provided that not less than three years have elapsed since the owner’s last
17 indication of interest in the stock or other equity interest, or (ii) three years after the owner’s last
18 indication of interest in the property for owners who do not receive communications from the
19 holder by United States mail, provided, however, that as to stock or other equity interest in a
20 business association held within a plan that allows for automatic re-investment of dividends,
21 three years after the return date of the second mailing of a statement of account or other
22 notification or communication that was returned as undeliverable.

1 **Reporter's Comment**

2
3 This change is a combination of suggestions by NAUPA and STA on the mechanics for
4 determining the presumption of abandonment for securities and is offered up to, in part, prompt
5 further analysis and discussion.
6

7 (4) State or municipal bond or debt of a business association, non-profit
8 organization, or financial organization, other than a bearer bond or an original issue discount
9 bond, three years after the date of when the bond matured or was called;

10 **Reporter's Comment**

11
12 This change puts State and municipal bonds on the same footing as corporate bonds, and
13 includes bonds issued by non-profits such as churches and schools. The principal obligation of
14 the obligor on the bond is not accelerated by an interest payment not being claimed. An
15 uncashed interest payment is treated like any other uncashed check. *See* change to § 3(e)(iii).
16

17 (5) a demand, savings, or time deposit, including a deposit that is automatically
18 renewable, five years after the earlier of maturity or the date of the last indication by the owner of
19 interest in the property; but a deposit that is automatically renewable is deemed matured for
20 purposes of this section upon its initial date of maturity, unless the owner has consented to a
21 renewal at or about the time of the renewal and the consent is in writing or is evidenced by a
22 memorandum or other record on file with the holder;

23 (6) money or credits owed to a customer as a result of a retail business transaction,
24 three years after the obligation accrued;

25 (7) gift card and stored value card, five years after December 31 of the year in
26 which the gift card was sold or stored value card issued, or the most recent activity by the owner
27 involving the gift card or stored value card, or any verification or review of the balance. The
28 amount abandoned is deemed to be the value remaining at the time it is presumed abandoned,
29 unless it is redeemable only in merchandise or services, in which case the amount abandoned is
30 deemed to be [60] percent of the value remaining on it at the time it is presumed abandoned;

1 **Reporter's Comment**

2
3 This section is changed to extend the time for presuming a gift card or stored value card to be
4 abandoned from three to five years, and to put stored value cards on the same footing as gift
5 cards. It retains the provision first seen in the 1995 Act which limits the abandoned value of a
6 gift card to a bracketed 60% of the remaining value deemed abandoned. This provision is
7 intended to avoid the assertion that by being required to turn over 100% of the value the issuer is
8 being deprived of the gross profit it earned or derived at the time of sale of the card and takes
9 into account the cost to the issuer/merchant of selling the card, to include any credit card fees
10 charged to the issuer of the card.

11
12 (8) amount owed by an insurer on a life or endowment insurance policy or an
13 annuity that has matured or terminated, three years after the obligation to pay arose or, in the case
14 of a policy or annuity payable upon proof of death, three years after the insured has attained, or
15 would have attained if living, the limiting age under the mortality table on which the reserve is
16 based;

17 **Reporter's Comment**

18 This relates to Issue #4 and Sec. 2(11) and has been deferred to a working group and reserved for
19 further consideration by the Drafting Committee.

20
21 (9) property distributable by a business association or financial organization in a
22 course of dissolution, one year after the property becomes distributable;

23 (10) property received by a court as proceeds of a class action, and not distributed
24 pursuant to the judgment, one year after the distribution date;

25 (11) property held by a court, government, governmental subdivision, agency, or
26 instrumentality, one year after the property becomes distributable;

27 (12) wages or other compensation for personal services, one year after the
28 compensation becomes payable;

29 (13) deposit or refund owed to a subscriber by a utility, one year after the deposit
30 or refund becomes payable;

(14) property which is qualified for tax deferral under the income tax laws of the United States consisting of the following:

(A) property in any individual retirement account or any [retirement health saving account], [three] [ten] years from the later of (i) the date a mailing to the owner was returned as undeliverable by the U.S. Post Office (unless a subsequent mailing to the owner was not returned as undeliverable); (ii) the date of the last contact by the owner with respect to the property and (iii) the date, if determinable by the holder, that the owner of the account reaches age 70.5;

(B) property in a [non-retirement health savings account] [three] years from the later of (i) the date a mailing to the owner was returned as undeliverable by the U.S. Post Office (unless a subsequent mailing to the owner was not returned as undeliverable); (ii) the date of the last contact by the owner with respect to the property and (iii) the date, if determinable by the holder, that the owner of the account reaches age 82;

(C) property in a [529 Plan], [three] year from the later of (i) the date a mailing to the owner was returned as undeliverable by the U.S. Post Office (unless a subsequent mailing to the owner was not returned as undeliverable); (ii) the date of the last contact by the owner with respect to the property; and

Alternative A

(iii) the date, if determinable by the holder, that any beneficiary of the plan turns [26] [30]

Alternative B

(iii) thirty years after the date the account was opened in the [529 Plan]

1 **Alternative C**

2 (iii) the date, if determinable by the holders that the owner of the account reaches

3 age 82.

4 **End of Alternatives**

5 **Reporter's Comment**

6 At the last Drafting Committee meeting, the Committee decided that, for this draft, the standard
7 for presumption of abandonment for tax deferred accounts or plans would be permutations of the
8 standard proposed by the ABA, with some modifications, as follows: (i) for Roth and other
9 IRAs plus retirement Health Savings Accounts: (i) the period of dormancy running from the
10 later of RPO, date of last contact, or age 70.5 of the owner; (ii) for non-retirement Health
11 Savings Accounts, the period of dormancy running from the later of RPO, date of last contact or
12 age 82 of the owner; and (iii) for "529" plans: the period of dormancy running from the later of
13 RPO, the date of last contact or (i) age 26 (or 30) of any beneficiary (ii) 30 years from the
14 opening of the account or (iii) age 82 of the owner.

15
16 (15) all other property, five years after the owner's right to demand the property or
17 after the obligation to pay or distribute the property arises, whichever first occurs.

18 (b) At the time that an interest is presumed abandoned under subsection (a), any other
19 property right accrued or accruing to the owner as a result of the interest, and not previously
20 presumed abandoned, is also presumed abandoned.

21 (c) Notwithstanding any provision of this part to the contrary, any outstanding check,
22 draft, credit balance, customer's overpayment or unidentified remittance issued to a business
23 entity or association as part of a commercial transaction in the ordinary course of a holder's
24 business shall not be presumed abandoned if the holder and such business entity or association
25 have [a substantial] ongoing business relationship. An ongoing business relationship shall be
26 deemed to exist if the holder has engaged in a commercial, business or professional transaction
27 involving the sale, lease, license, or purchase of goods or services with the business entity or
28 association or a predecessor-in-interest of the business entity or association within the dormancy

1 period immediately following the date of the check, draft, credit balance, customer's
2 overpayment, or unidentified remittance giving rise to the unclaimed property interest. As used
3 herein "dormancy period" means the period during which the holder may hold the property
4 interest before it is presumed to be abandoned. A transaction between the holder and a third
5 party insurer of another is a commercial transaction which constitutes a business relationship
6 between the holder and the insurer. A "predecessor-in-interest" is a person or entity whose
7 interest in a business entity or association was acquired by its successor-in-interest, whether by
8 purchase of the business ownership interest, purchase of business assets, statutory merger or
9 consolidation and includes successive acquisitions by whatever means accomplished. [As used
10 herein "substantial" means a total amount of [one hundred thousand] dollars or more in each
11 fiscal year of the holder.]

12 **Reporter's Comment**

13
14 This provision is adapted from Tenn. Code Ann. § 66-29-104.

15
16 (d) Property is unclaimed if, for the applicable period set forth in subsection (a), the
17 apparent owner has not communicated in writing or by other means reflected in a
18 contemporaneous record prepared by or on behalf of the holder, with the holder concerning the
19 property or the account in which the property is held, and has not otherwise indicated an interest
20 in the property. A communication with an owner by a person other than the holder or its
21 representative who has not identified the property to the owner is not an indication of interest in
22 the property by the owner.

23 (e) An indication of an owner's interest in property includes:

24 (i) any written communication, including any electronic communication, by the
25 owner to the holder or agent of the holder concerning the property or the account in which the

1 property is held;

2 (ii) any oral communication by the owner to the holder or agent of the holder
3 concerning the property or the account in which the property is held, if the holder or its agent
4 makes and preserves a contemporaneous record of the owner's communication;

5 (iii) the presentment of a check or other instrument of payment of a dividend,
6 interest payment or other distribution made with respect to an account or underlying stock,
7 bond, debt or other interest in a business association, non-profit organization, or financial
8 organization or, in the case of a distribution made by electronic or similar means, electronic or
9 other evidence that the distribution has been received;

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

13 (v) the making of a deposit or withdrawal from an account in which the property
14 is held, including automatic deposits or withdrawals previously authorized by the owner;

15 (vi) the payment of a premium with respect to a property interest in an insurance
16 policy, but the application of an automatic premium loan provision or other nonforfeiture
17 provision contained in an insurance policy does not prevent a policy from maturing or
18 terminating if the insured has died or the insured or the beneficiary of the policy has otherwise
19 become entitled to the proceeds before the depletion of the cash surrender value of a policy by
20 the application of those provisions;

21 (vii) any other action by the owner that demonstrates that the owner is aware that
22 the property exists;

23 (viii) any action by an agent or other representative of an owner, if done on

behalf of the owner, is deemed an action by the owner.

Reporter's Comment

It has been argued that the owner's interest in property should not be deemed abandoned if there have been indications that the owner is aware of the existence of his claim and it is not in fact abandoned property. The revision expands the ways in which such continuing interest may be indicated, and makes clear that an owner may act through a representative.

[(f) A holder may not assign or otherwise transfer its obligation to hold for or pay or deliver property or to comply with the duties of this Act, other than to a parent, subsidiary, or affiliate of the holder or to the holder's successor by merger or consolidation, or to any person or entity that acquires all or substantially all of the holder's capital stock or assets, provided the assignee or transferee assumes or succeeds to all the obligations of the assignor or transferor by operation of law.]

Reporter's Comment

This provision, in brackets, has been added at the suggestion of NAUPA as a means of preventing holders from avoiding an obligation to remit unclaimed property by transferring its obligation to another who is neither affiliated with nor a successor-in-interest to the holder. There are various issues surrounding any such prohibition which need to be discussed at the next meeting.

(g) A holder may contract with a third party for the reporting of unclaimed property, provided that the holder shall remain responsible to the Administrator for the complete, accurate and timely reporting and remitting of the property.

Reporter's Comment

This provision has been added to make it clear that a holder may contract with another to carry out its reporting and remitting obligations under the Act, provided that the holder remains responsible for the completeness, timeliness and accuracy of the report and remission. It has been suggested with regard to accounts such as mutual funds with multiple parties having recordkeeping, funds custody, and tax reporting obligations, that the holder should be the entity filing tax reports. This makes no sense. The entity that has a legal obligation to redeem mutual funds for cash is the holder even if it has contracted with others to physically hold its assets or account for or report for tax purposes.

(h) Property is payable or distributable for purposes of this [Act] notwithstanding the owner's failure to make demand or present an instrument or document otherwise required to obtain payment.

Reporter's Comment

This provision is left intact despite the arguments made concerning the Derivative Rights Doctrine. This is an example where the Courts have made an exception and allowed the unclaimed property Administrator to have custody of assets even though the owner would have had to make a demand or present an instrument to obtain payment.

(i) Notwithstanding any provision of this [Act] to the contrary, any unclaimed property that has a value of \$50 or less is not required to be reported or remitted.

Reporter's Comment

It has been suggested that the *de minimus* threshold should be increased to \$50 and made uniform.

SECTION 4. CONTENTS OF SAFE DEPOSIT BOX OR OTHER

SAFEKEEPING DEPOSITORY. Tangible property held in a safe deposit box, self-storage facility, airport, train, or bus station storage locker, or other safekeeping depository available to the public in this State in the ordinary course of the holder's business and proceeds resulting from the sale of the property by the holder permitted by other law, are presumed abandoned if the property remains unclaimed by the owner for more than five years after the earlier of the expiration of the lease or rental period on the box or other depository, or the earliest date when the owner of the storage facility is authorized by law to enter a unit of its facility and remove [or dispose of] the contents without the consent or authorization of the lessee or renter.

Reporter's Comment

This revision will make the contents of all safekeeping depositories on equal footing with safe deposit boxes usually associated with banks. [Query: What about custodians of private mailboxes?]

SECTION 5. RULES FOR TAKING CUSTODY. Except as otherwise provided in this [Act] or by other statute of this State, property that is presumed abandoned, whether located in this or another State, is subject to the custody of this State if:

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

(2) the records of the holder do not reflect the identity of the apparent owner and it is established that the last known address of the apparent owner is in this State;

(3) the records of the holder do not reflect the last known address of the apparent owner and it is established that:

(i) the last known address of the apparent owner is in this State; or

(ii) the holder is domiciled in this State or is a government or governmental subdivision, agency, or instrumentality of this State and 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 is not obligated to pay or deliver the property to that State.

Reporter's Comment

The added language will preclude the possible ambiguity that its omission allows.

(iii) provided that, if the State of domicile of the holder has changed, the holder's State of domicile shall be the State where the holder was domiciled at such time as the property was deemed abandoned.

Reporter's Comment

These changes are intended to eliminate confusion about which State is entitled to custody in the situation where the address of the owner or domicile of the holder has changed between the time of the underlying transaction and the date of presumed abandonment.

(4) the holder, at its option, voluntarily remits property for which the last known address

1 of the apparent owner, as shown on the records of the holder, is a foreign country or is in a State
2 that does not provide for the escheat or custodial taking of the property and the holder is
3 domiciled in this State or is a government or governmental subdivision, agency, or
4 instrumentality of this State;

5 **Reporter's Comment**

6
7 This change to allow voluntary remission of foreign held property presumes that the Act will not
8 require remission of property where owner's address is in a foreign country
9

10 (5) the last known address of the apparent owner, as shown on the records of the holder,
11 is [in a State that does not provide for the escheat or custodial taking of unclaimed property], [or
12 in a foreign country] and the holder is domiciled in this State or is a government or
13 governmental subdivision, agency, or instrumentality of this State; provided, however, that
14 property that is specifically exempt from escheat or custodial taking under the laws of the State
15 of the last known address of the apparent owner, if applicable, or if not, the State of domicile of
16 the holder, if applicable, is not subject to the custody of the State or any State.

17 **Reporter's Comment**

18
19 This revision is intended to recognize, but limit the third-priority rule. The Court in *Texas v.*
20 *New Jersey* only delineated the priority between the State of residence of this owner and the
21 domicile of the holder and did not account for the situation where neither State provided for
22 escheat or custodial taking. While providing a third party rule avoids the situation of a holder
23 getting a windfall, the situation is different if the lack of an escheat or custodial provision is not
24 an oversight but results from a State's deliberate decision to exempt a class of property from its
25 unclaimed property laws. For example, the State of residence of the owner expressly exempts
26 gift cards, or the State of domicile of the holder does too. To allow the State where the
27 transaction took place (assuming it is a third State) would not be giving the laws of the other
28 States full faith and credit. See *American Express, etc. v. Sidamon-Eristoff*, 755 F.Supp. 2d 556,
29 604-05 (D.C.N.J. 2011).
30

31 (6) the transaction out of which the property arose occurred in this State, the holder is
32 domiciled in a State that does not provide for the escheat or custodial taking of the property, and
33 the last known address of the apparent owner or other person entitled to the property is unknown

1 or is in a State that does not provide for the escheat or custodial taking of the property unless the
2 property is expressly exempt from escheat or custodial taking under the laws of that State; or

3 **Reporter's Comment**
4

5 *See* Reporter's Comment to the preceding subparagraph (5).
6

7 (7) the property is a traveler's check or money order purchased in this State, or the issuer
8 of the traveler's check or money order has its principal place of business in this State and the
9 issuer's records show that the instrument was purchased in a State that does not provide for the
10 escheat or custodial taking of the property, or do not show the State in which the instrument was
11 purchased.

12 (8) If a person other than the insured or annuitant is entitled to the funds and an address
13 of the person is not known to the insurance or annuity company, or it is not definite or certain
14 from the records of the company who is entitled to the funds, it is presumed that the last known
15 address of the person entitled to the funds is the same as the last known address of the insured or
16 annuitant according to the records of the company.

17 **Reporter's Comment**
18

19 This provision has been added at the suggestion of NAUPA and provides that when proceeds of
20 life insurance or an annuity are payable to a person other than the insured or annuitant, and the
21 records of the holder do not contain the address of the owner, the holder will presume that the
22 State of residence of the owner is the same as that of the insured or annuitant. This presumption
23 will make it more likely that the owner will receive notice of the abandoned property.
24

25 **SECTION 6. DORMANCY CHARGE.** A holder may deduct from property presumed
26 abandoned a charge imposed by reason of the owner's failure to claim the property within a
27 specified time only if there is a valid and enforceable written contract between the holder and the
28 owner under which the holder may impose the charge and the holder regularly imposes the
29 charge, which is not regularly reversed or otherwise canceled. The amount of the deduction is

1 limited to an amount that is not unconscionable.

2 **SECTION 7. BURDEN OF PROOF AS TO PROPERTY EVIDENCED BY**

3 **RECORD OF CHECK OR DRAFT.** [A record of the issuance of a check, draft, or similar
4 instrument][Any unpaid debt reflected in the records of the holder] is prima facie evidence of an
5 obligation. In claiming property from a holder who is also the issuer, the Administrator's burden
6 of proof as to the existence and amount of the property and its abandonment is satisfied by
7 showing issuance of the instrument and passage of the requisite period of abandonment; however
8 the putative holder may rebut the presumption by presentation of evidence sufficient to
9 overcome the presumption to the reasonable satisfaction of the trier of fact.] Defenses of
10 payment, satisfaction, discharge, and want of consideration are affirmative defenses that must be
11 established by the putative holder, and may be established by evidence of custom and practice
12 and prior dealings between the putative holder and the owner.

13 **Reporter's Comment**

14
15 It sometimes happens that checks are lost or not cashed and payment is accomplished by
16 issuance of a replacement, but through oversight the prior check is not voided on the record.
17 When this happens, the putative holder should not be held to an impossible standard of proof that
18 the obligation is no longer owed and should be given a reasonable opportunity to produce
19 collateral evidence sufficient to overcome the presumption.
20

21 **SECTION 8. REPORT OF ABANDONED PROPERTY.**

22 (a) A holder of property presumed abandoned shall make a report to the Administrator
23 concerning the property by a means and in a format approved by the Administrator which is
24 reasonably designed to protect the confidentiality of the owner's information contained in such
25 report, to the extent it is required to be protected under the provisions of Section 27 of this Act.

26 **Reporter's Comment**

27
28 One of the concerns of holders such as banks and securities brokers is that they are under very
29 strict rules regarding maintenance of the confidentiality of their client's/customer's financial

1 records. New Section 27 provides the requirement that the administration maintain that same
2 degree of confidentiality of owner's records. This revision implements the requirements of new
3 Section 27 in the context of how these holders may report this information to the administration.

4
5 (b) The report must be signed by the holder under the penalties of perjury, or verified by
6 the holder as to its completeness and accuracy. The Administrator may accept an electronic
7 signature or waive verification. The report must contain:

8 **Reporter's Comment**
9

10 This revision allows electronic signatures to be used and avoids the requirement of
11 verification/notarization.

12
13 (1) a description of the property;

14 (2) except with respect to a traveler's check or money order, the name, if known,
15 and last known address, if any, and the social security number or taxpayer identification number,
16 if readily ascertainable, of the apparent owner of property;

17 (3) an aggregated amount of items valued under \$50 each; however, a holder may
18 choose to report the name and last known address of the apparent owner of property valued
19 under \$50;

20 **Reporter's Comment**
21

22 If the *de minimis* amount of \$50 is accepted, this provision allows the holder to voluntarily remit
23 amounts that are less than those required to be remitted.

24
25 (4) in the case of an amount held or owing under an annuity or a life or
26 endowment insurance policy, the full name and last known address of the annuitant or insured
27 and of the beneficiary;

28 (5) in the case of property held in a safe deposit box or other safekeeping
29 depository, an indication of the place where it is held and where it may be inspected by the
30 Administrator, and any amounts owing to the holder;

1 (6) the date, if any, on which the property became payable, demandable, or
2 returnable, and the date of the last transaction with the apparent owner with respect to the
3 property;

4 (7) a statement that the holder has complied with the owner notification
5 requirements of subsection (e) of this Section, and of Section 10 of this [Act]; and

6 (8) other information that the Administrator by rule prescribes as necessary for the
7 administration of this [Act].

8 (c) If a holder of property presumed abandoned is a successor to another person who
9 previously held the property for the apparent owner or the holder has changed its name while
10 holding the property, the holder shall file with the report its former names, if any, and the known
11 names and addresses of all previous holders of the property.

12 (d) The report must be filed before November 1 of each year and cover the 12 months
13 next preceding July 1 of that year, but a report with respect to a life insurance company must be
14 filed before May 1 of each year for the calendar year next preceding.

15 (e) Except as otherwise provided in this subsection, the holder of property presumed
16 abandoned shall send written notice which complies with Section 10(a) of this [Act] by first
17 class U.S. Mail to the apparent owner, not more than 120 days nor less than 60 days before
18 filing the report, and may also send such written notices earlier and as often as it chooses to do
19 so, stating that the holder is in possession of property subject to this [Act], if:

20 (1) the holder has in its records an address for the apparent owner which the
21 holder's records do not disclose to be inaccurate;

22 (2) the claim of the apparent owner is not barred by a statute of limitations; and

23 (3) the value of the property is \$50 or more.

Such notice shall not include any sensitive or non-public personal information concerning the owner or the owner's property. In the event the owner has previously consented to electronic delivery of information from the holder, the notice required by this section may be sent via electronic delivery in lieu of first class U.S. Mail if the holder does not have reason to believe that the owner's electronic mail address is not valid. In the event the holder sends the required notice to the owner electronically and receives information indicating that the owner's electronic address is no longer valid, the holder shall send the required notice by first class U.S. mail to the owner's last known physical address. A holder is not required to send any notice required under this section to any address that the holder has reason to believe is not a valid address for the owner.

Reporter's Comment

These revisions make explicit that the holder has an obligation to send notice to the apparent owner by first class U.S. Mail unless the owner has consented to being notified by electronic mail and the holder believes the current email address it has is a valid address. If an email notification is rejected or kicked back to the sender, the holder must follow up with notice by first class U.S. Mail.

(f) Before the date for filing the report, the holder of property presumed abandoned may request the Administrator to extend the time for filing the report. The Administrator may grant the extension for good cause. The holder, upon receipt of the extension, may make an interim payment on the amount the holder estimates will ultimately be due, which terminates the accrual of additional interest on the amount paid.

(g) If a holder chooses to report items valued under \$50 in the aggregate, the Administrator may not request or demand that the holder provide the name and address of an apparent owner of such items unless the information is necessary to verify or process an owner's claim.

1 **SECTION 9. PAYMENT OR DELIVERY OF ABANDONED PROPERTY.**

2 (a) Except for property held in a safe deposit box or other safekeeping depository, upon
3 filing the report required by Section 8, the holder of property presumed abandoned shall pay,
4 deliver, or cause to be paid or delivered to the Administrator the property described in the report
5 as unclaimed, but if the property is an automatically renewable deposit, and a penalty or
6 forfeiture in the payment of interest would result, the time for compliance is extended until a
7 penalty or forfeiture would no longer result. Tangible property held in a safe deposit box or other
8 safekeeping depository may not be delivered to the Administrator until [120] days after filing the
9 report required by Section 8.

10 (b) If the property reported to the Administrator is a security or security entitlement under
11 [Article 8 of the Uniform Commercial Code], the Administrator is an appropriate person to make
12 an indorsement, instruction, or entitlement order on behalf of the apparent owner to invoke the
13 duty of the issuer or its transfer agent or the securities intermediary to transfer or dispose of the
14 security or the security entitlement in accordance with [Article 8 of the Uniform Commercial
15 Code].

16 (c) If the holder of property reported to the Administrator is the issuer of a certificated
17 security, the Administrator has the right to obtain a replacement certificate in physical or book
18 entry form pursuant to [Section 8-405 of the Uniform Commercial Code], but an indemnity bond
19 is not required.

20 (d) The Administrator shall adopt by rule procedures for the registration and issuance,
21 method of delivery, transfer and maintenance of unclaimed securities and security entitlements.

22 (e) An issuer, the holder, and any transfer agent or other person acting pursuant to the
23 instructions of and on behalf of the issuer or holder in accordance with this section is not liable to

1 the apparent owner and must be indemnified against claims of any person in accordance with
2 Section 10.

3 (f) A holder of a security which the holder in good faith has determined to be of no value
4 [shall] [is not required to] deliver the security to the Administrator, and [may elect instead to]
5 give notice to the Administrator of its determination. If the holder [elects to] deliver[s] to the
6 Administrator a security it has determined to be of no value, the Administrator may decline to
7 accept deliver of the worthless security.]

8 **Reporter's Comment**

9
10 This new provision spells out when and how the holder of a security believed or determined to be
11 worthless should deal with it and what the Administrator may do with it.

12 **SECTION 10. OWNER NOTIFICATION.**

13
14 (a) A holder of property that has been presumed abandoned or that may become
15 abandoned shall send notice to the apparent owner, as required by Section 8(e) of this [Act], in a
16 format acceptable to the Administrator, not less than 60 days before filing the report.

17 (1) The notice shall contain a heading that reads as follows: "THE STATE OF
18 [_____] REQUIRES US TO NOTIFY YOU THAT YOUR UNCLAIMED PROPERTY
19 MAY BE TRANSFERRED TO THE STATE IF YOU DO NOT CONTACT US BEFORE
20 [insert date the report is due to be filed]," or substantially similar language. The notice shall
21 specify the date that the property will be turned over to the State, and explain the necessity of
22 filing a claim for the return of the property following receipt by the State; identify the nature and
23 amount of the property that is the subject of the notice; and provide instructions that the apparent
24 owner must follow to prevent the property from being reported and put into the custody of the
25 State.

26 (2) The holder is not required to send a notice if the records of the holder indicate

1 the address of the apparent owner is incorrect, or if the total value of the property due is less than
2 \$50.

3 (3) There is no limit as to the number of notices that a holder may send to an
4 apparent owner.

5 **Reporter's Comment**

6
7 Section 10 has been substantially rewritten to deal with the separate but different obligation that
8 holders and Administrators have with respect to giving owners notification that their property
9 will be or has been turned over to an unclaimed property administration. Paragraph (a) deals
10 with the holder's obligations and is cross-referenced to the notice required by Section 8(e).
11 Paragraph (b) deals with the Administrator's duties.

12
13 (b) The Administrator shall establish, conduct, and maintain a notification program
14 designed to inform owners of the possible existence of unclaimed property received by the State
15 pursuant to this Act. The notification program shall include, but not be limited to:

16 (1) the sending of a written notice by first class U.S. Mail to apparent owners of
17 property presumed abandoned and received by the State, and in the case of property in the form
18 of securities held in electronic form, electronic notice if the electronic address of the apparent
19 owner is known to the Administrator and the Administrator has been advised that the apparent
20 owner has consented to receive electronic notification in lieu of notification by mail. If the
21 Administrator does not have a valid mailing address for an apparent owner, but has an electronic
22 address which it does not know to be invalid, notice shall be sent to the owner's electronic
23 address. The Administrator, in his or her discretion, may elect not to send written notices by
24 mail to any apparent owner if the Administrator determines that such mailing would not be likely
25 to be received by the apparent owner, [or would otherwise not be cost effective].

26 (2) publication of notice, [every [six] months] in a newspaper or newspapers of
27 wide general circulation in the State, of unclaimed property received by the State. Such

1 publication shall include the following information:

2 (i) the total number and value of abandoned accounts received by the State
3 during the preceding [six]-month period].

4 (ii) the total number and value of claims to abandoned accounts paid by
5 the State during the preceding [six]-month period].

6 (iii) the web address of the unclaimed property website maintained by the
7 Administrator.

8 (iv) a telephone number by which persons wishing to contact the State for
9 purposes of inquiring about or claiming abandoned property may do so.

10 (v) a statement that anyone interested in searching for unclaimed property
11 may access the Internet by use of a computer provided to the public at a local public library.

12 (3) the maintenance of an internet website or database accessible by the public
13 which sets forth in an electronically searchable manner the names of all apparent owners
14 reported to the State in an approved electronic format for whom unclaimed property in amounts
15 of \$50 or more is being held by the State. The internet database shall include instructions for
16 filing a claim to abandoned property with the Administrator, and a printable form of claim.

17 The Administrator is authorized to undertake additional notification efforts through
18 printed publication, telecommunication, the internet, or other mediums in an effort to apprise the
19 public of the existence of unclaimed property and the State's unclaimed property program.

20 **Reporter's Comment**

21
22 Paragraph (b) of § 10 sets out the requirements imposed on Administrators to make reasonable,
23 good faith efforts to notify owners of unclaimed property being held for them in furtherance of
24 the goal of reuniting owners with their property. How it is done is left to the discretion of the
25 Administrators but they are at a minimum required to send written notices by first class U.S.
26 Mail to apparent owners, except for the use of electronic mail in limited circumstances. In
27 addition publication of newspaper notices required each 6 months with the understanding that

1 what is intended is that the broadest possible circulation of the notice within the State is expected
2 given the size of the State. It also calls for the maintenance of an electronically searchable
3 website accessible to the public from which unclaimed property information can be obtained, and
4 authorizes use of additional means of apprising the public of unclaimed property rights.
5

6 (c) Notwithstanding any provision of law to the contrary, all officers, agencies, boards,
7 commissions, divisions, and departments of the State, including any body politic and corporation
8 created by the State for public purposes, and every political subdivision of the State shall, upon
9 the request of the Administrator, make its books and records available and cooperate with the
10 Administrator to determine the current whereabouts of an apparent owner of unclaimed property.
11 Subject to the provisions of Section 27, the Administrator, an employee or agent of the
12 Administrator may not use or disclose such information or record obtained except as may be
13 necessary to locate the apparent owner of unclaimed property.

14 **Reporter's Comment**

15
16 This new provision is intended to allow for interagency cooperation between other agencies and
17 subordinate governments of the State and the Administrator for the purpose of locating apparent
18 owners of unclaimed property. Because the Administrator is under the duty of confidentiality, it
19 would authorize Departments of Revenue and other agencies to disclose to the Administrator
20 information about taxpayers that would otherwise not be available due to confidentiality
21 requirements.
22

23 **SECTION 11. CUSTODY BY STATE; RECOVERY BY HOLDER; DEFENSE OF**

24 **HOLDER.**

25 (a) In this section, payment or delivery is made in "good faith" if:

26 (1) (i) payment or delivery was made in a reasonable attempt to comply with
27 this [Act];

28 (ii) the holder was not then in breach of a fiduciary obligation with respect
29 to the property and had a reasonable basis for believing, based on the facts then known, that the
30 property was presumed abandoned; and

1 (iii) there is no showing that the records under which the payment or
2 delivery was made did not meet reasonable commercial standards of practice; or
3 (2) payment or delivery of the property was made by the holder
4 (i) in response to a demand by the Administrator or an agent of the
5 Administrator; or
6 (ii) pursuant to private or public guidance or ruling by the Administrator
7 or an agent of the Administrator which the holder reasonably believes requires the property to be
8 reported and remitted.

9 **Reporter's Comment**

10
11 These revisions expand the circumstances under which a holder may turn over unclaimed
12 property to the Administrator for safekeeping and avoid any further liability or responsibility for
13 it to the owner or anyone claiming to be the owner.
14

15 (b) Upon payment or delivery of property to the Administrator, the State assumes custody
16 and responsibility for the safekeeping of the property, and shall maintain in an electronically
17 searchable form a record accessible to the public of all such payments and related information
18 provided to it in perpetuity by name of the apparent owner, if known. A holder who pays or
19 delivers property to the Administrator in good faith is relieved of all liability arising thereafter
20 with respect to the property. If the holder's records contain an address for the apparent owner
21 which the holder's records do not disclose to be inaccurate, and the holder has made reasonable
22 efforts to notify the owner by mail or in substantial compliance with Section 10 of this Act, the
23 holder is relieved of all liability to the extent of the amount of money or value of property so
24 paid or delivered for any liability arising thereafter with respect to the property.

25 **Reporter's Comment**

26
27 These revisions relieve the holder of liability to the owner of property as to which the holder
28 gave the required notice and turned the property over to the Administrator. It then imposes the

1 duty on the Administrator to maintain a record of such payments in publicly accessible and
2 electronically searchable form in perpetuity.

3
4 (c) A holder who has paid money to the Administrator pursuant to this [Act] may
5 subsequently make payment to a person reasonably appearing to the holder to be entitled to
6 payment, and may claim reimbursement from the Administrator, or may deduct the amount of
7 such payment from its next subsequent unclaimed property filed with the State if such deduction
8 is supported by proof of payment and proof that the payee was entitled to the payment filed with
9 the Administrator. If a deduction is taken for a payment made on a negotiable instrument,
10 including a traveler's check or money order, the holder must file proof that the instrument was
11 duly presented and that payment was made to a person who reasonably appeared to be entitled to
12 payment. The holder may deduct for payment made, even if the payment was made to a person
13 whose claim was barred under Section 19(a).

14 **Reporter's Comment**

15
16 Even though a holder has turned over abandoned property to the Administrator, it may
17 subsequently elect to honor a claim made by the owner to the holder for the property. In that
18 case, rather than seek and wait to be reimbursed by the Administrator, the holder may offset its
19 future obligations to the Administrator *pro tanto* with an explanation and proof of payment
20 provided to the Administrator.

21
22 (d) A holder who has delivered property other than money to the Administrator pursuant to
23 this [Act] may reclaim the property if it is still in the possession of the Administrator, without
24 paying any fee or other charge, upon filing proof that the apparent owner has claimed the
25 property from the holder.

26 (e) The Administrator may accept a holder's affidavit as sufficient proof of the holder's
27 right to recover money and property under this section.

28 (f) If a holder pays or delivers property to the Administrator in good faith and thereafter
29 another person claims the property from the holder, or another State or foreign government

1 claims the money or property under its laws relating to escheat or abandoned or unclaimed
2 property, the Administrator, upon written notice of the claim, shall defend the holder against the
3 claim and indemnify the holder against any liability on the claim resulting from payment or
4 delivery of the property to the Administrator.

5 (g) Property removed from a safe deposit box or other safekeeping depository under
6 Section 4 of this [Act] is received by the Administrator subject to the holder's right to be
7 reimbursed for the cost of the opening and to any valid lien or contract providing for the holder
8 to be reimbursed for unpaid rent or storage charges. The Administrator shall reimburse the
9 holder out of the proceeds remaining after deducting the expense incurred by the Administrator in
10 selling the property.

11 **SECTION 12. CREDITING OF DIVIDENDS, INTEREST, AND INCREMENTS**
12 **TO OWNER'S ACCOUNT.** If property other than money is delivered to the Administrator
13 under this [Act], the owner is entitled to receive from the Administrator any income or gain
14 realized or accruing on the property at or before liquidation or conversion of the property into
15 money. If the property was an interest bearing demand, savings, or time deposit, including a
16 deposit that is automatically renewable, the Administrator shall pay interest at a rate of [insert
17 legal rate] percent a year or any lesser rate the property earned while in the possession of the
18 holder. Interest begins to accrue when the property is delivered to the Administrator and ceases
19 on the earlier of the expiration of 10 years after delivery or the date on which payment is made to
20 the owner. Interest on interest bearing property is not payable for any period before the effective
21 date of this [Act], unless authorized by law superseded by this [Act].

22 **SECTION 13. PUBLIC SALE OF ABANDONED PROPERTY.**

23 (a) Except as otherwise provided in this section, the Administrator, within three years

1 after the receipt of abandoned property, shall sell it to the highest bidder at public sale at a
2 location in the State which in the judgment of the Administrator affords the most favorable
3 market for the property; provided, however, in the discretion of the Administrator, the sale may
4 be conducted by electronic means on the internet in a manner reasonably intended to solicit bids
5 approximating the reasonable fair market value of the property. The Administrator may decline
6 the highest bona fide bid and reoffer the property for sale if the Administrator considers the
7 highest bona fide bid to be insufficient. The Administrator is not required to offer the property
8 for sale if the Administrator considers that the probable cost of sale will exceed the proceeds of
9 the sale, in which case the Administrator shall destroy or dispose of the property under the
10 provisions of Section 18. A sale held under this section, conducted other than by electronic
11 means, must be preceded by a single publication of notice, at least three weeks before sale, in a
12 newspaper of wide general circulation in the [county] in which the property is to be sold.

13 **Reporter's Comment**

14
15 The new provisions allow for sale of abandoned property by electronic means on the Internet
16 rather than by a public auction. It also permits the Administrator to exercise discretion to destroy
17 rather than sell low value items.

18
19 (a) **[The following alternate language was proposed by NAUPA]** [(a) Except as
20 otherwise provided in this section, the Administrator, within three years after the receipt of
21 abandoned property, shall sell it to the highest bidder at a publicly held sale, which may include
22 an Internet auction or any other forum which in the judgment of the Administrator will yield the
23 most favorable net proceeds of sale. The Administrator may decline the highest bid and re-offer
24 the property for sale if the Administrator considers the highest bid to be insufficient. The
25 Administrator need not offer the property for sale if the Administrator considers the probable
26 cost of sale to be disproportionately excessive given the anticipated proceeds of sale.]

1 **Reporter's Comment**

2
3 NAUPA suggests that this paragraph be entirely rewritten and offers this language as an
4 alternative.

5
6 **Alternative A**

7 (b) The Administrator shall not sell or otherwise liquidate securities received as
8 abandoned property. A person making a claim under this [Act] is entitled to receive the
9 securities delivered to the Administrator by the holder plus dividends, interest and other
10 increments thereon up to the time the claim is made.

11 **Alternative B**

12 (b) Securities listed on an established stock exchange must be sold at prices prevailing on
13 the exchange at the time of the sale. Other securities may be sold over the counter at prices
14 prevailing at the time of sale or by any reasonable method selected by the Administrator. The
15 Administrator shall not sell or otherwise liquidate securities until at least three years have passed
16 from receipt of the securities. A person making a claim under this [Act] after the expiration of
17 the three-year period is entitled to receive (i) the securities delivered to the Administrator by the
18 holder, if they remain in the custody of the Administrator along with all dividends, interest and
19 other increments therein up to the time the claim is made or (ii) if no longer in the custody of the
20 Administrator, the same amount of those securities that were delivered by the holder to the
21 Administrator, separately purchased by the Administrator, plus the value of all dividends,
22 interest and other increments therein up to the time the claim is made, or (iii) if no longer in the
23 custody of the Administrator and not reasonably available for purchase by the Administrator, the
24 market value of the stock, plus all dividends, interest and other increments therein as of and up to
25 the time the claim is made.

1 **Reporter's Comment**

2
3 Alternatives A and B are designed to address a decision made by the Drafting Committee that, in
4 this draft, the State would not be able to liquidate shares or, if shares are liquidated, the shares
5 must be repurchased and provided to claimant once a valid claim is made.
6

7 **Alternative C**

8 The Administrator shall not sell or otherwise liquidate securities until at least three years
9 have passed from receipt of the securities. Securities shall not be sold unless and until the
10 Administrator has provided the owner with notice of the Administrator's possession of the stock.
11 The notice shall, at a minimum, include at least one publication designed to reach maximum
12 distribution, whether such publication is electronic or in print media. Securities listed on an
13 established stock exchange must be sold at prices prevailing on the exchange at the time of sale.
14 Other securities may be sold over the counter at prices prevailing at the time of sale or by any
15 reasonable method selected by the Administrator.

16 A person making a claim under this [Act] after the expiration of the three-year period is
17 entitled to receive the securities delivered to the Administrator by the holder, if they still remain
18 in the custody of the Administrator, or the net proceeds received from sale plus dividends,
19 interest and other increments thereon up to the time the claim is made, but is not entitled to
20 receive any appreciation in the value of the property occurring after delivery to the
21 Administrator, except in a case of intentional misconduct or malfeasance by the Administrator.

22 **End of Alternatives**

23 **Reporter's Comment**

24
25 Alternative C is offered to provide another approach - suggested by UPPO – requiring notice
26 prior to sale but not requiring the Administrators repurchase shares for a valid claimant.
27

28 (c) A purchaser of property at a sale conducted by the Administrator pursuant to this [Act]
29 takes the property free of all claims of the owner or previous holder and of all persons claiming

1 through or under them. The Administrator shall execute all documents necessary to complete the
2 transfer of ownership.

3 (d) Medals [and decorations] for military service in the armed forces [of the United States
4 shall not be sold by the Administrator, but in the discretion of the Administrator may be
5 delivered to a military veteran's organization under § 501(c)(19) of the Internal Revenue Code to
6 hold as custodian for the owner.]

7 **Reporter's Comment**

8
9 Military medals are not generally considered to be abandoned property appropriate for custodial
10 taking. An alternate means of handling them is made available.

11 12 **SECTION 14. DEPOSIT OF FUNDS.**

13 [(a) Except as otherwise provided by this section, the] [The] Administrator shall promptly
14 deposit in the [general fund] of this State all funds received under this [Act], including the
15 proceeds from the sale of abandoned property under Section 13. [The Administrator shall retain
16 in a separate trust fund at least [\$100,000] from which the Administrator shall pay claims duly
17 allowed. Provided, however, that to the extent the owner's claims exceed at any time the amount
18 held in the trust fund, such excess claims shall be paid out of the general funds of the State.] The
19 Administrator shall record the name and last known address of each person appearing from the
20 holders' reports to be entitled to the property and the name and last known address of each
21 insured person or annuitant and beneficiary and with respect to each policy or annuity listed in
22 the report of an insurance company, its number, the name of the company, and the amount due.

23 **Reporter's Comment**

24
25 This added language is included to make it clear that after abandoned funds are received and
26 deposited by the Administrator into the general funds of the State, the Administrator may not
27 hold sufficient readily available funds required to honor valid claims by owners, in which case
28 the owners are nevertheless entitled in all events to be paid out of the general funds of the State.
29

[(b) Before making a deposit to the credit of 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 holders of property and in collecting the property from those holders.]

[(c) And shall deduct such amount as may be sufficient to satisfy any current or past due legally enforceable debts as to which the Administrator has been given notice that the apparent owner owes for:

- (1) child support arrearages to include child support collection costs and child support arrearages which are combined with maintenances;
- (2) civil and criminal fines, court costs, surcharges, or restitution imposed by final court judgment; or
- (3) state or local taxes, penalties, and interest which have been determined to be deficient and are delinquent.]

Reporter's Comment

The Administrator is authorized and required to deduct from unclaimed funds received for the benefit of the owner certain debts and obligations which the owner is known to be liable for.

[(d) Funds received and held by the Administrator under this Act are custodial funds held for the benefit of owners, are not funds of the State, and are not protected under the doctrine of sovereign immunity.]

Reporter's Comment

This provision is intended to make it clear that abandoned property held by the Administrator are

1 not the funds of the State which are protected from seizure by the doctrine of sovereign
2 immunity, but are custodial funds held in trust by the State for the benefit of the rightful owners.

3 4 **SECTION 15. CLAIM OF ANOTHER STATE TO RECOVER PROPERTY.**

5 (a) A claim of another State to recover abandoned property held by this State must be
6 presented in a form prescribed by the Administrator, who shall decide the claim within 90 days
7 after it is presented. The Administrator shall allow the claim if it is determined that the other
8 State is entitled to the abandoned property.

9 (b) Before turning over property to another state under paragraph (a), the Administrator
10 shall require the other state to indemnify this State and its officers and employees against any
11 liability on a claim to the property.

12 **Reporter's Comment**

13
14 This section has been simplified to allow the Administrator to honor a valid claim of another
15 state to recover abandoned property held by this State upon a showing of entitlement to the
16 claimed property and indemnification of this State.

17 18 **SECTION 16. FILING CLAIM WITH ADMINISTRATOR; HANDLING OF** 19 **CLAIMS BY ADMINISTRATOR; ACTION TO ESTABLISH CLAIM.**

20 (a) A person, other than another state, claiming property paid or delivered to the
21 Administrator may file a claim on a form prescribed by the Administrator and verified or signed
22 under the penalty of perjury by the claimant.

23 (b) The Administrator may pay or deliver property to the owner if the Administrator has
24 been given proof sufficient to establish to the satisfaction of the Administrator that such person is
25 the rightful owner of the property

26 (c) Within 90 days after a claim or amended claim is filed, the Administrator shall allow or
27 deny the claim and give written notice of the decision to the claimant. If allowed, in whole or in
28 part, payment of the allowed amount shall be made with or within 30 days after notice of

allowance is given. If the claim is denied, the Administrator shall inform the claimant of the reasons 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 subsection (f) of this Section.

Reporter's Comment

A person who claims the right to abandoned property as the owner is entitled to a prompt determination and payment of the claim, and if denied to know the reasons why, and what other information might be required. The claimant then has the option of submitting an amended claim or proceeding to Court under § 16(f), or may abide by the Administrator's decision. No limitation is imposed on the number of claims or amended claims that may be filed by the same person with respect to the same property since conceivably additional new information bearing on its ownership may turn up at any time. But an unsuccessful suit under § 16(f) would bar the plaintiff/claimant from further claims absent new evidence.

(d) Within 30 days after a claim is allowed, the property or the net proceeds of a sale of the property shall be delivered or paid by the Administrator to the claimant, together with any dividend, interest, or other increment to which the claimant is entitled under Sections 12; provided, however, that before making delivery or payment of any allowed claim to the owner, the Administrator shall first determine, by making inquiry of the appropriate agencies, if there are legally enforceable debts which the claimant owes as described in Section 14(c), or as to which notice has been recorded with the [Secretary of the State] of this State, and shall withhold from such delivery or payment an amount sufficient to discharge all such indebtednesses as are determined to be owed by the claimant.

Reporter's Comment

The additional language requires the Administrator to determine if there are debts owing by the owner that need to be satisfied before turning the funds or property over to the claimant.

(e) A holder who pays the owner for property that has been delivered to the State and which, if claimed from the Administrator by the owner would be subject to an increment under

1 Section 11, may recover from the Administrator the amount of the increment.

2 (f) A person whose claim or amended claim has been denied, or whose claim or amended
3 claim has not been acted upon within [90 days] after its filing, may within a year after filing the
4 claim, maintain an original action to establish the claim in the [appropriate] court, naming the
5 [Administrator] as a defendant. [The court may award the prevailing party reasonable attorney's
6 fees and expenses of litigation.]

7 **Reporter's Comment**

8 If the Administrator fails to act on an owner's claim within 90 days, or if the claimant is
9 dissatisfied with the decision, the claimant has a year from the date the claim was filed to file suit
10 to establish the claim. Rather than restricting the award of attorneys' fees to the successful
11 claimant, an Administrator who is the prevailing party may also recover fees and expenses.

12
13 **SECTION 17. ELECTION TO TAKE PAYMENT OR DELIVERY.**

14 (a) The Administrator may decline to take custody of property reported under this [Act]
15 which the Administrator considers to have a value less than the expenses of notice and sale.

16 (b) After having unsuccessfully attempted to notify the apparent owner of property as
17 provided under section 10(a), a holder may voluntarily report and deliver to the Administrator
18 property that is not presumed abandoned and upon delivery to the Administrator the property
19 shall be deemed abandoned under this Act.

20 **Reporter's Comment**

21
22 This change to the Act would permit a holder voluntarily to deliver property to the Administrator
23 before it has been presumed to be abandoned, which then converts it into abandoned property. In
24 turn the Administrator may destroy or dispose of the property if it has no substantial value under
25 § 18.

26
27 [(c) The following property may not be reported and delivered to the Administrator under

28 (b):

29 (i) Stock or an equity interest in a business association under Section 2(a)(4) of

1 this Act;

2 (ii) an interest bearing debt of a business association or financial organization
3 under Section 2(a)(4) of this Act;

4 (iii) an individual retirement account, defined benefit plan, or other account or
5 plan that is qualified for tax deferral under the tax laws of the United States under Section
6 2(a)(14) of this Act that has not been terminated;

7 (iv) other tangible property entitlements that are due or deliverable to the owner
8 by the holder in a form other than money; or

9 (v) tangible property taken from a safe deposit box or other safekeeping
10 repository under Section 3 of this Act.

11 **Reporter's Comment**

12
13 This bracketed paragraph (c) sets out a series of property types it has been suggested should not
14 become abandoned property. It requires further discussion.

15
16 **SECTION 18. DESTRUCTION OR DISPOSITION OF PROPERTY HAVING NO**
17 **SUBSTANTIAL COMMERCIAL VALUE; IMMUNITY FROM LIABILITY.** If the
18 Administrator determines after investigation that property delivered under this [Act] has no
19 substantial commercial value, or that the costs of custody or disposition exceed the value of the
20 property, the Administrator may disclaim and not accept the property, or accept it and destroy or
21 otherwise dispose of the property at any time. An action or proceeding may not be maintained
22 against the State or any officer or against the holder for or on account of an act of the
23 Administrator under this section, except for intentional misconduct or malfeasance.

24 **SECTION 19. PERIODS OF LIMITATION AND REPOSE.**

25 [(a) The expiration, before or after the effective date of this [Act], of a period of
26 limitation on the owner's right to receive or recover property, whether specified by contract,

1 statute, or court order, does not preclude the property from being presumed abandoned or affect a
2 duty to file a report or to pay or deliver or transfer property to the Administrator as required by
3 this [Act].]

4 (b) No action or proceeding may be maintained by the Administrator to enforce this [Act]
5 in regard to the reporting, delivery, or payment of property more than [3] years after the holder
6 specifically identified the property in a report filed with the Administrator or gave express notice
7 to the Administrator of a dispute regarding specifically identified property, unless the amount or
8 value reported or with respect to which notice was given was less than 75% in the aggregate of
9 the amount or value that was due or required to be turned over to the Administrator, in which
10 event the limitation period is not more than [6] years after the report was filed or notice given.

11 **Reporter's Comment**

12
13 The new provisions would establish a statute of limitations on examinations for unclaimed
14 property with respect to which the holder has filed a report or given express notice of a dispute.
15 The time period of three years parallels the period for audits of tax returns by the IRS, and six
16 years where the amount reported is less than 75% of the amount determined to be due.
17

18 (c) No action, proceeding, or examination may be commenced by the Administrator with
19 respect to any duty of a holder under this Act more than 10 years after the first date the duty
20 arose.

21 **Reporter's Comment**

22
23 The new provision returns to the 1981 Act and provides a statute of repose and absolute bar to
24 examination and required payment or delivery of property more than 10 years after a report of
25 such property was due to be filed.
26

27 **SECTION 20. REQUESTS FOR REPORTS, EXAMINATION OF RECORDS;** 28 **LIMITATIONS ON USE OF INFORMATION AND DOCUMENTS OBTAINED BY THE** 29 **ADMINISTRATOR.**

30 (a) The Administrator may require a person who has not filed a report, or a person who

1 the Administrator believes has filed an inaccurate, incomplete, or false report, to file a verified
2 report in a form specified by the Administrator. The report must state whether the person is
3 holding property reportable under this [Act], describe property not previously reported or as to
4 which the Administrator has made inquiry, and specifically identify and state the amounts of
5 property that may be in issue.

6 (b) (1) The Administrator, at reasonable times and upon reasonable notice, may
7 examine the records of any person to determine whether the person has complied with this [Act],
8 may, if necessary, issue an administrative subpoena requiring that such records be made
9 available for examination, and may, if necessary, bring an action seeking judicial enforcement
10 of the subpoena. The Administrator may conduct the examination even if the person believes it
11 is not in possession of any property that must be reported, paid, or delivered under this [Act].

12 (2) The Administrator may contract with another person, other than a person
13 related to the Administrator, if an individual, or if a business entity is owned in whole or in part
14 by the Administrator or related to either of them by marriage or kinship within the third degree,
15 or by common ownership, to conduct the examination on behalf of the Administrator. The
16 Administrator may not authorize another person with whom it has contracted to conduct an
17 examination of a person believed to be the holder of unreported unclaimed property unless the
18 Administrator has given that person written demand to report and deliver unclaimed property,
19 and that person has not complied with the demand within [60] days of its delivery.

20 **Reporter's Comment**

21
22 This provision codifies a conflict of interest standard with regard to whom an Administrator may
23 enter into a contract for purposes of conducting an unclaimed property examination.

24
25 (3) [In the event the Administrator contracts with another person to conduct an

1 examination on behalf of the Administrator, the terms of any such contract may provide for
2 compensation of such person based on a fixed fee, hourly fee, or contingent fee to be paid out of
3 the proceeds of the amount (or value) of property paid or delivered to the Administrator as a
4 result of such examination [which is not the subject of ongoing litigation brought by a putative
5 holder under the provisions of Section 22(c)(2) or (3), provided however, no contingent fee
6 arrangement shall pay such person in excess of [10] percent of the amount (of value) of property
7 paid or delivered as a result of such examination;] [and further provided that no contingent fee
8 shall become payable with respect to any amount paid to the Administrator under protest until
9 the putative holder no longer has a right to claim a refund of the amount paid either because a
10 timely suit for refund has been finally adjudicated in favor of the Administrator, or the time for
11 filing suit for refund has lapsed with no suit being filed.]

12 **Reporter's Comment**
13

14 This provision expressly authorizes the Administrator to enter into hourly fixed fees, or
15 contingency fee audits, under the conditions set out in this section.
16

17 (4) [In the event an examination is to be conducted by a person contracted with by
18 the Administrator, the Administrator shall deliver to the person being examined a complete
19 unredacted copy of all contracts between the examiner and the Administrator and between all
20 persons participating in the conduct of the examination and the contracting party by whom they
21 are employed.

22 **Reporter's Comment**
23

24 This provision mandates that a person undergoing an investigation or audit by a third party
25 contractor be given unredacted copies of the contract.
26

27 (5) [No contract between the Administrator and another person which authorizes
28 such other person to conduct an examination under the provision of this [Act] may be awarded

1 unless:

2 (A) it is awarded on the basis of competitive bids conducted pursuant to
3 the provisions of [the code section authorizing the State's competitive bid for services to be
4 provided by private contractors];

5 (B) has been approved in advance by the State [Comptroller or other
6 appropriate official];

7 **Reporter's Comment**

8
9 This provision requires that third party auditing contracts be awarded on a competitive bid basis
10 and approved by the State's chief accounting officer.

11
12 (C) is expressly subject to public disclosure without redaction pursuant to
13 [the State's Freedom of Information Act;]

14 **Reporter's Comment**

15
16 All third party contracts are in the public domain subject to FOIA requests.

17
18 (D) the Administrator has made a good faith determination that:

19 (i) it is neither economically feasible nor fiscally responsible to
20 hire as employees of the State a sufficient number of persons who are competent to conduct such
21 examinations to reasonably insure voluntary compliance of this Act;

22 (ii) it is neither economically feasible nor fiscally responsible to
23 authorize auditors employed by the [Department of Revenue] of this State to conduct such
24 examinations on behalf of the Administrator; and

25 (iii) before entering into a contract with another person authorizing
26 examinations to be conducted on a contingent fee basis, the Administrator has determined that it
27 is neither economically feasible nor fiscally responsible to contract with another person, [and
28 specifically persons who are residents of this State] to conduct such examinations on an hourly

1 or fixed fee basis.

2 The Administrator's determinations under this part (d) shall be
3 reviewed by and concurred in by the [Comptroller] before any contract is awarded.

4 **Reporter's Comment**

5
6 These provisions require that before awarding an auditing contract the Administrator must make
7 good faith determination that:

8
9 (1) It is not economically feasible to employ staff auditors to perform the unclaimed property
10 auditing function;

11
12 (2) It is not economically feasible to contract the audit to staff auditors employed by the State's
13 revenue department, and;

14
15 (3) If on a contingent fee basis, it is not economically feasible to employ outside contract
16 auditors on an hourly or fixed fee basis.

17
18 These determinations by the Administrator require that they be reviewed and concurred in by the
19 State's chief accounting officer before audit contracts can be awarded.

20
21 (6) [If the Administrator contracts with other persons to conduct examinations on
22 behalf of the Administrator, no later than three months after the end of the State's fiscal year, the
23 Administrator shall compile and submit a report to the [Governor, the Comptroller, the Presiding
24 Officer of the Senate, and the Presiding Officer of the House] which shall contain the following
25 information with respect to the preceding fiscal year:

26 (A) The total amount and value of all property paid or delivered to the
27 Administrator, separated into the portion voluntarily paid or delivered, and the portion paid or
28 delivered as a result of an examination and determination of liability, which amount shall be
29 further separated into amounts recovered as a result of an examination conducted by (i) State
30 employees, (ii) and by outside parties under contract and further divided between those under
31 fixed fee contracts and those under contingent fee contracts;

32 (B) the total amount

1 (i) paid as compensation to State employees who conducted
2 examinations and the percentage such compensation paid was to the amount paid or delivered to
3 the Administrator as a result of such examinations

4 (ii) the names and amounts paid to all outside contractors, and the
5 total amounts paid or delivered to the Administrator as a result of such examinations; and

6 (iii) the names and amounts paid as contingent fees to contractors,
7 and the percentage such compensation bears to amounts paid or delivered to the Administrator as
8 a result of such examinations;

9 (C) the total amount paid by the Administrator to owners who claimed
10 property being held by the Administrator, and the percentage such total payments bear to the
11 total amounts paid or delivered to the Administrator;

12 (D) the total amount of claims made by purported owners which were
13 denied;

14 (E) the total amount applied to or made available to the State for its use,
15 and the uses to which such amounts were made, and

16 (F) the total amount of unclaimed funds held by the State subject to the
17 claims of owners.

18 (7) [Reports compiled by the Administrator pursuant to subpart (6) are public
19 records and are subject to the disclosure requirements of [the State's Freedom of Information
20 Act].

21 **Reporter's Comment**

22
23 Subparagraph (b)(6) establishes an in depth reporting requirement triggered by the
24 Administrator's decision to employ third party examiners, and is intended to better inform the
25 public and other responsible officials of the State with exactly how much unclaimed property net

1 revenue is being generated through the use of third party contractors and at what cost. The
2 current Acts do not require such disclosures and very substantial contracts are awarded which are
3 not fully disclosed or pass unnoticed. It also requires detailed reporting of how much property is
4 returned to owners, how many claims are denied, and how much net revenue is generated for the
5 benefit of the State. This report will allow assessment of the claim by Administrators that their
6 job is to return property to owners, not generate State revenue.

7
8 Contingent fee auditors are paid very large amounts of money and have a substantial economic
9 incentive to recover the greatest amounts possible which can be reasonably expected to cause
10 them to adopt aggressive examination techniques. It also incentivizes them to select potential
11 targets in choosing who to examine. This circumstance has recently prompted one state, North
12 Carolina, to enact legislation banning as a general matter the use of contingent fee auditors on
13 the basis that they “may impair an auditor’s independence or the perception of the auditor’s
14 independence by the public. N.C. Gen. Stat. § 116B-8. NAUPA representatives have made it
15 clear in their presentations to the drafting committee that they would be severely constrained in
16 their ability to do the job given to them were they not able to use outside auditors and pay them
17 on a contingent fee basis. These revised rules are intended to allow greater transparency as to
18 these issues to other State authorities and to the public.

19
20 (8) [For a period of [3][5][10] years after leaving employment with the State,
21 neither the Administrator, nor any persons employed by the Administrator who participate in,
22 recommend or approve the award of an unclaimed property examination contract on or after the
23 effective date of this Act, may be employed by, contracted with, or compensated in any capacity
24 by any person, or an affiliate of such person, with whom the Administrator has contracted to
25 conduct unclaimed property examinations on behalf of the Administrator.]

26 **Reporter’s Comment**

27
28 Recent events in Delaware have caused that State to enact laws imposing post-employment
29 constraints and limits on Administrators who have awarded contingent fee contracts with third
30 party auditors and then left the employ of the State to go to work at large salaries for the firms to
31 whom audit work has been given generating millions of dollars in fee revenue.

32
33 (c) The Administrator at reasonable times may examine the records of an agent,
34 including a dividend disbursing agent, transfer agent, or tax reporting agent, of a business
35 association or financial association that is the holder of property presumed abandoned if the
36 Administrator has given the notice required by subsection (b) to both the association or

1 organization and the agent at least 90 days before the examination.

2 (d) Documents and working papers obtained or compiled by the Administrator, or the
3 Administrator's agents, employees, or designated representatives, in the course of conducting an
4 examination are subject to the confidentiality provisions of Section 27, and are not public
5 records. However, the documents and papers may be:

6 (1) used by the Administrator in the course of an action to collect unclaimed
7 property or otherwise enforce this [Act];

8 (2) used in joint examinations conducted with or pursuant to an agreement with
9 another State, the federal government, or any other governmental subdivision, agency, or
10 instrumentality;

11 (3) produced pursuant to subpoena or court order; or

12
13 (4) disclosed to the abandoned property office of another State for that State's use
14 in circumstances equivalent to those described in this subdivision, if the other State is legally
15 bound to keep the documents and papers confidential in a manner equivalent to Section 27 of
16 this [Act].

17 (e) Any examination performed by the Administrator or his or her duly authorized
18 agents must be performed in accordance with generally accepted auditing practices and
19 standards to the extent applicable to unclaimed property examinations. A person whose books,
20 records, and papers have been examined by the Administrator or his or her duly authorized
21 agents shall be provided a complete copy in printed or electronic format of the examination
22 report, which shall identify in detail the work performed, the property types reviewed, any
23 estimation techniques employed, calculations showing the potential amount of property due,
24 and a statement of findings as well as all other correspondence and documentation which

1 formed a basis for the findings. The Administrator shall issue rules regarding accepted
2 examination standards.

3 (f) If the person being examined does not have substantially complete records, the
4 Administrator or his or her duly authorized agents may determine the amount of any abandoned
5 or unclaimed property due and owing based upon a reasonable method of estimation based on
6 all information available to the Administrator, including the use of statistical sampling when
7 appropriate and necessary, consistent with the standards described in subsection (e).

8 (g) If the person being examined has filed all the required reports and has maintained
9 substantially complete legal records, then all of the following apply to the examination:

10 (i) The examination shall include a review of the person's books and records.

11 (ii) The examination shall not be based on an estimate unless the person being
12 examined expressly consents in writing to the use of an estimate.

13 (iii) The Administrator or his or her duly authorized agents shall consider all
14 evidence presented by the holder to remediate the findings.

15 **Reporter's Comment**

16
17 New paragraphs (e), (f), and (g) are taken from 2013 Mich. Pub. Acts, 148 (Oct. 29, 2013).

18
19 (h) If an examination of the records of a person results in the disclosure of property
20 reportable under this [Act], the Administrator may assess the cost of the examination against the
21 holder at the rate of [\$200] a day for each examiner, or a greater amount that is reasonable and
22 was incurred, but the assessment may not exceed the value of the property found to be reportable.
23 The cost of an examination made pursuant to subsection (c) may be assessed only against the
24 business association or financial organization.

25 (i) If a person being examined believes that the examiner is making unreasonable or

1 unauthorized demands, or is not proceeding expeditiously to complete the examination, such
2 person may request that the Administrator intervene and take such remedial actions as the
3 circumstances may require, including, but not limited to, countermanding the demands of the
4 examiner, imposing time limits for the conduct of the examination, or reassigning the
5 examination to another examiner. The person making the request, or the person's duly
6 authorized agent or attorney, shall be entitled to a conference with the Administrator to present
7 his or her case, which conference may be held in person, telephonically, or by other electronic
8 means.

9 **Reporter's Comment**

10
11 Subparagraph (i) has been added to provide a method by which a person being examined may
12 obtain redress if he believes he is being treated unfairly by the examiner.
13

14 **SECTION 21. RETENTION OF RECORDS BY HOLDERS.**

15 (a) Except as otherwise provided in subsection (b), a holder required to file a report
16 under Section 7 shall maintain the records containing the information required to be included in
17 the report for [10] [7] years after the earlier of the date the report was filed, or the last date a
18 timely filed report was due to be filed. The records required to be retained shall include, but not
19 be limited to the date, place, nature, and amount of the transaction and the last known address of
20 the owner, if known to the holder.

21 **Reporter's Comment**

22
23 Assuming that the 10 year statute of repose (§ 19) is adopted, the period for required records
24 retention conceivably should be in parallel. However, a 10 year requirement is more extensive
25 than the seven year record retention period suggested by the IRS with respect to federal tax
26 liabilities (even though there is no formal equivalent statute of repose for federal taxes).
27

28 (b) A business association or financial organization that sells, issues, or provides to others
29 for sale or issue in this State, traveler's checks, money orders, or similar instruments other than

1 third-party bank checks, on which the business association or financial organization is directly
2 liable, shall maintain a record of the instruments while they remain outstanding, indicating the
3 State and date of issue, for three years after the holder files the report.

4 **SECTION 22. DETERMINATION OF LIABILITY FOR UNREPORTED**
5 **REPORTABLE PROPERTY; [ADMINISTRATIVE AND] JUDICIAL ENFORCEMENT.**

6 (a) If the Administrator finds from examination of a person pursuant to Section 20 that a
7 putative holder has failed or refused to pay over or deliver to the Administrator property believed
8 to be reportable under this [Act], the Administrator shall issue a written determination of such
9 liability and provide written notice to the putative holder of the determination.

10 (b) If the putative holder does not comply with a determination of the Administrator
11 within [90] days of the mailing of notice of the determination, the Administrator may maintain
12 an action in the [____] court of this State, or in the appropriate court of another State, to enforce
13 the determination; [provided that such action must be filed within [1] year of the mailing of
14 notice of the determination.]

15 **Reporter's Comment**

16
17 The revisions to this Section 22 provide a mechanism by which the Administrator who has
18 determined that a holder has an unremitted unclaimed property obligation may pursue collection
19 of property determined to be due to be paid to the Administrator. When the Administrator gives
20 the putative holder detailed written notice of the determination, the notice triggers the running of
21 a 90 day period during which the putative holder may either pay up or file suit to dispute the
22 determination in Court in whole or in part. If the putative holder does neither, the Administrator
23 has one year from the date of notice to commence an enforcement action against the putative
24 holder in Court.

25
26 (c) If the putative holder against whom a determination of liability to pay or turn over
27 reportable property believes the determination to be unjust, incorrect, or in error, in whole or in
28 part, the putative holder may:

29 (1) within 30 days of the mailing of a notice of determination of liability to pay or

1 turn over reportable property, request an informal conference with the Administrator, or an
2 employee of the State who is familiar with the provisions of this [Act] designated by the
3 Administrator. The making of a timely request for an informal conference shall toll the 90 day
4 period under the provisions of subsection (b) and subparts (2) and (3) of this subsection (c) until
5 such time as notice of the decision of the conferee has been given to the putative holder, or the
6 request for an informal conference has been withdrawn. The Administrator shall set a time and
7 place for such conference to be held within 20 days from the date of the request and shall give
8 the person requesting the conference notice of when and where it will be held. The purpose of an
9 informal conference is to give the putative holder an opportunity to confer informally with the
10 Administrator or the designated conferee, to discuss the determination and present such matters
11 for the conferee's consideration as the putative holder may consider informative and relevant to
12 any issues raised by the putative holder concerning the validity of the determination. A
13 conference may be adjourned and reconvened by the conferee. No oath shall be required and no
14 judicial rules of evidence shall be enforced. The Administrator, or the designated conferee, shall
15 issue a decision and give notice of the decision to the putative holder with 20 days of the
16 conclusion of an informal conference. A putative holder shall not be prejudiced in any manner
17 by seeking or failing to seek or pursue an informal conference. The Administrator, or the
18 designated conferee with the approval of the Administrator, may adjust a determination in part or
19 withdraw it in its entirety. An informal conference shall not be considered an administrative
20 remedy and shall not constitute a contested case subject to the [Uniform Administrative
21 Procedures Act of this State]. The Administrator shall not be prejudiced in any manner by failing
22 to act within the time periods prescribed in the subsection (c), except that no interest shall accrue
23 on any amount determined to be reportable property during any period in which the

1 Administrator has not acted within the time period prescribed in this subsection (c) until the
2 earlier of such time as a suit is filed by the putative holder or the [90] day period for filing suit
3 under subpart (3) of this subsection (3) has expired. At any time prior to the filing of suit by the
4 taxpayer, the Administrator, in the Administrator's discretion, may hold an informal conference
5 with the putative holder without the requirement of timely written request for a conference.

6 **Reporter's Comment**

7
8 Within the first 30 days from the date of the notice of the determination the putative holder has
9 the option to choose to have an informal conference with the Administrator or a designee of the
10 Administrator. A timely request for informal conference tolls the running of the 90 day period
11 within which to file suit to challenge the determination until the conference is held and the
12 conferee issues conference findings. The informal conference is just that. It is not an
13 administrative procedure or contested case, no rules of evidence are imposed, no testimony is
14 taken, and no record is created. If the conferee agrees with the holder the determination can be
15 altered or reversed in whole or in part.

16
17 (2) pay the amount or deliver the property determined to be reportable to the
18 Administrator under protest and within [one year] of payment or delivery, maintain an action
19 against the Administrator in the [____] court of this State for a refund of all or a portion of the
20 amount paid or return of all or part of the property delivered; or

21 (3) file suit against the Administrator in the [____] court of this State challenging
22 all or a portion of the determination of the liability and seek a judgment of the court declaring
23 that the determination or portion thereof challenged is unenforceable.

24 (d) During the 90 day period for filing suit by the putative holder under subparts (2) and
25 (3) and until the final determination of any suit filed under subpart (2) or (3), any collection
26 activity effort by the Administrator shall be stayed; [provided, however, the Administrator may
27 file a lien with the Secretary of State of this State, or the State of the putative holder's domicile
28 or place of residence against the putative holder for [150%] of the amount or for the property
29 which is the subject of the determination, which lien upon filing and until paid, released or

1 determined to be invalid by final judgment of a court of competent jurisdiction shall have the
2 same force and effect of a final judgment of a court of general jurisdiction of this State.

3 **Reporter's Comment**
4

5 A putative holder who disputes the determination of the Administrator under protest has two
6 avenues of judicial relief: (1) to pay or deliver the property and within one year file suit in Court
7 for refund, or (2) not pay and within the 90 day period (plus any period tolled) file a suit in Court
8 for challenging the delineation by the Administrator. During that period and while a timely filed
9 suit is pending the Administrator is barred from any effort to collect the amount but may file a
10 lien against the putative holder in an amount of 150% of the amount determined to be owed.

11
12 (e) If the putative holder pays the amount or delivers the property determined to be
13 reportable property to the Administrator under protest at any time after filing suit for a
14 declaration by the court under subpart (3), the suit shall continue as if it were originally filed as a
15 suit for refund or return of property under subpart (2).

16 **Reporter's Comment**
17

18 After the putative holder has filed a timely suit challenging the determination it may elect to pay
19 or deliver the property it has been determined that it owes, and the suit continues as if it were
20 originally filed as a suit for refund.

21
22 (f) Upon the final determination of any suit brought under the provisions of this section,
23 the court [may] [shall], on application or petition, award to the prevailing party its reasonable
24 attorney's fees and expenses of litigation [in an amount not to exceed [20]% of the amount in
25 controversy]. [If the attorney's fees and expenses of litigation awarded under this provision are
26 with respect to a determination of the putative holder's liability for unreported unclaimed
27 property made pursuant to an examination of the putative holder by a person with whom the
28 Administrator contracted to conduct the examination, the Administrator shall be entitled to
29 recover the amount awarded from the contractor who conducted the examination.]

30 [(g) A putative holder who is the prevailing party in a suit for refund of money paid to the
31 Administrator [shall be entitled to] [may be awarded] interest on the amount recovered from the

1 date paid to the Administrator at the same rate a holder is required to pay to the Administrator
2 under the provisions of Sections 24(a) of this [Act].]

3 **Reporter's Comment**
4

5 This provision allows or requires the Court to award to the prevailing party its reasonable
6 attorneys' fees and expenses of litigation subject to a cap of not more than 20% of the amount in
7 controversy. The provisions of the foregoing revisions to § 22 are adopted from the Tennessee
8 Tax Procedures Act of 1996, Tenn. Code Ann. § 67-1-1801, *et seq.*
9

10 [As an alternate to subpart (c)(3) the Revised Act might provide that the putative holder
11 who wishes to challenge the Administrator's determination of liability complying with the
12 determination and filing suit for refund or return of the property, would be
13 [entitled/regarded/allowed] to a proceeding against the Administrator under the State's
14 Administrative Procedures Act, or under a provision to be drafted specifically for this Act,
15 provided that any such administrative proceeding would in all events be subject to review by a
16 Court of record as a matter of right in a de novo proceeding on the record, subject to the State's
17 rules of evidence and procedures for introduction of additional evidence to supplement the
18 record.]

19 **Reporter's Comment**
20

21 Some States may prefer that the parties go through an intermediate administrative procedure to
22 resolve any disputes before the matter can be taken to Court. In Tennessee, unlike the procedure
23 for going to Court without an administrative proceeding used in disputes of taxes administered
24 by the Department of Revenue, the State Board of Equalization procedures for review of
25 property tax assessments mandates a hearing before an administrative judge from which either
26 party may appeal to the Chancery Court for a trial de novo on the record. In the Reporter's
27 experience this is a cumbersome and burdensome exercise that causes delay and additional
28 expense. By contrast, experience has shown that more than 80% of the disputed tax assessments
29 which are taken to informal conference in the Tennessee Department of Revenue result in an
30 outcome sufficiently satisfactory to the taxpayer to allow resolution of the issue without a suit
31 being filed in Court.

1 **SECTION 23. INTERSTATE AGREEMENTS AND COOPERATION; JOINT**
2 **AND RECIPROCAL ACTIONS WITH OTHER STATES.**

3 (a) The Administrator may enter into an agreement with another State to exchange
4 information relating to abandoned property or its possible existence. The agreement may permit
5 the other State, or another person acting on behalf of a State, to examine records as authorized in
6 Section 20. The Administrator by rule may require the reporting of information needed to enable
7 compliance with an agreement made under this section and prescribe the form.

8 (b) The Administrator may join with another State to examine and seek enforcement of
9 this [Act] against any person who is or may be holding property reportable under this [Act].

10 (c) At the request of another State, the attorney general of this State may maintain an
11 action on behalf of the other State to enforce, in this State, the unclaimed property laws of the
12 other State against a holder of property subject to escheat or a claim of abandonment by the other
13 State, if the other State has agreed to pay expenses incurred by the attorney general in
14 maintaining the action.

15 (d) The Administrator may request that the attorney general of another State or another
16 attorney commence an action in the other State on behalf of the Administrator. With the approval
17 of the attorney general of this State, the Administrator may retain any other attorney to
18 commence an action in this State on behalf of the Administrator. This State shall pay all
19 expenses, including attorney's fees, in maintaining an action under this subsection. With the
20 Administrator's approval, the expenses and attorney's fees may be paid from money received
21 under this [Act]. [The Administrator may agree to pay expenses and attorney's fees based in
22 whole or in part on a percentage of the value of any property recovered in the action.] Any
23 expenses or attorney's fees paid under this subsection may not be deducted from the amount that

1 is subject to the claim by the owner under this [Act].

2 (e) In an action to enforce this Act under § 22, if no Court of general jurisdiction in this
3 State has jurisdiction over the defendant, the Administrator may commence the action in a
4 federal court or State court of another State having jurisdiction over that person.

5 [(f) The Administrator, for and on behalf of this State, may commence an action against
6 the United States government or any agency or subdivision thereof for an adjudication that the
7 proceeds of United States savings bonds subject to the provisions of this Act that are payable to
8 the State.]

9 **Reporter's Comment**

10
11 This provision for suit to recover U.S. Savings Bonds is bracketed to see what decision is made
12 with regard to whether U. S. Savings Bonds may become unclaimed property under this Act.
13

14 (g) The Administrator shall be deemed a necessary party to any judicial or administrative
15 proceedings concerning the disposition and handling of unclaimed property that is or may be
16 payable or distributable into the custody of the Administrator. The Administrator shall have a
17 right to intervene and participate in any judicial or administrative proceeding when to do so will
18 be in the best interest of this State or of the apparent owner of the unclaimed property or to
19 conserve and safeguard the unclaimed property against dissipation, undue diminishment or
20 adverse discriminatory treatment.

21 **SECTION 24. INTEREST AND PENALTIES.**

22 (a) A holder who fails to report, pay, or deliver property within the time prescribed by
23 this [Act] shall pay to the Administrator interest at the fixed annual rate of [two percentage
24 points above the annual rate of discount in effect on the date the property should have been paid
25 or delivered for the most recent issue of 52-week United States Treasury bills] [the interest
26 payable to the Department of Revenue of this State on tax deficiencies] on the property or value

1 thereof from the date the property should have been reported, paid or delivered.

2 (b) Except as otherwise provided in subsection (c), a holder who fails to report, pay, or
3 deliver property within the time prescribed by this [Act], or fails to perform other duties imposed
4 by this [Act], shall pay to the Administrator, in addition to interest as provided in subsection (a),
5 a civil penalty of [\$200] for each day the report, payment, or delivery is withheld, or the duty is
6 not performed, up to a maximum of [\$5,000].

7 (c) A holder who enters into a contract or other arrangement for the purposes of
8 evading its obligations under this [Act] or who willfully fails to report, pay, or deliver property
9 within the time prescribed by this [Act], or willfully fails to perform other duties imposed by this
10 [Act], shall pay to the Administrator, in addition to interest as provided in subsection (a), a civil
11 penalty of [\$1,000] for each day the report, payment, or delivery is withheld, or the duty is not
12 performed, up to a maximum of [\$25,000], plus 25 percent of the value of any property that
13 should have been but was not reported.

14 (d) A holder who makes a fraudulent report shall pay to the Administrator, in addition to
15 interest as provided in subsection (a), a civil penalty of [\$1,000] for each day from the date a
16 report under this [Act] was due, up to a maximum of [\$25,000], plus 25 percent of the value of
17 any property that should have been but was not reported.

18 (e) The Administrator for good cause may waive, in whole or in part, interest under
19 subsection (a) and penalties under subsections (b) and (c), and shall waive penalties if the holder
20 acted in good faith and without negligence.

21 **SECTION 25. AGREEMENT TO LOCATE PROPERTY.**

22 (a) An agreement by an owner, the primary purpose of which is to locate, deliver,
23 recover, or assist in the recovery of property that is presumed abandoned is void and

1 unenforceable if it was entered into during the period commencing on the date the property was
2 presumed abandoned and extending to a time that is 24 months after the date the property is paid
3 or delivered to the Administrator. This subsection does not apply to an owner's agreement with
4 an attorney to file a claim as to identified property or contest the Administrator's denial of a
5 claim.

6 (b) An agreement by an owner, the primary purpose of which is to locate, deliver,
7 recover, or assist in the recovery of property is enforceable only if the agreement is in writing,
8 clearly sets forth the nature of the property and the services to be rendered, is signed by the
9 apparent owner, and states the value of the property before and after the fee or other
10 compensation has been deducted.

11 (c) If an agreement covered by this section applies to mineral proceeds and the agreement
12 contains a provision to pay compensation that includes a portion of the underlying minerals or
13 any mineral proceeds not then presumed abandoned, the provision is void and unenforceable.

14 (d) An agreement covered by this section which provides for compensation that is
15 unconscionable is unenforceable except by the owner. An owner who has agreed to pay
16 compensation that is unconscionable, or the Administrator on behalf of the owner, may maintain
17 an action to reduce the compensation to a conscionable amount. The court may award reasonable
18 attorney's fees to the party who prevails in the action.

19 (e) This section does not preclude an owner from asserting that an agreement covered by
20 this section is invalid on grounds other than unconscionable compensation.

21 **SECTION 26. FOREIGN TRANSACTIONS.** This [Act] does not apply to property
22 held, due, and owing to a person whose last known address is in a foreign country or to property
23 arising out of a foreign transaction where the property is held in a foreign country or location

1 outside the United States, unless the property has been voluntarily turned over to the State
2 pursuant to Section 5(4).

3 **Reporter's Comment**
4

5 This provision is related to a decision on whether property held for the benefit of an owner
6 whose address is outside of the United States.

7
8 **SECTION 27. CONFIDENTIALITY OF INFORMATION.**

9 (a) Except as otherwise provided in this Act, the records of the Administrator, the
10 reports of holders, and the information derived by an examination or audit of the records of a
11 person or otherwise obtained by or communicated to the Administrator shall be deemed
12 confidential and exempt from public inspection or disclosure. Any record or information that is
13 confidential under the law of this State, or another State where the property is located, or of the
14 United States when in the possession of a person shall continue to be confidential when
15 disclosed or delivered to the Administrator. Any record or information that is confidential under
16 any law of another State shall continue to be confidential when disclosed or delivered by that
17 other State to the Administrator.

18 (b) Confidential information concerning any aspect of property presumed abandoned
19 and reported and delivered to the State shall only be disclosed to:

20 (1) an apparent owner, or his or her personal representative, next of kin, attorney
21 at law, or a person entitled to inherit from a person who was an apparent owner but who is now
22 deceased or such person's personal representative, next-of-kin, or attorney-at-law;

23 (2) another department or agency of the State or of the federal government;

24 (3) the Administrator of another state, if that other state accords substantially
25 reciprocal privileges to the Administrator of this State and has legal requirements of

1 confidentiality of records comparable to that of this State;

2 (c) subject to the exception provided in subsection (d) the Administrator shall include in
3 published notices and on the Internet database provided for in Section 10(b)(2) and (3) of this
4 Act the names of all apparent owners of property presumed abandoned and in custody of the
5 State, and may include additional information concerning an apparent owner's property on the
6 internet database that in the discretion of the Administrator will assist in facilitating the
7 identification and claiming of property.

8 (d) all persons with whom the Administrator has contracted to conduct examinations
9 under this Act on behalf of the Administrator, and all affiliates, officers, directors, owners,
10 employees and independent contractors of such persons shall be subject to the provisions of this
11 Section, and may be required by any putative holder before being subjected to examination
12 conducted by them may require, as a condition of disclosure of its records that they execute and
13 deliver to such person a confidentiality agreement reasonably satisfactory to the Administrator.

14 (e) Any person subject to the provisions of this section shall also be subject to the
15 provisions of [the statute of the State imposing criminal penalties for violation of a requirement
16 of maintaining confidentiality of information].

17 **Reporter's Comment**

18
19 This new section on confidentiality is intended to address holders' concerns about their
20 confidential information being disclosed, and more importantly the confidentiality of their
21 customers, the owners, not being protected, especially where there are stringent requirements of
22 client confidentiality imposed on financial institutions. This provision is adapted from the
23 statutory confidentiality provisions dealing with taxpayer information in the hands of the
24 Tennessee Department of Revenue.

25
26 (f) A holder may not be required to include any confidential or non-public information
27 or data in any notices it is required to provide under this [Act] to an owner of property held by

1 the holder, and if required to include any such information or data in a report provided to the
2 Administrator may only be required to submit such information or data by way of a secure
3 means such as a strong password protected website or internet address or an encrypted compact
4 disk, thumb drive or other means, provided the Administrator is provided a means by which it
5 may access such information or data.

6 **Reporter's Comment**

7
8 This specific additional safeguard was requested by representatives of the securities industry.
9

10 **SECTION 28. TRANSITIONAL PROVISIONS.**

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

15 (b) This [Act] does not relieve a holder of a duty that arose before the effective date of
16 this [Act] to report, pay, or deliver property. Except as otherwise provided in Section 19(b) and
17 (c), a holder who did not comply with the law in effect before the effective date of this [Act] is
18 subject to the applicable provisions for enforcement and penalties which then existed, which are
19 continued in effect for the purpose of this section.

20 **SECTION 29. RULES.** The Administrator may adopt [pursuant to the Administrative
21 Procedures Act] rules necessary to carry out this [Act].

22 **SECTION 30. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** This
23 [Act] shall be applied and construed to effectuate its general purpose to make uniform the law
24 with respect to the subject of this [Act] among States enacting it.

25 **SECTION 31. SHORT TITLE.** This [Act] may be cited as the Uniform Unclaimed

1 Property Act (1995).

2 **SECTION 32. SEVERABILITY CLAUSE.** If any provision of this [Act] or the
3 application thereof to any person or circumstance is held invalid, the invalidity does not affect
4 other provisions or applications of this [Act] which can be given effect without the invalid
5 provision or application, and to this end the provisions of this [Act] are severable.

6 **SECTION 33. EFFECTIVE DATE.** This [Act] takes effect _____.

7 **SECTION 34. REPEALS.** The following acts and parts of acts are repealed:

8 (a)

9 (b)

10 (c)