

REVISION OF THE UNIFORM UNCLAIMED PROPERTY ACT
Schedule of NAUPA Recommendations

February 4, 2014

1. Reinstate 1981 Uniform Act provisions relating to unclaimed **life insurance policies**; redefine "proof of death" to include identification of policyholder within the Social Security Administration death master file (DMF) or similar database; incorporate NCOIL Model Act to create an affirmative duty on the part of a life insurer to perform DMF matching.

Citation: 1995 Uniform Act Section 2(a)(8) and (d)(iv).

Objective: update statute to reflect current regulatory-compliance requirements of state unclaimed property programs and life insurance departments.

NAUPA research: position paper drafted.

NAUPA legislation: drafted.

2. Define abandonment parameters for funds maintained on **stored value cards** and other electronic mediums for the payment of wages, and government benefits, as well as general purpose "cash cards."

Citation: 1995 Uniform Act Section 2(12).

Objective: to eliminate the ambiguity that currently exists concerning whether these obligations should be treated as unclaimed deposit accounts or some other property type.

NAUPA research: position paper completed.

NAUPA legislation:

(12) wages or other compensation for personal services, including wages or other compensation represented by a non-activated stored value card or other electronic payment medium, one year after the compensation becomes payable;

(new subsection) funds represented by a non-activated stored value card or other non-activated electronic payment medium, one year after the funds would have otherwise first been available to the owner;

3. Expressly provide that where there is a **different abandonment period for the medium on which an unclaimed asset was paid and the abandonment period for the underlying obligation**, the abandonment period for the underlying property types takes precedence.

Citation: 1995 Uniform Act Section 2 (new subsection required).

Objective: to eliminate the ambiguity that currently exists between payments mediums and the nature of the liability; prevent holders from taking advantage of extended abandonment periods for certain payment mediums that were never intended to supersede specific types of obligations.

NAUPA research: position paper drafted.

NAUPA legislation: drafted.

4. Provide specific due diligence and abandonment criteria for **tax-advantaged assets** in addition to retirement plans.

Citation: 1995 Uniform Act Section 2 (will require new subsections for each tax-advantaged asset individually addressed).

Objective: review new and evolving tax advantaged assets (colleges savings plans, health savings accounts, ROTH IRAs, etc.) and determine reasonable abandonment periods in view of passive investment characteristics of certain assets, taking into account the possible investment loss to owners from presuming abandonment under existing (standard) parameters.

NAUPA research: position paper completed and research on additional types of tax-advantaged assets being conducted.

NAUPA legislation: drafted; will require further consideration including possible differential treatment for different types of tax advantaged assets; will required consideration of due diligence requirements and treatment of deceased owners.

5. Retain as reportable unclaimed property arising from a transaction between business entities ("**business-to-business**" or "B2B" property).

Citation: none (no exemption under the 1995 Act).

Objective: to prevent the exemption of B2B property such that businesses (particularly small businesses) will continue to recover substantial amounts of unclaimed property reported under the Act.

NAUPA research: position paper completed.

NAUPA legislation: none required.

6. Maintain the states' ability to **utilize contract examiners and compensate them on a pay for performance basis.**

Citation: 1995 Uniform Act Section 20(b); method of payment not addressed.

Objective: to allow for the continued use of contingent fee contract examiners, which is the current practice of 49 states, the District of Columbia, and Puerto Rico.

NAUPA research: position paper drafted.

NAUPA legislation: none required (but should Section 20 (a) be amended to expressly provide that auditors may be compensated on a contingency basis?).

7. Retain in full force and effect prohibitions on **conditions precedent** and **anti-limitations** concepts.

Citations: 1995 Uniform Act Sections 2(e) (conditions precedent) and 19 (anti-limitations).

Objective: maintain the important consumer protection aspects of the Act and prevent holders from effectuating private escheat of unclaimed assets.

NAUPA research: position paper completed.

NAUPA legislation: none required.

8. Create a uniform **audit appeals process for holders disputing findings from an unclaimed property audit.**

Citation: none (new section required).

Objective: provide an administrative forum for holders to challenge audit findings; expedite the finalization of an examination and collection of audit findings; avoid litigation where disputes exist.

NAUPA research: position paper completed.

NAUPA legislation: drafted.

9. Refine existing definitions of unclaimed property to expressly include **promotional incentives and **loyalty programs**.**

Citation: 1995 Uniform Act Section 2(13)(ii).

Objective: to remove ambiguity concerning whether direct monetary consideration is necessary for a liability to constitute unclaimed property.

NAUPA research: position paper drafted.

NAUPA legislation: drafted.

10. Revise **definitions of holder "domicile."**

Objective: provide greater clarity as to a holder's state of domicile, particularly with respect to forms of legal entity not widely utilized when the 1995 Act was drafted.

Citation: 1995 Uniform Act Section 1(4).

NAUPA research: April 26, 2013 committee discussion.

NAUPA legislation: "Domicile" means the State of incorporation of a corporation; the State of formation of a limited partnership, limited liability company, trust, or other entity created by State statute; the State of home office of a federally-chartered entity; and except as otherwise provided the State of principal place of business for a sole proprietorship or other unincorporated entity.

11. Provide greater specificity for **records to be retained by a holder following the filing of a report of unclaimed property.**

Citation: 1995 Uniform Act Section 21(a).

Objective: create an affirmative duty on the part of holders to document and retain all records relied on in preparing an unclaimed property filing, so as to facilitate a subsequent audit of the filing.

NAUPA research: April 26, 2013 committee discussion.

NAUPA legislation: Except as otherwise provided in subsection (b) or (c), a holder required to file a report under section 7 shall maintain for a period of 10 years after filing the report, all underlying source documents, work papers, records, and other information utilized in determining (i) whether property was unclaimed and (ii) the amount of property reportable.

(b) [unchanged]

(c) The administrator may provide by rule for a shorter record retention period.

12. Revise definition of "domicile" to address mergers and reincorporations.

Objective: to provide clarity when the state of incorporation of a holder changes prior to the running of the abandonment period.

Citation: 1995 Uniform Act Section 1(4).

NAUPA research: April 26, 2013 committee discussion.

NAUPA legislation: (add to existing text) Where the state of domicile of a holder changes subsequent to the date on which property became payable or distributable, the holder's state of domicile for unclaimed property purposes shall be the State where the holder is domiciled at such time as the property is deemed abandoned.

13. Limit the assignment of holder liability to a third party.

Objective: prevent holders circumventing their reporting obligations through contractual assignment of the liability to third parties outside of the creditor-debtor relationship giving rise to the property. Currently, many third parties "assuming" the reporting obligation fail to report correctly, if at all. Additionally, avoid confusion as to the disposition of unclaimed property in corporate divestitures through requiring that the holder remains liable for all of its unclaimed property obligations, except where the holder undergoes merger or acquisition.

Citation: none (new section required).

NAUPA research: April 26, 2013 committee discussion.

*NAUPA legislation: New Section **Limitations on Assignment or Transfer of Liability***

(a) 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.

(b) Nothing in this section shall prohibit a holder from contracting with a third party for the reporting of unclaimed property, provided however that a holder shall remain responsible to the administrator for the complete, accurate and timely reporting of the property.

14. Include a definition for "address."

Objective: provide clarity to holders and avoid disputes as to what constitutes an "address," particularly in view of evolving record keeping formats by holders.

Citation: 1995 Uniform Act (new definitional subsection).

NAUPA research: April 26, 2013 committee discussion

NAUPA legislation: "Address" means any description, code or indication of the location of the apparent owner that sufficiently identifies the state of residence of the owner, regardless of whether such description, code or indication of location is sufficient to direct the delivery of mail.

NOTE: *as an alternative to "sufficiently identifies," "adequately," "reasonably," or "definitively" could be utilized. I believe the US Supreme Court's test is that a state must be able to demonstrate that an owner did in fact have a last known address in that State.*

15. Allow for state disclaimer or destruction of tangible property where the costs of custody would exceed the value of the property.

Objective: provide states with flexibility in assuming custody of safe deposit box contents and other tangible property where storage and other costs would be excessive, given the value of the property.

Citation: 1995 Uniform Act Sections 17(a) and 18 (existing law permits disclaimer/destruction where the cost of notice/sale exceeds the value of the tangible property, or if the tangible property has no substantial commercial value).

NAUPA Research: April 26, 2013 committee discussion.

NAUPA Legislation:

(17)(a)--The administrator may decline to receive property reported under this Act which the administrator considers to have a value less than the expenses of custody or notice and sale.

(18) If the Administrator determines after investigation that property delivered under this Act has no substantial commercial value, or the value of the property is less than the expense of the State maintaining custody of the property, the Administrator may destroy or otherwise dispose of the property at any time. An action or proceeding may not be maintained against the State or any officer or against the holder for or on account of an act of the administrator under this section, except for intentional misconduct or malfeasance.

16. Clarify that verifiable electronic contact with an owner of unclaimed property **constitutes an indication of the owner's interest** in the property.

Objective: increasingly, owners undertake account inquiries and communications with holders electronically, and where subject to verification, should be expressly recognized as constituting contact for purposes of rebutting a presumption of abandonment.

Citation: 1995 Uniform Act 2(c), (d).

NAUPA research: April 26, 2013 committee discussion.

NAUPA legislation:

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

(iv) an account balance or similar owner-initiated account inquiry, including an account inquiry made electronically where the owner has contemporaneously authenticated his or her identity.

[Renumber existing subsection (iv) as (v).]

The Commissioners' Comment should clarify that this definition of an owner's indication is limited to situations where an owner logs in to an account and does not extend to authentication cookies, because authentication cookies do not confirm the identity of the individual making the inquiry.

17. Expand the acceptable processes for the **sale of tangible property**, including electronic/Internet auctions; exempt military decorations from tangible property sales.

Objective: allow for states to utilize any means for the sale of tangible property, so as to maximize efficiency and proceeds of sale; recognize the special status of military decorations.

Citation: 1995 Uniform Act 12(a).

NAUPA research: April 26, 2013 committee discussion.

NAUPA legislation:

(a) Except as otherwise provided in this section, the administrator, within three years after the receipt of abandoned property, shall sell it to the highest bidder at a publicly held sale, which may include an Internet auction or any other forum which in the judgment of the administrator will yield the most favorable net proceeds of sale. The administrator may decline the highest bid and re-offer the property for sale if the administrator considers the highest bid to be insufficient. The administrator need not offer the property for sale if the administrator considers the probable cost of sale to be disproportionately excessive given the anticipated proceeds of sale.

(b) Medals for military service in the armed forces of the United States shall not be sold by the administrator. In lieu of the administrator holding such medals until the rightful owner is located, the administrator may, in his or her discretion, designate a veterans' organization or other appropriate organization to act as custodian.

[Renumber existing subsections (b) and (c) as (c) and (d), respectively].

18. Allow holders to perform **due diligence** at an earlier juncture, when the likelihood of successfully contacting the owner is greater; clarify specifics of holder due diligence communications; expand, beyond printed notice, the acceptable approaches available to the state to **apprise owners of the state's receipt of unclaimed property**.

Objective: improve the effectiveness, efficiency and cost of notifying owners of the existence of unclaimed property.

Citation: 1995 Uniform Act Sections 7(e) and 9

NAUPA research: April 26, 2013 committee discussion

NAUPA legislation: Change Section 9 title to **Owner Notification** from **Notice and Publication of Lists of Abandoned Property**

(a) A holder of property that has been presumed abandoned or may become abandoned shall send written notice to the apparent owner not less than 60 days before filing the report.

(1) The face of the notice shall contain a heading at the top that reads as follows: "THE STATE OF _____ REQUIRES US TO NOTIFY YOU THAT YOUR UNCLAIMED PROPERTY MAY BE TRANSFERRED TO THE STATE IF YOU DO NOT CONTACT US," or substantially similar language. The notice shall specify the date that the property will be turned over to the State, and explain the necessity of filing a claim for the return of the property following receipt by the State; identify the nature and amount of the property that is the subject of the notice; and provide instructions that the apparent owner must follow to prevent the property from being reported and remitted to the State.

(2) The holder need not send a notice where the records of the holder indicate the address of the apparent owner is incorrect, or if the total value of property due the apparent owner is less than \$50.

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

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

(1) the mailing of a written notice to apparent owners of property presumed abandoned and received by the State. The administrator, in his or her discretion, may elect not to mail written notices to any owner where the administrator determines that such mailing would not be likely to be received by the apparent owner, or would otherwise not be cost effective.

(2) publication of notice, every six months in a newspaper of general circulation, of unclaimed property received by the State. Such publication shall include the following information:

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

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

(iii) the address of the unclaimed property website maintained by the administrator.

(iv) a telephone number for persons wishing to contact the State for purposes of inquiring about or claiming abandoned property.

(v) a statement that anyone interested in searching for unclaimed property may access the Internet at a local public library.

(3) the maintenance of an Internet database accessible by the public which sets forth the names of all owners reported to the state in an approved electronic format for whom unclaimed property in amount of \$10 or more is being held by the State. The Internet database shall include instructions for filing a claim to abandoned property with the administrator, and a form of claim.

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

(c)Notwithstanding any provision of law to the contrary, all officers, agencies, boards, commissions, divisions, and departments of the state, including any body politic and corporation created by the State for public purposes, and every political subdivision of the state shall, upon the request of the administrator, make their books and records available and cooperate with the administrator to determine the current whereabouts of an apparent owner of unclaimed property. Neither the administrator no any employee or agent of the administrator may use or disclose the information or record obtained except as necessary in attempting to locate the apparent owner of unclaimed property.

(Alternative version of (c): Notwithstanding any other provision of law, upon request of the administrator, all persons and government entities shall provide the administrator from its records the address and any other information which could be used to locate the apparent owner of unclaimed property. Even if the information or record requested by the administrator is deemed confidential under any other law or regulation, that information or record shall be furnished to the administrator. Neither the administrator no any employee or agent of the administrator may use or disclose the information or record obtained except as necessary in attempting to locate the apparent owner of unclaimed property.)

[Amend Section 7(e) to reflect transfer of holder due diligence requirement to Section 9].

19. Mandate standardized reporting formats; allow for alternative approaches to a written signature for **holder report verification**.

Objective: insure ease of data conversion and uniform reporting through requiring holder use of state-specified reporting formats and mediums; provide flexibility for utilization of emerging technologies such as electronic signature in the verification of report submissions by holders.

Citation: 1995 Uniform Act Section 7(a), (b)

NAUPA research: April 26, 2013 committee discussion.

NAUPA legislation:

(a)A holder of property presumed abandoned shall make a report to the administrator concerning the property. The report must be filed in a format that is approved by the administrator.

(b) The report must contain:

* * *

(7) A verification or attestation of the holder as to the completeness and accuracy of the report. The administrator, in his or her discretion, may (i) accept an electronic signature or other alternative evidence of verification or attestation or (ii) waive the requirement of verification or attestation; and

[Renumber existing subsection (7) as subsection (8); omit "and" at the end of existing subsection (6)].

20. Provide guidance with respect to **dormancy charges** and prohibit excessive charges; prohibit "stacking" of multiple service charges.

Objective: prevent dormancy charges from being used by holders as de facto private escheat through defining what constitutes an "unconscionable" dormancy charge.

Citation: 1995 Uniform Act Section 5

NAUPA research: April 26, 2013 committee discussion

NAUPA legislation: (a) Except as otherwise provided in (b), a holder may deduct from property presumed abandoned a charge imposed by reason of the owner's failure to claim the property within a specified time if there is a valid enforceable written contract between the holder and the owner under which the holder may impose the charge and the holder regularly imposes the charge, which is not regularly reversed or otherwise cancelled.

(b) A holder may not deduct from property presumed abandoned a charge:

(1) for the holder's reporting of the property as abandoned, or for the holder's performance of other duties under this Act;

(2) that is unconscionable, in consideration of the costs incurred by the holder in its maintenance of the owner's property, and the services received by the owner; or

(3) specifically for reason of the owner's failure to claim the property within a specified time if the holder is contemporaneously imposing another type of service charge against the property.

21. Provide for the **electronic imaging and storage** of hard copy records in the possession of the state.

Objective: expressly authorize the digital conversion and storage of records; permit the destruction of paper records once imaged; and provide for the legal sufficiency of electronic records.

Citation: none (new section required).

NAUPA Research: April 26, 2013 committee discussion.

NAUPA legislation:

*(New section) **Imaging and disposing of paper records***

The administrator shall develop procedures for the storage, retention and disposal of records filed, submitted or otherwise created under this Act. Electronic records shall be

maintained in an unalterable readable electronic media in accordance with industry standards, reviewed for accuracy and indexed, and shall have the same force and effect as the original records whether the original records are in existence or not.

22. Relax formality of requirements for interstate cooperation.

Objective: eliminate requirements for formal agreements and rulemaking in interstate cooperation scenarios.

Citation: 1995 Uniform Act Section 23(a).

NAUPA research: April 26, 2013 committee discussion.

NAUPA legislation: The administrator may exchange information with another State relating to abandoned property or its existence. The administrator may in writing authorize another State, or a person acting on behalf of another State, to examine records as authorized in Section 20.

23. Discourage active, ongoing reciprocal reporting and address the state's disposition of property belonging to another state.

Objective: to move away from reciprocal reporting and to create a mutual, affirmative obligation for states to exchange property in their possession that is in fact owed to other states.

Citation: 1995 Uniform Act Section 14

NAUPA Research: April 26, 2013 committee discussion

NAUPA legislation:

(a) If property is received by the administrator and the administrator is aware that the property is subject to the superior claim of another State, the administrator shall either:

(1) return the property to the holder so that it may be paid and delivered to the correct State; or

(2) report and deliver the property to the correct State. No formal agreement shall be required for the administrator to undertake such transfer to the correct State.

(b) Property under the custody of the administrator under this Act is subject to recovery by another State if:

[Renumber existing subsections (b) and (c) as (c) and (d), respectively.]

NOTE: *the committee may have interest in the "Colorado model," which requires that the unclaimed program "proactively" match claims over \$600 against various databases identifying delinquent taxpayers, child support payors, etc. This model can be alternatively incorporated in suggested revisions to the Act, should the committee so elect.*

24. Expand the scope of premature reporting.

Objective: permit holders to report and remit most types of property at any time after due diligence is performed.

Citation: 1995 Uniform Act Section 17 (b).

NAUPA research: April 26, 2013 committee discussion.

NAUPA legislation: Property that has not yet been presumed abandoned may be voluntarily reported and delivered by a holder to the administrator and upon receipt by the administrator shall be deemed abandoned under the Act, provided that

(1) the holder has attempted to contact the apparent owner of the property as provided for in Section 9(a) of this Act; and

(2) the property is not:

(i) a stock or equity interest in a business association under Section 2(a)(3) of this Act;

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

(iii) an individual retirement account, defined benefit plan, or other account or plan that is qualified for tax deferral under the income tax laws of the United States under Section 2(a)(14) of this Act (unless the plan has been terminated);

(iv) other intangible property entitlements that are due or payable to the owner by the holder in a form other than money; or

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

NOTE: the committee is not in agreement as to whether premature reporting should require the consent of the administrator. The consent requirement exists within the 1995 Uniform Act. If the consensus is that consent should be mandatory, it is no clear that there is a reason to amend the Act.

25. Address worthless and non-transferable securities; review the need for modification of the 1995 Uniform Act to take into account **dematerialization of securities;** broaden the level of discretion of states in enacting protocols governing the delivery and transfer of **unclaimed securities and mutual funds.**

Objective: update the Act to reflect current operations procedures for securities; make states better able to administer unclaimed securities portfolios in an effective and cost-efficient manner.

Citation: 1995 Uniform Act Section 8.

NAUPA research: position paper completed.

NAUPA legislation: drafted.

26. Include the “Kansas Provision” covering unredeemed U.S. Savings Bonds.

Objective: to allow the states to pursue claims for unredeemed bonds held by the Bureau of Public Debt adopting the approach successfully undertaken by Kansas in 2014.

Citation: none

NAUPA research: none (proposed by Carolyn Atkinson).

*NAUPA legislation: (new section) **United States Savings Bonds; Procedure for Escheat***

(a) Notwithstanding any provision this Act to the contrary, United States savings bonds that have fully matured and have ceased bearing interest and that are presumed abandoned pursuant to section 2(a)(12) of this Act shall escheat to the State and all property rights to such United States savings bonds or proceeds from such bonds shall vest solely in the State of [].

(b) Within 180 days after a United States savings bond has been presumed abandoned, in the absence of a claim having been filed with the administrator for such savings bond,, the administrator shall commence a civil action in the district court of [] County for a determination that such savings bond shall escheat to the State. The administrator may postpone the bringing of such action until sufficient savings bonds have accumulated in the administrator’s custody to justify the expense of such proceedings.

(c) If no person shall file a claim or appear at the hearing to substantiate a claim or where the court shall determine that a claimant is not entitled to the property claimed by such claimant, then the court, if satisfied by evidence that the administrator has substantially complied with the laws of this state, shall enter a judgment that the subject United States savings bonds have escheated to the state.

(d) The administrator shall redeem from the Bureau of the Fiscal Service of the United States Treasury such United States savings bonds escheated to the State and the proceeds from such redemption of United States savings bonds shall be deposited in accordance with Section 13 of this Act.

27. Allow for claims to escheated savings bonds, and the offset of debts owed the State against unclaimed property received by the State.

Objective: provide for the claiming of savings bonds proceeds by owners notwithstanding their escheat to the state; formally recognize the standing of a state or local government entity to collect an amount owed by an owner against unclaimed property held for that owner.

Citation: 1995 Uniform Act Section 15.

NAUPA Research: April 26, 2013 committee discussion.

NAUPA Legislation:

(e) Not withstanding any provision of this Act to the contrary, any person making a claim for the United States savings bonds escheated to the State under Section [TBD] or for the

proceeds from such bonds, may file a claim with the administrator. Upon providing sufficient proof the validity of such person's claim, the administrator may pay such claim.

(f) Upon receiving notice from a governmental entity that an apparent owner owes a past-due legally enforceable debt, the administrator shall, following confirmation of the apparent owner's entitlement to the property, offset the property, in whole or in part, to satisfy the debt or delinquent child support. For purposes of this subsection, "past due-legally enforceable debt" shall include:

(1) current child support, child support debt, retroactive child support, child support arrearages, child support costs, or child support when combined with maintenance;

(2) court fines, fees, costs, surcharges, or restitution; or

(3) state taxes, penalties or interest.

28. Expand **legal enforcement** to expressly recognize the State's right to bring an action against the federal government with respect to savings bonds; file an action in federal court; and to be named a "necessary party" in all legal actions involving unclaimed property.

Objective: to ensure that the State is duly authorized to enforce all claims to abandoned property, and to ensure that the State receives adequate notice of litigation where the disposition of unclaimed property is at issue.

Citation: 1995 Uniform Act Section 22.

NAUPA research: April 26, 2013 committee discussion.

NAUPA legislation:

*Change section title from "**Enforcement**" to "**Legal Proceedings and Enforcement.**"*

(a) The administrator may maintain an action to enforce this Act. In a situation where no district court in this State can obtain jurisdiction over the person involved, the administrator may commence such an action in a federal court or state court of another state having jurisdiction over that person. The court may award reasonable attorney's fees to the prevailing party.

(b) The administrator, for and on behalf of this State, may commence an action against the United States government or any agency or subdivision thereof for an adjudication that the proceeds of United States savings bonds subject to the provisions of this Act that are payable to the State.

(c) The administrator shall be deemed an indispensable party to any judicial or administrative proceedings concerning the disposition and handling of unclaimed property that is or may be payable or distributable into the protective custody of the administrator. The administrator shall have a right to intervene and participate in any judicial or administrative proceeding when to do so will be in the best interest of this state, the

apparent owner or the unclaimed property or to conserve and safeguard the unclaimed property against dissipation, undue diminishment or adverse discriminatory treatment.

29. Expand **confidentiality** of owner records and holder information in the possession of the State.

Objective: to ensure greater financial privacy for owners and the public release of proprietary information regarding holders.

Citation: none.

NAUPA research: proposed by Carolyn Atkinson.

NAUPA legislation:

*(new section) “**Confidentiality of Information.**”*

(a) Except as otherwise provided by this section, the records of the administrator, the reports of holders, and the information derived by an examination or audit of the records of a person or otherwise obtained by or communicated to the administrator shall be deemed confidential and exempt from public inspection. Any record or information that is confidential under the law of this State or of the United States when in the possession of a person shall continue to be confidential when revealed or delivered to the administrator. Any record or information that is confidential under any law of another state shall continue to be confidential when revealed or delivered by that other State to the administrator.

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

(1) an apparent owner, or his or her personal representative, next of kin, attorney or law, or such person entitled to inherit from an apparent owner who is deceased;

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

(2) the administrator of another state, if that other state accords substantially reciprocal privileges to the administrator.

(c) The administrator shall include on the Internet database provided for in Section 9(b)(3) of this Act the names of all apparent owners of property presumed abandoned and in the custody of the State. The administrator may include additional information concerning an apparent owner’s property on the Internet database that, in the discretion of the administrator, will assist in facilitate the identification and claiming of property.

30. Reduce **abandonment periods** and include an acceleration of the presumption of abandonment where the **owner is deceased** or where a **dormancy charge** has been imposed.

Objective: increase return rates to missing owners, and extend consumer protections by preventing significant diminution of property value where dormancy charges are being assessed.

Citation: 1995 Uniform Act Section 2.

NAUPA research: NAUPA UUPA revision survey (2013).

NAUPA legislation:

-Reduce all five year abandonment periods to three years;

-Reduce matured life insurance policies (including policies where the insured has reached the limiting age) from three years to two years;

Add the following new subsections:

(16) if the holder has imposed a charge against property for reason of owner inactivity or the failure of the owner to claim the property within a specified period of time, and the abandonment period for the property as specified in this section is greater than two years, the property shall instead be presumed abandoned two years from the date of the owner's last indication of interest in the property.

(17) if the holder has reason to believe that the owner is deceased, and the abandonment period for the owner's property as specified in this section is greater than two years, the property shall instead be presumed abandoned two years from the date of the owner's last indication of interest in the property. If the owner's property is subject to subsection (14) of this section, the two year presumption of abandonment shall run from the earliest of the date of the distribution or attempted distribution of the property, the date of the required distribution as stated in the plan or trust agreement governing the plan, or the date, if determinable by the holder, specified in the income tax laws of the United States by which distribution of the property must begin in order to avoid a tax penalty.

NOTE: there is not a proposal to reduce traveler's checks or money orders from their current abandonment periods of 15 years and 7 years, respectively; however, under new subsection (16), an issuer of a negotiable check would be required to report an unrepresented item after two years, if inactivity or dormancy fees were imposed. Thus, issuers of these types of payments would have a choice: either generate revenue from float, or from dormancy fees, but not both.

31. Expand the definition of a **gift card**, revise the determination of abandonment to take into account the date of an owner's last use of the card, and reconcile with federal regulatory guidelines on preemption.

Objective: update property classifications; codify the determination of the Consumer Financial Protection Bureau that an unclaimed gift card balance cannot be claimed by a state as unclaimed property less than three years from the date of sale, unless the issuer is required by the state to continue to honor any such reported gift card balances (see Docket No. CFPB-2012-0036, August 16, 2012).

Citation: 1995 Uniform Act Section 2(a)(7)and Section 10(c).

NAUPA research: NAUPA UUPA revision survey (2013).

NAUPA legislation:

(2)(a)(7) balance of a gift card, including virtual gift card and other form of gift instrument, three years following the latter of the date of sale or the owner's last use of the card.

(10)(c) A holder who has paid money to the administrator pursuant to this Act may subsequently make payment to a person reasonably appearing to the holder to be entitled to payment. In the case of a gift card or other gift instrument including a virtual gift card balance that has been transferred to the administrator, the holder shall be required to honor the gift card upon presentment by the owner. Upon a filing by the holder of proof of payment and proof that the payee was entitled to the payment, the administrator shall promptly reimburse the holder for the payment without imposing a fee or other charge. If reimbursement is sought for a payment made on a negotiable instrument, including a traveler's check or money order, the holder must be reimbursed upon filing proof that the instrument was duly presented and that payment was made to a person who reasonably appeared to be entitled to payment. The holder must be reimbursed for payment made even if the payment was made to a person whose claim was barred under Section 19(a).

32. Revise the definition of a **money order.**

Objective: prevent holders from taking advantage of the longer, seven year abandonment period for money orders. The longer period was intended to make personal money orders an affordable payment instrument for the unbanked. However, many holders now make general disbursements though instruments treated as money orders. The longer abandonment period in this scenario is not justifiable.

Citation: 1995 Uniform Act section 1(10).

NAUPA research: August 5, 1991 discussion draft of proposed revisions to the 1981 Uniform Act.

NAUPA legislation: "Money order" is an express money order or personal money order, purchased by an individual. The term does not include a bank money order or any other instrument sold by a financial organization, or any instrument on which a business association, financial organization, or insurance company is the remitter.

33. Expand the definition of "property" to expressly cover **virtual currency.**

Objective: update the Act to include payments made through mediums of exchange other than money, such as Bitcoin.

Citation: 1995 Uniform Act Section 1(13)(i)

NAUPA research: none.

NAUPA legislation:

"Property" means...(i) money, electronic or virtual currency, a check, draft, deposit, interest, or dividend;.

34. Expand the definition of **state to reference the U.S. Virgin Islands.**

Objective: provide recognition to the U.S. Virgin Islands which has adopted the 1995 Uniform Act, but is not expressly included in the definition of a "state" within the Act.

Citation: 1995 Uniform Act Section (1)(15).

NAUPA research: none.

NAUPA legislation: "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

35. Redefine the abandonment of **unclaimed bonds**, and expressly address the abandonment period for a municipal bond.

Objective: eliminate the concept of "underlying bonds" which have in fact not been reported by corporate trust agents; resolve ongoing disputes as to when municipal bond interest/principal is reportable.

Citation: 1995 Uniform Act Section 2(a)(4) and (11).

NAUPA research: none

NAUPA legislation:

(4) interest on debt of a business association or financial organization, three years.

(11) property held by a court, government, governmental subdivision, agency, or instrumentality, including municipal bond interest and principal under the administration of a paying agent or indenture trustee, one year after the property becomes distributable.

36. Expand coverage for unclaimed **class action** and other settlement proceeds.

Objective: improve upon the existing provision of the Act, which merely speaks to undistributed property received by court. The existing provision is ambiguous and current compliance is low.

Citation: 1995 Uniform Act Section 2(10).

NAUPA research: April 26, 2013 committee discussion.

NAUPA legislation: property distributable pursuant to a judgment or settlement in a class action, litigation, other dispute between a judicial or administrative body, one year after the property became distributable.

37. Reconfigure existing abandonment parameters for **unclaimed securities**.

Objective: update the Act to take into account the increasing level of electronic-only communications with shareholders, and dovetail statute to complement Securities and Exchange Commission lost shareholder search requirements.

Citation: 1995 Uniform Act Section 2(3).

NAUPA research: being developed.

NAUPA legislation: being developed.

38. Expand **penalties** to address active efforts by holders to circumvent or ignore the Act.

Objective: provide holders with an additional incentive not to avoid compliance through strengthening sanctions.

Citation: 1995 Uniform Act Section 24

NAUPA research: April 26, 2013 committee discussion.

NAUPA legislation: (c) A holder who enters into a contract or arrangement to avoid its responsibilities under the Act, who willfully fails to report, pay, or deliver unclaimed property within the time prescribed by this Act, or willfully fails to perform other duties imposed by this Act, shall pay the administrator, in addition to interest as provided in subsection (a), a civil penalty of \$1,000 for each day the report, payment, or delivery is withheld, up to a maximum of \$25,000, plus 25 percent of the value of any property that should have been but was not reported.

39. Expand a holder's **burden of proof** to encompass all records of unclaimed property, not merely unrepresented negotiable instruments.

Objective: holders are in the best position to explain why records reflecting an outstanding liability do not in fact represent unclaimed property; it is substantially more difficult, if not in many instances impossible for a state to document that an outstanding liability does in fact reflect unclaimed property. Shifting the burden of proof to a holder, which actually created the accounting record, places responsibility on the proper party.

Citation: 1995 Uniform Act Section 6

NAUPA research: none

NAUPA legislation: A record of a liability in a holder's book or records is prima facie evidence of an obligation. In claiming property from a holder, the administrator's burden of proof as to the existence and amount of the property and its abandonment is satisfied by showing establishment of the liability and passage of the requisite period of abandonment. Defenses of payment, satisfaction, discharge, want of consideration, and errors in accounting or recordkeeping are affirmative defenses that must be established by the holder.

40. Reinstate the **address presumption for beneficiaries** that was included in the 1981 Uniform Act.

Objective: address the scenario where property is owed to a beneficiary, but the beneficiary has no last known address; treat the last known address of the beneficiary as identical to that of the deceased insured or other original owner.

Citation: 1981 Uniform Act Section 7(b); 1995 Uniform Act Section 4

NAUPA research: none

NAUPA legislation: 4(8) If the last known address of a person other the apparent owner, insured or annuitant who becomes entitled to property through the death of the apparent owner, insured or annuitant is not known to the holder, it is presumed that the last known

address of the person entitled to the property is the same as the last known address of the apparent owner, insured or annuitant according to the record of the holder.