

D R A F T
FOR APPROVAL

REVISED UNIFORM UNCLAIMED PROPERTY ACT

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REVISED UNIFORM UNCLAIMED PROPERTY ACT

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NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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May 26, 2016

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*

DAVID D. BIKLEN, 799 Prospect Ave., B2, West Hartford, CT 06105

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, 1395 Kalmia Ave., Boulder, CO 80304

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 Plz., 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

RICHARD T. CASSIDY, 100 Main St., P. O. Box 1124, Burlington, VT 05402, *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, 333 S. Hope St., 16th Floor, Los Angeles, CA 90071, *ABA Advisor*

ALEXANDRA DARRABY, 11620 Wilshire Blvd., Suite 900, Los Angeles, CA 90025, *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, 322 70th St. SE, P.O. Box 3328, Charleston, WV 25333, *Advisor*

BETH PEARCE, Office of the State Treasurer, 109 State St., Montpelier, 4th Floor, VT 05609-6200, *Advisor*

EXECUTIVE DIRECTOR

LIZA KARSAI, 111 N. Wabash Ave., Suite 1010, Chicago, IL 60602, *Executive Director*

Copies of this act may be obtained from:

UNIFORM LAW COMMISSION
111 N. Wabash Ave., Suite 1010
Chicago, IL 60602
312/450-6600
www.uniformlaws.org

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1 **REVISED UNIFORM UNCLAIMED PROPERTY ACT**

2 **[ARTICLE] 1**

3 **IN GENERAL**

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

6 **SECTION 102. DEFINITIONS.** In this [act]:

7 (1) “Administrator” means [insert name of the state official with responsibility to
8 administer this [act]].

9 (2) “Administrator’s agent” means a person with whom the administrator contracts to
10 conduct an examination under [Article] 10 on behalf of the administrator and an independent
11 contractor of the person. The term includes each individual participating in the examination on
12 behalf of the person or contractor.

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

15 (4) “Business association” means a for profit or nonprofit corporation, joint stock
16 company, investment company other than an investment company registered under the
17 Investment Company Act of 1940[, as amended,], 15 U.S.C. Sections 80a-1 through 80a-64,
18 partnership, unincorporated association, joint venture, limited liability company, business trust,
19 trust company, land bank, safe deposit company, safekeeping depository, financial organization,
20 insurance company, federally chartered entity, utility, sole proprietorship, or other business
21 entity.

22 (5) “Confidential information” means the information described in Section 1402.

23 (6) “Domicile” means:

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

2 (B) for a business association, other than a corporation, whose formation requires
3 a filing with a state, the state of its filing;

4 (C) for a federally chartered entity or an investment company registered under the
5 Investment Company Act of 1940[, as amended,], 15 U.S.C. Sections 80a-1 through 80a-64, the
6 state of its home office; and

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

8 (7) “Electronic” means relating to technology having electrical, digital, magnetic,
9 wireless, optical, electromagnetic, or similar capabilities.

10 (8) “Electronic mail” means any communication of information by electronic means
11 which is automatically retained and stored and may be readily accessed or retrieved.

12 (9) “Financial organization” means a savings and loan association, building and loan
13 association, savings bank, industrial bank, bank, banking organization, or credit union.

14 (10) “Game-related digital content” means digital content that exists only in an electronic
15 game or electronic-game platform. The term:

16 (A) includes:

17 (i) game-play currency such as a virtual wallet, even if denominated in
18 United States currency; and

19 (ii) the following if for use or redemption only within that game or
20 platform or another electronic game or electronic-game platform:

21 (I) points sometimes referred to as gems, tokens, gold, and similar
22 names; and

23 (II) digital codes; and

1 (B) does not include an item that the issuer:

2 (i) permits to be redeemed for use outside of a game or platform for:

3 (I) money; or

4 (II) goods or services that have more than minimal value; or

5 (ii) otherwise monetizes for use outside of a game or platform.

6 (11) "Gift card" means:

7 (A) a stored-value card:

8 (i) the value of which does not expire;

9 (ii) that may be decreased in value only by redemption for merchandise,
10 goods, or services; and

11 (iii) that, unless required by law, may not be redeemed for or converted
12 into money or otherwise monetized by the issuer; and

13 (B) includes a prepaid commercial mobile radio service, as defined in 47 C.F.R.
14 20.3[, as amended].

15 (12) "Holder" means a person obligated to hold for the account of, or to deliver or pay to,
16 the owner property that is subject to this [act].

17 (13) "Insurance company" means an association, corporation, or fraternal or mutual-
18 benefit organization, whether or not for profit, engaged in the business of providing life
19 endowments, annuities, or insurance, including accident, burial, casualty, credit-life, contract-
20 performance, dental, disability, fidelity, fire, health, hospitalization, illness, life, malpractice,
21 marine, mortgage, surety, wage-protection, and worker-compensation insurance.

22 (14) "Loyalty card" means a record given without direct monetary consideration, under
23 an award, reward, benefit, loyalty, incentive, rebate, or promotional program which may be used

1 or redeemed only to obtain goods or services or a discount on goods or services. The term does
2 not include a record that may be redeemed for money or otherwise monetized by the issuer.

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

8 (16) “Mineral proceeds” means an amount payable for extraction, production, or sale of
9 minerals, or, on the abandonment of the amount, the amount that becomes payable after
10 abandonment. The term includes an amount payable:

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

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

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

17 (17) “Money order” means a payment order for a specified amount of money and
18 includes an express money order and a personal money order on which the remitter is the
19 purchaser.

20 (18) “Municipal bond” means a bond or evidence of indebtedness issued by a
21 municipality or other political subdivision of a state.

22 (19) “Net card value” means the original purchase price or original issued value of a
23 stored-value card, plus amounts added to its original value and minus amounts used and any

1 service charge, fee, or dormancy charge permitted by law.

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

6 (21) “Owner” means a person that has a legal, beneficial, or equitable interest in property
7 subject to this [act] or the person’s legal representative when acting on behalf of the owner. The
8 term includes:

9 (A) a depositor, for a deposit;

10 (B) a beneficiary, for a trust other than a deposit in trust;

11 (C) a creditor, claimant, or payee, for other property; and

12 (D) the lawful bearer of a record that may be used to obtain money, a reward, or a
13 thing of value.

14 (22) “Payroll card” means a record that evidences a payroll-card account as defined in
15 Regulation E, 12 C.F.R. Part 1005[, as amended].

16 (23) “Person” means an individual, estate, business association, public corporation,
17 government or governmental subdivision, agency, or instrumentality, or other legal entity.

18 (24) “Property” means tangible property described in Section 205 or a fixed and certain
19 interest in intangible property held, issued, or owed in the course of a holder’s business or by a
20 government, governmental subdivision, agency, or instrumentality. The term:

21 (A) includes all income from or increments to the property;

22 (B) includes property referred to as or evidenced by:

23 (i) money, virtual currency, interest, dividend, a check, draft, deposit, or

1 payroll card;

2 (ii) a credit balance, customer's overpayment, stored-value card, security
3 deposit, refund, credit memorandum, unpaid wage, unused ticket for which the issuer has an
4 obligation to provide a refund, mineral proceeds, or unidentified remittance;

5 (iii) a security except for:

6 (I) a worthless security; or

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

10 (iv) a bond, debenture, note, or other evidence of indebtedness;

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

13 (vi) an amount due and payable under the terms of an annuity contract or
14 insurance policy; and

15 (vii) an amount distributable from a trust or custodial fund established
16 under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock
17 purchase, profit-sharing, employee-savings, supplemental-unemployment insurance, or similar
18 benefits; and
19

20 (C) does not include:

21 (i) game-related digital content; [or]

22 (ii) a loyalty card.[:] [or]

23 [(iii) an in-store credit for returned merchandise][:] [or]

24 [(iv) a gift card].

1 (25) “Putative holder” means a person believed by the administrator to be a holder, until
2 the person pays or delivers to the administrator property subject to this [act] or a final
3 determination is made that the person is a holder.

4 (26) “Record” means information that is inscribed on a tangible medium or that is stored
5 in an electronic or other medium and is retrievable in perceivable form.

6 (27) “Security” means a security or security entitlement as defined in [cite to appropriate
7 sections of Article 8 of the Uniform Commercial Code].

8 (28) “State” means a state of the United States, the District of Columbia, the
9 Commonwealth of Puerto Rico, the United States Virgin Islands, or any territory or insular
10 possession subject to the jurisdiction of the United States.

11 (29) “Stored-value card”:

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

15 (B) includes:

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

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

20 (C) does not include a loyalty card[, gift card,] or game-related digital content.

21 (30) “Utility” means a person that owns or operates for public use a plant, equipment,
22 real property, franchise, or license for the following public services:

23 (A) transmission of communications or information;

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

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

5 (31) “Virtual currency” means a digital representation of value used as a medium of
6 exchange, unit of account, or a store of value, but does not have legal tender status as recognized
7 by the United States. The term does not include:

8 (A) the software or protocols governing the transfer of the digital representation
9 of value;

10 (B) game-related digital content; or

11 (C) a loyalty card[or gift card].

12 (32) “Worthless security” means a security whose cost of liquidation and delivery would
13 exceed the value of the security on the date a report is due under this [act].

14 ***Legislative Notes:***

15

16 *In states in which the constitution, or other law, does not permit the phrase “as*
17 *amended” when federal statutes or regulations are incorporated into state law, the phrase*
18 *should be deleted in paragraphs (4), (6)(C), (11)(B), and (22) of Section 201. If those federal*
19 *statutes or regulations are amended in the future, those states will need to decide whether their*
20 *unclaimed property laws will need to be revised to reflect those amendments. In states where*
21 *incorporating future changes to federal statutes or regulations is permitted, the brackets should*
22 *be removed and the language retained so that future amendments to the referenced statutes and*
23 *regulations will be incorporated into the act without further action by those states.*

24

25 *The definitions of “security” and “security entitlement” in Section 102(27) should refer*
26 *to the appropriate section of the state’s enacted version of Article 8 of the Uniform Commercial*
27 *Code.*

28

29 *Thirty-three states exempt gift cards from unclaimed property either in whole or in part,*
30 *with variations. (See Section 102(11).) For example, Colorado exempts up to a certain amount*
31 *and Tennessee exempts 40% of the credit remaining on a gift card that has been abandoned.*
32 *The act does not take a position on whether or to what extent gift cards should be included or*
33 *excluded, leaving to the individual states to choose and to tailor this act to fit their choices.*

1 *Either way, however, a definition is needed. This one is suggested, but a state may choose a*
2 *different definition. Also note in Section 102(11)(B) a reference to the Code of Federal*
3 *Regulations. Some states do not reference federal statutes or regulations in their acts. These*
4 *states should substitute the full text of the relevant section of the Regulations verbatim.*
5

6 *For states that do not refer to federal statutes or regulations, the reference in Section*
7 *102(22) to the Code of Federal Regulations should be replaced with “...means a record that*
8 *evidences an account that is directly or indirectly established through an employer and to which*
9 *electronic fund transfers of an employee’s wages, salary, and other compensation are made on a*
10 *recurring basis.”*
11

12 *States that want to exclude in-store credits for returned merchandise from unclaimed*
13 *property should remove the brackets from Section 102(24)(C)(iii) and retain the language.*
14 *States that want to include these credits should delete clause (iii) in its entirety. Likewise, states*
15 *that want to exclude gift cards from unclaimed property should delete the brackets from Section*
16 *102(25)(B)(iv) and retain the language, but states that want to include gift cards should delete*
17 *clause (iv) in its entirety.*
18

19 *Eleven states have some form of exemption for property rights arising from transactions*
20 *in a business-to-business relationship. A state that wants to exempt this type of property will*
21 *need to include in Section 102 a definition of a business-to-business relationship and specifically*
22 *state in the definition of “property” in Section 102(24) that it does not include property rights*
23 *arising from a business-to-business relationship.*
24

25 *In Section 102(29)(B)(ii) and (C) the words “a gift card and” are in brackets to indicate*
26 *that those states that want to exclude gift cards from unclaimed property should remove them*
27 *from inclusion in the definition of stored-value card by deleting reference to gift cards in*
28 *subparagraph (B)(ii) and removing the brackets in subparagraph (C). States that want to*
29 *include gift cards, should remove the brackets from subparagraph (B)(ii) and delete reference to*
30 *them in subparagraph (C).*
31

32 **Comments**

33 **1.** As used in Section 102(4) the word “partnership” is intended to include all forms
34 of partnerships, not just general partnerships.
35

36 **2.** Section 102(6)(A) is current law based on the decision of the U.S. Supreme Court
37 in Texas v New Jersey, 379 U.S. 674 (1964). Subsection (B) follows the rationale of the Court
38 that if the state of incorporation is the domicile, then there will be no confusion. In cases of
39 associations other than corporations, such as LLC’s and limited partnerships, that only come into
40 existence upon the filing of their organizational documents with a state, there likewise can be no
41 confusion. At the time the Court announced its rule with respect to corporations, LLCs did not
42 exist in the United States. The first state to authorize the formation of LLCs was Wyoming in
43 1977. There is no reason to assume the Court would not have applied the same rationale to
44 LLCs. Limited partnerships were in existence, but at the time they were of limited use and were
45 seldom formed in a state other than the one in which they were organized and operated.

1 **3.** The trustee is the legal owner of trust assets. (See Section 102(22).) However,
2 there are situations where there is no trustee to act and the beneficial or equitable owner is the
3 “owner” for purposes of this act. The trustee as legal owner has precedence over the beneficial
4 owner unless the beneficiary can establish that the trust has terminated or there is no trustee
5 living to take and hold the property.
6

7 **4.** Payroll cards (Section 102(21)) are a subset of stored-value cards and are intended
8 to mean the bank account into which wages and other compensation can be paid and accessed
9 electronically by the employee. Accordingly they have a three year holding period as do bank
10 accounts, rather than the one year holding period for unpaid compensation being held by the
11 employer.
12

13 **5.** The term “bond” in Section 102(24)(A)(iv) includes U.S. Savings Bonds and they
14 are intended to be included in the definition of property under this act. The decision of the Third
15 Circuit in Treasurer of New Jersey v U.S. Dept. of Treasury, 684 F.3d 382 (2012) makes it clear
16 that the right of the U.S. Treasury to hold the proceeds of U.S. Savings Bonds in its custody for
17 the owners of the bonds preempts state claims to take custody and hold the bonds indefinitely for
18 the owners. The Court also indicated that the outcome would be different where a state had
19 become the owner of the bonds by operation of its escheat law or otherwise. In 2000 Kansas
20 amended its unclaimed property act to establish a procedure by which the Kansas administrator
21 could bring an action for a judgment of the state court affirming that the administrator was the
22 owner of U.S. Savings Bonds that had not been claimed. This matter is in litigation in the U.S.
23 Court of Federal Claims in a suit brought by the Treasurer of Kansas in Estes v United States,
24 13-1011 (Fed. Cl. 2015). By Opinion and Order entered August 20, 2015, the trial judge denied
25 the defendant’s Motion to Dismiss the plaintiff’s contract claim, equitable estoppel and
26 declaratory judgment claims and Takings Clause claim, and dismissed the plaintiff’s third party
27 beneficiary claim. The matter is still pending. Logically, if an administrator is judicially
28 declared to be the owner of U.S. Savings Bonds found in the lock box of a deceased owner by
29 operation of the state’s escheat laws, the administrator’s claim to the proceeds as the “owner”
30 should prevail. The more difficult issue before the Court is the “absent owner” bonds with
31 respect to which there is no evidence of the continued interest or ownership of the original
32 registered owner of the bonds. The court will have to determine whether the Kansas procedure
33 for obtaining such a ruling from a court is sufficient to create and vest legal title to the bond
34 proceeds in the administration.
35

36 **6.** The definition of virtual currency (Section 102(31)) is adapted from the current
37 draft of the Uniform Regulation of Virtual Currency Act (URVCA), a Uniform Law Commission
38 product which currently has settled on a definition of “virtual currency.” It is thought that the
39 two definitions should be harmonized. As used in this act, this URVCA definition specifically
40 excludes game related digital content and loyalty cards as they are excluded from this act, and
41 should not be swept back in through an over broad interpretation of virtual currency. The same
42 will hold true for versions of this act that will exclude “gift cards”.
43

1 under the terms of the policy or contract or, if a policy or contract for which an amount is owed
2 on proof of death has not matured by proof of the death of the insured or annuitant, three years
3 after the earlier of the date:

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

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

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

10 (9) property held by a court, including property received as proceeds of a class action,
11 one year after the property becomes distributable;

12 (10) property held by a government or governmental subdivision, agency, or
13 instrumentality, including municipal bond interest and unredeemed principal under the
14 administration of a paying agent or indenture trustee, one year after the property becomes
15 distributable;

16 (11) wages, commissions, bonuses, or reimbursements to which an employee is entitled,
17 or other compensation for personal services, other than amounts held in a payroll card, one year
18 after the amount becomes payable;

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

21 (13) all other property not specified in this section or Sections 202, 203, 204, 205, 206[,
22 207], or 208, the earlier of three years after the owner first has a right to demand the property or
23 the obligation to pay or distribute the property arises.

1 **Legislative Notes:**

2
3 *States that want to exclude in-store credits for returned merchandise from unclaimed*
4 *property should remove the brackets from Section 201(6). States that want to include these*
5 *credits should delete the bracketed language.*

6
7 *States that want to exclude gift cards from unclaimed property should delete the*
8 *bracketed reference to Section 207 in Section 201(13), change the reference to Section 208 to*
9 *Section 207 and delete Section 207 in its entirety. In addition, the succeeding sections of Article*
10 *2 will need to be re-numbered.*

11
12 **SECTION 202. WHEN TAX-DEFERRED RETIREMENT OR HEALTH-**
13 **SAVINGS ACCOUNT PRESUMED ABANDONED.**

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

17 (1) the date a second consecutive communication sent by the holder by first-class
18 United States mail to the apparent owner is returned to the holder undelivered by the United
19 States Postal Service, but if the second communication is sent later than 30 days after the date the
20 first communication is returned undelivered, the date the first communication was returned
21 undelivered by the United States Postal Service; or

22 (2) the earlier of:

23 (A) the date the apparent owner becomes 70.5 years of age, if
24 determinable by the holder; or

25 (B) if the Internal Revenue Code[, as amended], 26 U.S.C. §1 et seq.,
26 requires distribution, two years after the date the holder in the ordinary course of its business
27 receives confirmation of the death of the apparent owner.

28 (b) If a holder in the ordinary course of its business receives notice or an indication of the
29 death of an apparent owner and subsection (a)(2) applies, the holder shall attempt not later than

1 90 days after receipt of the notice or indication to confirm whether the apparent owner is
2 deceased.

3 (c) If the apparent owner of an account described in subsection (a) does not receive
4 communications from the holder by first-class United States mail, the holder shall attempt to
5 confirm the apparent owner’s interest in the property by sending the apparent owner an
6 electronic-mail communication not later than two years after the apparent owner’s last indication
7 of interest in the property. If the holder receives notification that the electronic-mail
8 communication was not received or if the apparent owner does not respond to the electronic-mail
9 communication not later than 30 days after the communication was sent, the holder promptly
10 shall attempt to contact the apparent owner by first-class United States mail. If the mail is
11 returned to the holder undelivered by the United States Postal Service, the property is presumed
12 abandoned three years after the later of:

13 (1) the date a second consecutive communication to contact the apparent owner
14 sent by first-class United States mail is returned to the holder undelivered by the United States
15 Postal Service, but if the second communication is sent later than 30 days after the date the first
16 communication is returned undelivered, the date the first communication was returned
17 undelivered by the United States Postal Service; or

18 (2) the date established by subsection (a)(2).

19 **Legislative Note:** *In states in which the constitution, or other law, does not permit the phrase*
20 *“as amended” when federal statutes are incorporated into state law, the phrase should be*
21 *deleted in Section 202(a)(2)(B) and in Section 203. If the Internal Revenue Code is amended in*
22 *the future, those states will need to decide whether their unclaimed property laws will need to be*
23 *revised to reflect the amendments. In states where incorporating future changes to federal*
24 *statutes is permitted, the brackets should be removed and the language retained so that future*
25 *amendments to the Internal Revenue Code will be incorporated into the act without further*
26 *action by those states.*

27

1 **SECTION 203. WHEN OTHER TAX-DEFERRED ACCOUNT PRESUMED**

2 **ABANDONED.** Except for property described in Section 202 and property held in a plan
3 described in Section 529A of the Internal Revenue Code[, as amended], 26 U.S.C. §529A,
4 property held in an account or plan that qualifies for tax deferral under the income-tax laws of
5 the United States is presumed abandoned if it is unclaimed by the owner three years after the
6 earlier of:

7 (1) the date, if determinable by the holder, specified in the income-tax laws and
8 regulations of the United States by which distribution of the property must begin to avoid a tax
9 penalty, with no distribution having been made; or

10 (2) 30 years after the date the account was opened.

11 **SECTION 204. WHEN CUSTODIAL ACCOUNT FOR MINOR PRESUMED**

12 **ABANDONED.**

13 (a) Property held in an account established under the [insert citation to state’s Uniform
14 Gifts to Minors Act or Uniform Transfers to Minors Act] is presumed abandoned if it is
15 unclaimed by or on behalf of the minor on whose behalf the account was opened three years after
16 the later of:

17 (1) the date a second consecutive communication sent by the holder by first-class
18 United States mail to the custodian of the minor on whose behalf the account was opened is
19 returned undelivered to the holder by the United States Postal Service, but if the second
20 communication is sent later than 30 days after the date the first communication is returned
21 undelivered, the date the first communication was returned undelivered by the United States
22 Postal Service; or

23 (2) the date on which the minor on whose behalf the account was opened reaches

1 the statutory age of majority in accordance with the [insert citation to state’s Uniform Gifts to
2 Minors Act or Uniform Transfers to Minors Act] under which the account was opened.

3 (b) If the custodian of the minor on whose behalf an account described in subsection (a)
4 was opened does not receive communications from the holder by first-class United States mail,
5 the holder shall attempt to confirm the custodian’s interest in the property by sending the
6 custodian an electronic-mail communication not later than two years after the custodian’s last
7 indication of interest in the property. If the holder receives notification that the electronic-mail
8 communication was not received or if the custodian does not respond to the electronic-mail
9 communication not later than 30 days after the communication was sent, the holder promptly
10 shall attempt to contact the custodian by first-class United States mail. If the mail is returned
11 undelivered to the holder by the United States Postal Service, the property is presumed
12 abandoned three years after the later of:

13 (1) the date a second consecutive communication to contact the custodian by first-
14 class United States mail is returned to the holder undelivered by the United States Postal service;
15 or

16 (2) the date established by subsection (a)(2).

17 (c) When the minor on whose behalf an account described in subsection (a) reaches the
18 age required for transfer to a minor of custodial property under applicable law, the property in
19 the account is no longer subject to this section.

20 *Legislative Note: Add the citation and short title to the Uniform Act in Section 204(a) and if a*
21 *state have both, cite to both.*

22
23 **SECTION 205. WHEN CONTENTS OF SAFE-DEPOSIT BOX PRESUMED**

24 **ABANDONED.** Tangible property held in a safe-deposit box and proceeds from a sale of the
25 property by the holder permitted by law of this state other than this [act] are presumed

1 abandoned if the property remains unclaimed by the apparent owner five years after the earlier of
2 the:

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

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

7 **SECTION 206. WHEN STORED-VALUE CARD PRESUMED ABANDONED.**

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

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

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

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

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

16 *Legislative Note:* States that want to exclude gift cards from unclaimed property should delete
17 the bracketed language in Section 206(a). States that want to include gift cards should remove
18 the brackets and retain the language.

19

20 **[SECTION 207. WHEN GIFT CARD PRESUMED ABANDONED.** A gift card is
21 presumed abandoned if it is unclaimed by the apparent owner five years after the later of the date
22 of purchase or its most recent use.]

23 *Legislative Note:* States that want to exclude gift cards from unclaimed property should delete
24 this section in its entirety and renumber the succeeding sections in Article 2. If gift cards are to
25 be included, the brackets should be removed and the language retained.

26

1 will be presumed abandoned just because an interest payment with respect to the bond is
2 presumed abandoned.

3
4 **SECTION 210. INDICATION OF APPARENT OWNER INTEREST IN**
5 **PROPERTY.**

6 (a) Property is not presumed abandoned if the apparent owner indicates an interest in the
7 property during the applicable periods in this [article].

8 (b) Under this [act], an indication of an apparent owner’s interest in property includes:

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

11 (2) an oral communication by the apparent owner to the holder or agent of the
12 holder concerning the property or the account in which the property is held, if the holder or its
13 agent contemporaneously makes and preserves a record of the fact of the apparent owner’s
14 communication;

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

18 (A) account;

19 (B) underlying security; or

20 (C) interest in a business association;

21 (4) activity directed by an apparent owner in the account in which the property is
22 held, including accessing the account or information concerning the account, or a direction by
23 the apparent owner to increase, decrease, or otherwise change the amount or type of property
24 held in the account;

25 (5) making a deposit into or withdrawal from an account at a financial

1 organization, including an automatic deposit or withdrawal previously authorized by the apparent
2 owner other than an automatic reinvestment of dividends or interest;

3 (6) subject to subsection (e), payment of a premium on an insurance policy; and

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

6 (c) An action by an agent or other representative of an apparent owner, other than the
7 holder acting as the apparent owner's agent, is presumed to be an action on behalf of the
8 apparent owner.

9 (d) A communication with an apparent owner by a person other than the holder or the
10 holder's representative is not an indication of interest in the property by the apparent owner
11 unless a record of the communication evidences the apparent owner's knowledge of a right to the
12 property.

13 (e) Application of an automatic-premium-loan provision or other nonforfeiture provision
14 contained in an insurance policy does not prevent the policy from maturing or terminating if the
15 insured has died or the insured or the beneficiary of the policy otherwise has become entitled to
16 the proceeds before depletion of the cash surrender value of the policy by application of the
17 provision.

18 **SECTION 211. KNOWLEDGE OF DEATH OF INSURED OR ANNUITANT.**

19 (a) If an insurance company owes an amount on a life or endowment insurance policy or
20 annuity contract, the company has knowledge of the death of an insured or annuitant when:

21 (1) the company receives a death certificate or a court order determining that the
22 insured or annuitant has died;

23 (2) due diligence performed as required under [insert applicable state law or

1 regulations relating to the business of insurance] to maintain contact with the insured or
2 annuitant or determine whether the insured or annuitant has died has provided the company with
3 notice and validation of the death of the insured or annuitant;

4 (3) a comparison is conducted by the company for any purpose between a death
5 master file and the names of some or all of the company's insureds or annuitants, a match is
6 found indicating that the insured or annuitant has died and the company validates the death; or

7 (4) the company:

8 (A) receives notice of the death of the insured or annuitant from an
9 administrator, beneficiary, policy owner, relative of the insured, or trustee or from a [personal
10 representative], [executor], or other legal representative of the insured's or annuitant's estate; and

11 (B) validates the death of the insured or annuitant.

12 (b) The following rules apply to a death-master-file comparison under subsection (a)(3):

13 (1) A death-master-file match occurs if the criteria for an exact or partial match
14 are satisfied as provided by:

15 (A) law of this state other than this [act];

16 (B) a rule or policy adopted by [insert name of the state insurance official
17 or department authorized to adopt rules]; or

18 (C) absent a law, rule, or policy, under subparagraph (A) or (B) standards
19 in the [National Conference of Insurance Legislators' "Model Unclaimed Life Insurance Benefits
20 Act" as published in 2014];

21 (2) A death-master-file match does not constitute proof of death for purposes of
22 submission of a claim to an insurance company for amounts due under an insurance policy or
23 annuity contract;

1 (3) A death-master-file match under subsection (a)(3) or validation of the
2 insured's or annuitant's death does not alter the requirements for a beneficiary, annuitant, or
3 owner of the policy or contract to make a claim to receive proceeds under the terms of the policy
4 or contract;

5 (4) Absent a provision in [state insurance laws or rules] which establishes a time
6 for the validation of a death of an insured or annuitant, the insurance company shall make a good
7 faith effort using other available records and information to validate the death and document the
8 effort taken not later than 90 days after the insurance company has notice of the death; and

9 (5) The administrator or the administrator's agent may conduct a comparison
10 between a death master file and the names of an insurance company's insureds or annuitants
11 during an examination conducted under [Article] 10 for a policy or a contract in force or
12 terminated within the period for which Section 401 requires a report.

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

18 **Comments**

19 **1.** The National Association of Insurance Commissioners (NAIC) is developing a
20 new model act that may contain standards different from those contained in the National
21 Conference of Insurance Legislators Model Act. If these standards are adopted a state may elect
22 to substitute a reference to the standards to be developed by NAIC. Although death-master-file
23 searches are referenced in this act, this act does not take a position on whether there should be a
24 death-maser-file search requirement.

25
26 **2.** Section 211(b)(3) applies to claims made by beneficiary, annuitant or policy
27 owner to an insurance company and does not apply to claims made by an unclaimed property
28 administrator.

1 address of the other person is not known by the insurance company and cannot be determined
2 under Section 302.

3 **SECTION 302. ADDRESS OF APPARENT OWNER IN THIS STATE.** The
4 administrator may take custody of property that is presumed abandoned, whether located in this
5 state or another state, or in a foreign country if the transaction involving the property was a
6 domestic transaction, if:

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

9 (2) the records of the holder do not reflect the identity or last-known address of the
10 apparent owner, but the administrator has determined that the last-known address of the apparent
11 owner is in this state.

12 **SECTION 303. WHEN RECORDS SHOW MULTIPLE ADDRESSES OF**
13 **APPARENT OWNER.**

14 (a) Except as otherwise provided in subsection (b), if records of a holder reflect multiple
15 addresses for an apparent owner, the state of the most recently recorded address may take
16 custody of property presumed abandoned, whether located in this state or another state.

17 (b) If it appears from records of the holder that the most recently recorded address of the
18 apparent owner under subsection (a) is a temporary address, the state of the next most recently
19 recorded address that is not a temporary address may take custody of the property presumed
20 abandoned.

21 **SECTION 304. HOLDER DOMICILED IN THIS STATE.** Except as otherwise
22 provided in Section 302 or 303, the administrator may take custody of property presumed
23 abandoned, whether located in this state, another state, or a foreign country if the transaction

1 involving the property was a domestic transaction, if:

2 (1) the holder:

3 (A) is domiciled in this state or is the state or a governmental subdivision, agency,
4 or instrumentality of this state, but if the state of domicile of the holder has changed since the
5 time the property was presumed abandoned, the holder's state of domicile is deemed to be the
6 state where the holder was domiciled at the time the property was presumed abandoned; and

7 (B) has not previously paid or delivered the property to the state or foreign
8 country of the last-known address of the apparent owner or other person entitled to the property
9 and is not obligated to pay or deliver the property to that state or foreign country;

10 (2) the holder:

11 (A) pays or delivers the property to the administrator where the last-known
12 address of the apparent owner, as shown on the records of the holder, is in a foreign country or a
13 state that does not provide custodial taking of the property, and

14 (B) is domiciled in this state; or

15 (3) the holder is domiciled in this state or is the state or a governmental subdivision,
16 agency, or instrumentality of this state and the last-known address of the apparent owner, as
17 shown on the records of the holder, is in a state that does not provide for the custodial taking of
18 the property or is in a foreign country, except that the property is not subject to the custody of the
19 administrator if:

20 (A) the property is specifically exempt from custodial taking under the law of the
21 state of the last-known address; or

22 (B) if subparagraph (A) does not apply and the property is specifically exempt
23 from custodial taking under the law of the state of domicile of the holder.

1 **SECTION 305. CUSTODY IF TRANSACTION OCCURRED IN THIS STATE.**

2 Except as otherwise provided in Sections 302, 303, and 304, the administrator may take custody
3 of property presumed abandoned whether located in this or another state if:

4 (1) the transaction involving the property occurred in this state;

5 (2) the holder is domiciled in a state that does not provide for the custodial taking of the
6 property, except that if the property is specifically exempt from custodial taking under the law of
7 the state of the holder’s domicile, the property is not subject to the custody of the administrator;
8 and

9 (3) the last-known address of the apparent owner or other person entitled to the property
10 is unknown or in a state that does not provide for the custodial taking of the property, except that
11 if the property is specifically exempt from custodial taking under the law of the state of the last-
12 known address, the property is not subject to the custody of the administrator.

13 **SECTION 306. TRAVELER’S CHECK, MONEY ORDER OR SIMILAR**

14 **INSTRUMENT.** The administrator may take custody of sums payable on a traveler’s check,
15 money order, or similar instrument presumed abandoned to the extent permissible under [12
16 U.S.C. Sections 2501 through 2503[, as amended]] [federal law].

17 *Legislative Notes:*

18
19 *In states that do not permit reference to specific federal statutes, the brackets and*
20 *bracketed language “12 USC Section 2501-2503” should be deleted and the brackets removed*
21 *from “federal law”. Otherwise, the brackets should be removed from the statutory references*
22 *and the bracketed language “federal law” should be deleted.*

23
24 *In states that are permitted to reference specific federal statutes but in which the*
25 *constitution, or other law, does not permit the phrase “as amended” when federal statutes are*
26 *incorporated into state law, the phrase should be deleted. If the referenced federal statute is*
27 *amended in the future, those states will need to decide whether their unclaimed property laws*
28 *will need to be revised to reflect those amendments. In states where incorporating future*
29 *changes to federal statutes or regulations is permitted, the brackets should be removed and the*
30 *language retained so that future amendments to the referenced statute will be incorporated into*

1 *the act without further action by those states.*

2

3 **SECTION 307. BURDEN OF PROOF TO ESTABLISH ADMINISTRATOR’S**

4 **RIGHT TO CUSTODY.** In asserting a right to take custody of unclaimed property, the

5 administrator has the burden to prove:

6 (1) the existence and amount of the property;

7 (2) the property is presumed abandoned; and

8 (3) the property is subject to the custody of the administrator.

9

[ARTICLE] 4

10

REPORT BY HOLDER

11

SECTION 401. REPORT REQUIRED BY HOLDER.

12

(a) A holder of property presumed abandoned and subject to the custody of the

13

administrator shall report in a record to the administrator concerning the property. The

14

administrator may not require a holder to file a paper report.

15

(b) A holder may contract with a third party to make the report required under subsection

16

(a).

17

(c) Whether or not a holder contracts with a third party under subsection (b), the holder

18

is:

19

(1) responsible to the administrator for the complete, accurate, and timely

20

reporting of property presumed abandoned; and

21

(2) responsible for paying or delivering to the administrator property described in

22

the report filed under this section.

23

SECTION 402. CONTENT OF REPORT.

24

(a) The report required under Section 401 must:

- 1 (1) be signed by or on behalf of the holder and verified as to its completeness and
2 accuracy;
- 3 (2) if filed electronically, be in a secure format approved by the administrator;
- 4 (3) protect confidential information of the apparent owner contained in the report
5 in the same manner as required of the administrator and the administrator's agent under [Article]
6 14;
- 7 (4) describe the property;
- 8 (5) except for a traveler's check, money order, or similar instrument contain the
9 name, if known, last-known address, if known, and Social Security number or taxpayer
10 identification number, if known or readily ascertainable, of the apparent owner of property with a
11 value of \$[50] or more;
- 12 (6) in the case of an amount held or owing under a life or endowment insurance
13 policy or annuity contract, contain the full name and last-known address of the insured, annuitant
14 or other apparent owner of the policy or contract and of the beneficiary;
- 15 (7) in the case of property held in or removed from a safe-deposit box, indicate
16 the location of the property, where it may be inspected by the administrator, and any amounts
17 owed to the holder under Section 606;
- 18 (8) contain the commencement date for determining abandonment under [Article]
19 2;
- 20 (9) state that the holder has complied with the notice requirements of Section 501;
- 21 (10) identify property that is a non-freely transferable security, and explain why it
22 is a non-freely transferable security; and
- 23 (11) contain other information the administrator prescribes by rules necessary for

1 the administrator.

2 (b) A report under Section 401 may include in the aggregate items valued under \$[50]
3 each. If the report includes items in the aggregate valued under \$[50] each, the administrator
4 may not require the holder to provide the name and address of an apparent owner of an item
5 unless the information is necessary to verify or process a claim in progress by the apparent
6 owner.

7 (c) A report under Section 401 may include sensitive personal information under Section
8 1402(a) about the apparent owner or the apparent owner's property.

9 (d) If a holder has changed its name while holding property presumed abandoned or is a
10 successor to another person that previously held the property for the apparent owner, the holder
11 shall include in the report under Section 401 its former name or the name of the previous holder,
12 if any, and the known name and address of each previous holder of the property.

13 **SECTION 403. WHEN REPORT TO BE FILED.**

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

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

20 (c) Before the date for filing the report under Section 401, the holder of property
21 presumed abandoned may request the administrator to extend the time for filing. The
22 administrator may grant an extension for good cause. If the extension is granted, the holder may
23 pay or make a partial payment of the amount the holder estimates ultimately will be due. The

1 acceptable to the administrator, by first-class United States mail, not more than 180 days nor less
2 than 60 days before filing the report under Section 401 if the:

3 (1) holder has in its records an address for the apparent owner sufficient to direct
4 the delivery of first-class United States mail to the apparent owner which the holder's records do
5 not disclose to be invalid; and

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

7 (b) If an apparent owner has consented to receive electronic-mail delivery from the
8 holder, the holder shall send the notice described in subsection (a) by first-class United States
9 mail to the apparent owner's last-known mailing address and by electronic mail, unless the
10 holder has reason to believe that the apparent owner's electronic-mail address is not valid.

11 **SECTION 502. CONTENTS OF NOTICE BY HOLDER.**

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

16 (b) The notice under Section 501 must:

17 (1) state that the property will be turned over to the administrator;

18 (2) state that after the property is turned over to the administrator an apparent
19 owner that seeks return of the property must file a claim with the administrator;

20 (3) identify the nature and, except for property that does not have a fixed value,
21 the value of the property that is the subject of the notice;

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

23 (5) provide instructions that the apparent owner must follow to prevent the holder

1 from reporting and paying or delivering the property to the administrator.

2 **SECTION 503. NOTICE TO APPARENT OWNER BY ADMINISTRATOR.**

3 (a) The administrator shall establish and maintain a program to give notice to apparent
4 owners that property presumed abandoned and appears to be owned by the apparent owners is
5 held by the administrator under this [act].

6 (b) Under the program in subsection (a), the administrator shall:

7 (1) except as otherwise provided in paragraph (2), send written notice by first-
8 class United States mail to each apparent owner of property valued at \$[50] or more held by the
9 administrator, unless the administrator determines that a first-class mailing would not be
10 received by the apparent owner, and, in the case of a security held in an account for which the
11 apparent owner had consented to receiving electronic mail from the holder, send notice by
12 electronic mail if the electronic-mail address of the apparent owner is known to the administrator
13 instead of by first-class United States mail;

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

17 (3) publish every [six] months in at least one newspaper of general circulation in
18 this state notice of property held by the administrator which must include:

19 (A) the total value of property received by the administrator during the
20 preceding [six]-month period, taken from the reports under Section 401;

21 (B) the total value of claims paid by the administrator during the preceding
22 [six]-month period;

23 (C) the Internet web address of the unclaimed property website maintained

1 by the administrator;

2 (D) a telephone number and electronic-mail address to contact the
3 administrator to inquire about or claim property; and

4 (E) a statement that a person may access the Internet by a computer to
5 search for unclaimed property and a computer may be available as a service to the public at a
6 local public library; and

7 (4) maintain a website or database accessible by the public and electronically
8 searchable which contains the names reported to the administrator of all apparent owners for
9 whom property is being held by the administrator.

10 (c) The website or database maintained under subsection (b)(4) must include instructions
11 for filing with the administrator a claim to property and a printable claim form with instructions
12 for its use.

13 (d) In addition to giving notice under subsection (b), the administrator may use printed
14 publication, telecommunication, the Internet, or other media to inform the public of the existence
15 of unclaimed property held by the administrator and the administrator's unclaimed-property
16 program.

17 **Comment**

18 The \$50 per item value threshold for the requirement of sending notice to the apparent
19 owners in Section 503(a)(1) is not intended to be a threshold regarding the value of property
20 which should be included in the administrator's unclaimed property website. Administrators are
21 strongly encouraged to include all property in the administrators' custody on their websites.

22

23 **SECTION 504. COOPERATION AMONG AGENCIES TO LOCATE**

24 **APPARENT OWNER.** On request of the administrator, each officer, agency, board,
25 commission, division, and department of this state, any body politic and corporate created by this
26 state for a public purpose, and each political subdivision of this state shall make its books and

1 records available to the administrator and cooperate with the administrator to determine the
2 current address of an apparent owner of property held by the administrator under this [act].

3 **[ARTICLE] 6**

4 **TAKING CUSTODY OF PROPERTY BY ADMINISTRATOR**

5 **SECTION 601. DEFINITION OF GOOD FAITH.** In this [article], payment or
6 delivery of property is made in good faith if a holder:

7 (1) had a reasonable basis for believing, based on the facts then known, that the property
8 was required or permitted to be paid or delivered to the administrator under this [act]; or

9 (2) made payment or delivery:

10 (A) in response to a demand by the administrator or administrator's agent; or

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

13 **SECTION 602. DORMANCY CHARGE.**

14 (a) A holder may deduct a dormancy charge from property required to be paid or
15 delivered to the administrator if:

16 (1) a valid and enforceable contract between the holder and the apparent owner
17 authorizes imposition of the charge for the apparent owner's failure to claim the property within
18 a specified time; and

19 (2) the holder regularly imposes the charge and does not regularly reverse or
20 otherwise cancel the charge.

21 (b) The amount of the deduction under subsection (a) is limited to an amount that is not
22 unconscionable considering all relevant factors, including the marginal transactional costs
23 incurred by the holder in maintaining the apparent owner's property and any services received by

1 the apparent owner.

2 **SECTION 603. PAYMENT OR DELIVERY OF PROPERTY TO**
3 **ADMINISTRATOR.**

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

6 (b) If property in a report under Section 401 is an automatically renewable deposit and a
7 penalty or forfeiture in the payment of interest would result from paying the deposit to the
8 administrator at the time of the report, the date for payment of the property to the administrator is
9 extended until a penalty or forfeiture no longer would result from payment, if the holder informs
10 the administrator of the extended date.

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

13 (d) If property reported to the administrator under Section 401 is a security, the
14 administrator may:

15 (1) make an endorsement, instruction, or entitlement order on behalf of the
16 apparent owner to invoke the duty of the issuer, its transfer agent, or the securities intermediary
17 to transfer the security; or

18 (2) dispose of the security under Section 702.

19 (e) If the holder of property reported to the administrator under Section 401 is the issuer
20 of a certificated security, the administrator may obtain a replacement certificate in physical or
21 book-entry form under [Section 8-405 of the Uniform Commercial Code]. An indemnity bond is
22 not required.

23 (f) The administrator shall establish procedures for the registration, issuance, method of

1 delivery, transfer, and maintenance of securities delivered to the administrator by a holder.

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

6 (h) A holder is not required to deliver to the administrator a security identified by the
7 holder as a non-freely transferable security. Not later than 10 days after the administrator or
8 holder determines that the security is no longer a non-freely transferable security, the holder
9 must deliver the security to the administrator. The holder shall make a determination annually
10 whether a security identified in a report filed under Section 401 as a non-freely transferable
11 security is no longer a non-freely transferable security.

12 **SECTION 604. EFFECT OF PAYMENT OR DELIVERY OF PROPERTY TO**
13 **ADMINISTRATOR.**

14 (a) On payment or delivery of property to the administrator under this [act], the
15 administrator as agent for the state assumes custody and responsibility for the safekeeping of the
16 property. A holder that pays or delivers property to the administrator in good faith and who has
17 substantially complied with Sections 501 and 502 is relieved of liability arising thereafter with
18 respect to payment and delivery of the property to the administrator.

19 (b) This state shall defend and indemnify a holder against liability on a claim against the
20 holder resulting from the payment or delivery of property to the administrator made in good faith
21 and after the holder has substantially complied with Sections 501 and 502.

1 **SECTION 605. RECOVERY OF PROPERTY BY HOLDER FROM**
2 **ADMINISTRATOR.**

3 (a) A holder that pays money to the administrator under this [act] may claim
4 reimbursement from the administrator of the amount paid if the holder:

5 (1) paid the money in error; or

6 (2) after paying the money to the administrator, paid the money to a person the
7 holder reasonably believed to be entitled to the money.

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

15 (c) If a holder is reimbursed by the administrator under subsection (a)(2), the holder may
16 also recover from the administrator dividends, interest or other increments under Section 607 that
17 would have been paid to the owner if the money had been claimed from the administrator by the
18 owner.

19 (d) A holder that delivers property other than money to the administrator under this [act]
20 may claim the property in the possession of the administrator by filing a claim under Section
21 903, together with evidence sufficient to establish that the apparent owner has claimed the
22 property from the holder or that the property was delivered by the holder to the administrator in
23 error.

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

4 (f) A holder is not required to pay a fee or other charge for reimbursement or return of
5 property under this section.

6 **SECTION 606. PROPERTY REMOVED FROM SAFE-DEPOSIT BOX.** Property
7 removed from a safe-deposit box and delivered to the administrator under this [act] is subject to
8 the holder's right to reimbursement for the cost of opening the box and any valid lien or contract
9 providing reimbursement to the holder for unpaid rent charges for the box. The administrator
10 shall reimburse the holder from the proceeds remaining after deducting the expense incurred by
11 the administrator in selling the property.

12 **SECTION 607. CREDITING DIVIDENDS, INTEREST, AND INCREMENTS TO**
13 **OWNER'S ACCOUNT.** If property other than money is delivered to the administrator, the
14 owner is entitled to receive from the administrator income or gain realized or accrued on the
15 property before the property is sold. If the property was an interest-bearing demand, savings, or
16 time deposit, the administrator shall pay interest at the lesser of the rate of [insert legal rate] or
17 the rate the property earned while in the possession of the holder. Interest begins to accrue when
18 the property is delivered to the administrator and ends on the earlier of the expiration of 10 years
19 after its delivery or the date on which payment is made to the owner.

20 **SECTION 608. ADMINISTRATOR'S OPTIONS AS TO CUSTODY.**

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

1 (b) A holder may pay or deliver property to the administrator before the property is
2 presumed abandoned under this [act] if the holder:

3 (1) sends the apparent owner of the property the notice or notices required by
4 Section 501 and conforming to Section 502 and provides the administrator evidence of the
5 holder's compliance with this paragraph;

6 (2) includes with the payment or delivery a report regarding the property
7 conforming to Section 402; and

8 (3) first obtains the administrator's consent in a record to accept payment or
9 delivery.

10 (c) The holder must request the administrator's consent under subsection (b)(3) in a
11 record. If the administrator fails to respond to the request not later than 30 calendar days after
12 receipt of the request, the administrator is deemed to consent to the payment or delivery of the
13 property and the payment or delivery is considered to have been made in good faith.

14 (d) On payment or delivery of the property under subsection (b), the property is presumed
15 abandoned.

16 **SECTION 609. DISPOSITION OF PROPERTY HAVING NO SUBSTANTIAL**
17 **VALUE; IMMUNITY FROM LIABILITY.**

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

22 [(b)] An action or proceeding may not be commenced against the state, an agency of the
23 state, the administrator, another officer, employee, or agent of the state, or a holder for or

1 because of an act of the administrator under this section, except for intentional misconduct or
2 malfeasance.]

3 *Legislative Note: States should determine whether Section 609(b) is covered by the states’*
4 *sovereign immunity tort claims acts and decide how to proceed with subsection (b).*

5

6 **SECTION 610. PERIODS OF LIMITATION AND REPOSE.**

7 (a) Expiration, before, on, or after [the effective date of this [act]], of a period of
8 limitation on an owner’s right to receive or recover property, whether specified by contract,
9 statute, or court order does not prevent the property from being presumed abandoned or affect
10 the duty of a holder to file a report or pay or deliver property to the administrator under this [act].

11 (b) The administrator may not commence an action or proceeding to enforce this [act]
12 with respect to the reporting, payment, or delivery of property more than five years after the
13 holder filed a non-fraudulent report with the administrator under Section 401. The parties may
14 agree in a record to extend the limitation in this subsection.

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

17 **[ARTICLE] 7**

18 **SALE OF PROPERTY BY ADMINISTRATOR**

19 **SECTION 701. PUBLIC SALE OF PROPERTY.**

20 (a) Subject to Section 702, not earlier than [three] years after receipt of property that has
21 been presumed abandoned, the administrator may sell the property to the highest bidder:

22 (1) at public sale at a location in this state which the administrator determines to
23 be the most favorable market for the property; or

24 (2) on the Internet or another forum the administrator determines is likely to yield
25 the highest net proceeds of sale.

1 (b) The administrator may decline the highest bid at a sale under subsection (a) and
2 reoffer the property for sale if the administrator determines the highest bid is insufficient.

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

7 **SECTION 702. DISPOSAL OF SECURITIES.**

8 (a) The administrator may not sell or otherwise liquidate a security until three years after
9 the administrator receives the security and gives the apparent owner notice under Section 503
10 that the administrator holds the security.

11 (b) The administrator may not sell a security listed on an established stock exchange for
12 less than the price prevailing on the exchange at the time of sale. The administrator may sell a
13 security not listed on an established exchange by any commercially-reasonable method.

14 **SECTION 703. RECOVERY OF SECURITIES OR VALUE BY OWNER.**

15 (a) If the administrator sells a security before the expiration of six years following
16 delivery to the administrator, an apparent owner that makes a valid claim under this [act] of
17 ownership of the security before the six-year period expires is entitled, at the option of the
18 administrator, to receive:

19 (1) a replacement of the security; or

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

22 (b) Calculation of the market value of the security under subsection (a)(2) must be in a
23 manner that places the owner in the same or similar position as if the security had not been sold.

1 The calculation must take into account a stock split, reverse stock split, stock dividend, and other
2 corporate action that would affects the value of the security.

3 (c) A person that makes a valid claim under this [act] of ownership of a security after
4 expiration of six years following delivery of a security to the administrator is entitled to receive:

5 (1) the security the holder delivered to the administrator, if it is in the custody of
6 the administrator, plus dividends, interest, and other increments on the security up to the time the
7 claim is paid; or

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

10 **SECTION 704. PURCHASER OWNS PROPERTY AFTER SALE;**

11 **INDEMNIFICATION BY STATE.** A purchaser of property at a sale conducted by the
12 administrator under this [act] takes the property free of all claims of the owner, a previous
13 holder, or a person claiming through the owner or the holder. The state shall indemnify the
14 purchaser from any loss resulting from a successful claim. The administrator shall execute
15 documents necessary to complete the transfer of ownership to the purchaser.

16 **Comment**

17 It is intended that indemnification claims will be paid out of unclaimed property funds
18 held by the administrator.

19
20 **SECTION 705. MILITARY MEDALS.**

21 (a) The administrator may not sell a medal or decoration awarded for military service in
22 the armed forces of the United States.

23 (b) The administrator may deliver a medal or decoration described in subsection (a) to be
24 held in custody for the owner, to:

25 (1) a military veteran's organization qualified under Section 501(c)(19) of the

1 Internal Revenue Code[,as amended], 26 U.S.C. §501(c)(19);

2 (2) the agency that awarded the medal or decoration; or

3 (3) a governmental entity.

4 (c) On delivery under subsection (b), the administrator is not responsible for safekeeping
5 the medal or decoration.

6 **Legislative Note:** *In states in which the constitution, or other law, does not permit the phrase*
7 *“as amended” when federal statutes are incorporated into state law, the phrase should be*
8 *deleted in Section 705(b)(1). If the Internal Revenue Code is amended in the future, those states*
9 *will need to decide whether their unclaimed property laws will need to be revised to reflect the*
10 *amendments. In states where incorporating future changes to federal statutes is permitted, the*
11 *brackets should be removed and the language retained so that future amendments to the Internal*
12 *Revenue Code will be incorporated into the act without further action by those states.*

13
14

[ARTICLE] 8

15

ADMINISTRATION OF PROPERTY

16

SECTION 801. DEPOSIT OF FUNDS BY ADMINISTRATOR.

17

(a) Except as otherwise provided in this section, the administrator shall deposit in the

18

[general fund of the state] all funds received under this [act], including proceeds from the sale of

19

property under [Article] 7.

20

(b) The administrator shall maintain an account with an amount of funds the

21

administrator reasonably estimates to be sufficient to pay claims allowed under this [act] [in each

22

fiscal [year] [quarter]]. If the aggregate amount of claims by owners allowed at any time

23

exceeds the amount held in the account, an excess claim must be paid as a priority claim out of

24

the general funds of the state.

25

Comment

26

States are given the choice in Section 801(a) of where they want to deposit funds

27

received by the administrator after depositing some amount into an account under subsection (b)

28

to pay claims. It is intended, however, that valid claims to be paid that exceed the amount in the

29

account will be paid out of the state’s general fund as required by subsection (b).

1 However, the doctrine does not apply to property which does not belong to the sovereign and is
2 merely being held by the sovereign as custodian for the true owner who may recover his or her
3 property from the administrator under the provisions of this act.
4

5 **[ARTICLE] 9**

6 **CLAIM TO RECOVER PROPERTY FROM ADMINISTRATOR**

7 **SECTION 901. CLAIM OF ANOTHER STATE TO RECOVER PROPERTY.**

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

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

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

13 (b) The administrator is not required to enter into a formal agreement or record to transfer
14 the property to the other state under subsection (a).

15 **SECTION 902. WHEN PROPERTY SUBJECT TO RECOVERY BY ANOTHER**
16 **STATE.**

17 (a) Property held by the administrator under this [act] is subject to the right of another
18 state to take custody of the property if:

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

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

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

25 (2) the records of the holder did not accurately identify the owner of the property,

1 the last-known address of the owner was in another state, and, under the law of the other state,
2 the property has become subject to a claim of abandonment by the other state;

3 (3) the property was subject to the custody of the administrator of this state under
4 Section 302 and, under the law of the state of domicile of the holder, the property has become
5 subject to a claim of abandonment by the state of domicile of the holder; or

6 (4) the property:

7 (A) is a sum payable on a traveler's check, money order, or similar
8 instrument that was purchased in the other state and delivered to the administrator under Section
9 306; and

10 (B) under the law of the other state, has become subject to a claim of
11 abandonment by the other state.

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

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

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

21 **SECTION 903. CLAIM FOR PROPERTY BY PERSON CLAIMING TO BE**
22 **OWNER.**

23 (a) A person claiming to be the owner of property held by the administrator may file a

1 claim for the property on a form prescribed by the administrator and verified by the claimant.

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

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

6 (2) the administrator reasonably believes the person is entitled to receive the
7 property or payment; and

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

9 **SECTION 904. WHEN ADMINISTRATOR MUST HONOR CLAIM FOR**
10 **PROPERTY.**

11 (a) The administrator shall pay or deliver property to a claimant under Section 903 if the
12 administrator receives evidence sufficient to establish to the reasonable satisfaction of the
13 administrator that the claimant is the owner of the property.

14 (b) Not later than [90] days after a claim is filed under Section 903, the administrator
15 shall allow or deny the claim and give the claimant notice of the decision in a record. If the
16 claim is denied:

17 (1) the administrator shall inform the claimant of the reason for the denial and
18 specify what additional evidence, if any, is required for the claim to be allowed;

19 (2) the claimant may file an amended claim with the administrator or commence
20 an action under Section 907; and

21 (3) the administrator shall treat an amended claim as an initial claim under this
22 section.

1 **SECTION 905. ALLOWANCE OF CLAIM FOR PROPERTY.**

2 (a) Not later than [30] days after a claim is allowed by the administrator under Section
3 904(b), the administrator shall pay or deliver to the owner the property or the net proceeds of a
4 sale of the property, together with dividends, interest, or other increments to which the owner is
5 entitled under Section 607. On request of the owner, the administrator may sell or liquidate a
6 security and pay the net proceeds to the owner, even if the security had been held by the
7 administrator for less than three years or the administrator has not complied with the notice
8 requirements under Section 702.

9 (b) Property held by the administrator is subject to a claim for the payment of an
10 enforceable debt that the owner owes in this state for:

11 (1) child-support arrearages, including child-support collection costs and child-
12 support arrearages that are combined with maintenance;

13 (2) a civil or criminal fine or penalty, court costs, a surcharge, or restitution
14 imposed by final court judgment; or

15 (3) state [or local] taxes, penalties, and interest that have been determined to be
16 delinquent or as to which notice has been recorded with the [Secretary of the State] [or local
17 taxing authority].

18 (c) The administrator may make periodic inquiries of state [and local] agencies in the
19 absence of a claim filed under Section 903 to determine whether apparent owners included in the
20 unclaimed-property records of this state have enforceable debts described in subsection (b). The
21 administrator first shall apply the property or net proceeds of a sale of property held by the
22 administrator to a debt under subsection (b) of an apparent owner that appears in the records of
23 the administrator and deliver the amount to the appropriate state [or local] agency. The

1 administrator shall notify the apparent owner of the payment.

2 (d) Before delivery or payment to an owner under subsection (a) of property or net
3 proceeds of a sale of the property, the administrator first shall apply the property or net proceeds
4 to a debt under subsection (b) the administrator has determined is owed by the owner. The
5 administrator shall pay the amount to the appropriate state [or local] agency and notify the owner
6 of the payment.

7 *Legislative Note: States that want to include payment for local taxes in this provision should*
8 *delete the brackets around “local” and “local taxing authority” wherever they appear.*
9 *However, a state with many different local taxing authorities may not want its unclaimed*
10 *property administrator to be burdened with contacting all of them and may not want to include*
11 *local taxes. If so, the state should delete the bracketed language.*

12
13 **Comment**

14
15 If there are multiple debts of a claimant to be paid under Section 905(b), the debts should
16 be paid in the order in which they are listed in subsection (b).

17
18 **SECTION 906. ACTION BY PERSON WHOSE CLAIM IS DENIED.** Not later
19 than one year after filing a claim with the administrator under Section 903, the claimant may
20 commence an action against the administrator in the [appropriate court] to establish a claim that
21 has been denied or on which the administrator has not acted not later than [90] days after the
22 filing of the claim. [On final determination of the action, the court may award reasonable
23 attorney’s fees, costs and expenses of litigation incurred by the [claimant] [prevailing party].]

24 *Legislative Note: The bracketed language at the end of this section may be included or deleted*
25 *according to the public policy of the state concerning statutory awards of attorney’s fees. If the*
26 *state elects to include attorney’s fees, the state must decide whether to change “may” to “shall”*
27 *if the intent is to remove the award from the discretion of the trial court. Finally, a decision is*
28 *required whether to restrict the award of attorney’s fees to the claimant as prevailing party or to*
29 *the prevailing party regardless which side prevails.*

30

1 [ARTICLE] 10

2 REPORT OF PROPERTY; EXAMINATION OF RECORDS

3 SECTION 1001. REQUEST FOR REPORT OF PROPERTY. If a person does not
4 file a report required by Section 401 or the administrator believes that a person may have filed an
5 inaccurate, incomplete, or false report, the administrator may require the person to file a verified
6 report in a form prescribed by the administrator. The report must:

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

8 (2) describe property not previously reported or as to which the administrator has
9 enquired; and

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

12 SECTION 1002. EXAMINATION OF RECORDS TO DETERMINE

13 COMPLIANCE WITH [ACT]. The administrator, at reasonable times and on reasonable
14 notice, may:

15 (1) examine the records of a person to determine whether the person has complied with
16 this [act], including examination of appropriate records in the possession of an agent of the
17 person under examination, if such records are reasonably necessary for the determination of
18 compliance of the person under examination with this [act];

19 (2) issue an administrative subpoena requiring the person or an agent of the person to
20 make records available for examination; and

21 (3) bring an action seeking judicial enforcement of the subpoena.

22 Comment

23 Although not included in the black letter of Section 1002, it is intended that even a person
24 that does not believe it has property subject to the act in its possession is subject to an

1 examination by the administrator or its agent. It would make no sense for a putative holder to be
2 able to refuse to be subject to an audit on the basis that the holder doesn't have any reportable
3 unclaimed property. That is what the audit will determine.

4
5 **SECTION 1003. RULES AND PROCEDURES FOR CONDUCTING**
6 **EXAMINATION.**

7 (a) The administrator shall adopt rules governing procedures and standards for an
8 examination under Section 1002, including rules for use of an estimation, extrapolation, and
9 statistical sampling in conducting an examination.

10 (b) An examination under Section 1002 must be performed in accord with rules adopted
11 under subsection (a) and with generally accepted examination practices and standards applicable
12 to unclaimed-property examinations.

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

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

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

18 (3) The person conducting the examination shall consider all evidence presented
19 by the person in good faith in preparing the findings of the examination under Section 1007.

20 **Comment**

21 There are generally accepted auditing standards applicable to the conduct of unclaimed
22 property audits based on generally accepted government auditing standards. Some states,
23 California for example, have adopted regulations concerning these standards applicable
24 specifically to the policies and procedures governing the activities of third-party auditors who are
25 engaged to conduct audits of holders of unclaimed property. A source used by the Pennsylvania
26 unclaimed property administrator is the generally accepted auditing standards issued by the
27 Comptroller General of the United States.

1 **SECTION 1005. EVIDENCE OF UNPAID DEBT OR UNDISCHARGED**

2 **OBLIGATION.**

3 (a) A record of a putative holder showing an unpaid debt or undischarged obligation is
4 prima facie evidence of the debt or obligation.

5 (b) A putative holder may establish by a preponderance of the evidence that there is no
6 unpaid debt or undischarged obligation with respect to debt or obligation described in subsection
7 (a) or that the debt or obligation was not, or no longer is, a fixed and certain obligation of the
8 putative holder.

9 (c) A putative holder may overcome prima facie evidence under subsection (a) by
10 establishing by a preponderance of the evidence that a check, draft, or similar instrument was:

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

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

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

15 (4) paid, satisfied, or discharged;

16 (5) issued in error;

17 (6) issued without consideration;

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

19 (8) voided [not later than 90 days] [within a reasonable time] after issuance for a
20 valid business reason set forth in a contemporaneous record; or

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

23 (d) In asserting a defense under this section, a putative holder may present evidence of a

1 course of dealing between the putative holder and the apparent owner or of custom and practice.

2 *Legislative Note: Each state should determine whether the time limit in Section 1005(c)(8)*
3 *should be set at not later than 90 days or within a “reasonable time” after issuance. One of the*
4 *bracketed provisions should be deleted and the other retained.*

5

6 **SECTION 1006. FAILURE OF PERSON EXAMINED TO RETAIN RECORDS.**

7 If a person subject to examination under Section 1002 does not retain the records required by
8 Section 404, the administrator may determine the amount of property due using a reasonable
9 method of estimation based on all information available to the administrator, including
10 extrapolation and use of statistical sampling when appropriate and necessary, consistent with
11 examination procedures and standards adopted under Section 1003(a).

12 **SECTION 1007. REPORT TO PERSON WHOSE RECORDS WERE**

13 **EXAMINED.** At the conclusion of an examination under Section 1002, the administrator shall
14 provide to the person whose records were examined a complete and unredacted examination
15 report, which must identify in detail:

16 (1) the work performed;

17 (2) the property types reviewed;

18 (3) the methodology of any estimation technique, extrapolation, or statistical sampling
19 method used in conducting the examination;

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

21 (5) the findings of the person conducting the examination.

22 **SECTION 1008. COMPLAINT TO ADMINISTRATOR ABOUT CONDUCT OF**
23 **PERSON CONDUCTING EXAMINATION.**

24 (a) If a person subject to examination under Section 1002 believes the person conducting
25 the examination has made an unreasonable or unauthorized request or is not proceeding

1 expeditiously to complete the examination, the person in a record may ask the administrator to
2 intervene and take remedial action the circumstances require, including countermanning the
3 request of the person conducting the examination, imposing a time limit for completion of the
4 examination, or reassigning the examination to another person.

5 (b) If a person in a record requests a conference with the administrator to present matters
6 that are the basis of a request for intervention under subsection (a), the administrator shall hold
7 the conference within a reasonable time after receiving the request. The administrator may hold
8 the conference in person, by telephone, or by electronic means.

9 (c) If a conference is held under subsection (b), the administrator shall provide a report in
10 a record of the conference to the person that requested the conference not later than 30 days after
11 the conference ends.

12 **SECTION 1009. ADMINISTRATOR’S CONTRACT WITH ANOTHER TO**
13 **CONDUCT EXAMINATION.**

14 (a) In this section, an individual is “related to the administrator” if the individual is the
15 administrator’s spouse, partner in a civil union, child, stepchild, grandchild, parent, stepparent,
16 sibling, step-sibling, half-sibling, aunt, uncle, niece, or nephew, spouse or partner in a civil union
17 of any of them, or any other person residing in the administrator’s home.

18 (b) The administrator may contract with a person to conduct an examination under this
19 [article].

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

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

22 (2) a business entity, the entity must not be owned in whole or in part by the
23 administrator or an individual related to the administrator.

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

4 (e) If the administrator contracts with a person under subsection (b):

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

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

9 (3) on request by a person subject to examination by a contractor, the
10 administrator shall deliver to the person a complete unredacted copy of the contract between the
11 administrator and the contractor relating to the examination and any contract between the
12 contractor and a person employed or engaged by the contractor to conduct the examination.

13 (f) A contract under subsection (b) may be awarded only under [insert reference to
14 statute regarding this state's competitive procurement of services by private contractors].

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

17 **Legislative Note:** *In states that have prohibited the use of contingent fee outside examiners,*
18 *Section 1009(e)(1) should be revised to delete the words "contingent fee", and subsection (e)(2)*
19 *should be deleted in its entirety.*

20
21 **SECTION 1010. LIMIT ON FUTURE EMPLOYMENT.** The administrator or an
22 individual employed by the administrator who participates in, recommends, or approves the
23 award of a contract under this [article] on or after [the effective date of this [act]] may not be
24 employed by, contracted with, or compensated in any capacity by the contractor or an affiliate of
25 the contractor whose contract the administrator or employee participated in, recommended, or

1 approved, for [two] years after the latest of participation in, recommendation of, or approval of
2 the award or conclusion of the contract.

3 **SECTION 1011. REPORT BY ADMINISTRATOR TO STATE OFFICIAL.**

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

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

10 (A) the part voluntarily paid or delivered; and

11 (B) the part paid or delivered as a result of an examination under Section
12 1002, which amount must be separated into the part recovered as a result of an examination
13 conducted by:

14 (i) a state employee; and

15 (ii) a person under contract under Section 1009;

16 (2) the name and amount paid to each contractor under Section 1009 and the
17 percentage the total compensation paid to all contractors under Section 1009 bears to the total
18 amount paid or delivered to the administrator as a result of examinations;

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

23 (4) the total amount of:

1 (A) claims made by persons claiming to be owners which were denied;
2 (B) claims made by persons claiming to be owners which were allowed;
3 and
4 (C) funds received and the value of property held by the administrator
5 subject to claims of owners.

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

8 **SECTION 1012. DETERMINATION OF LIABILITY FOR UNREPORTED**
9 **REPORTABLE PROPERTY.** If the administrator determines from an examination conducted
10 under Section 1002 that a putative holder has failed or refused to pay or deliver property to the
11 administrator which is reportable under this [act], the administrator shall issue a determination of
12 the putative holder's liability to pay or deliver and provide to the putative holder notice in a
13 record of the determination.

14 **[ARTICLE] 11**

15 **DETERMINATION OF LIABILITY; HOLDER REMEDIES**

16 **SECTION 1101. INFORMAL CONFERENCE.**

17 (a) Not later than 30 days after receipt of a notice of determination of liability under
18 Section 1012, a putative holder may request an informal conference with the administrator to
19 review the determination.

20 (b) If a putative holder makes a timely request under subsection (a) for an informal
21 conference:

22 (1) the administrator shall set a place for the conference and a time for it not later
23 than [20] days after the date of the request;

1 (2) the administrator shall give the putative holder notice of the time and place of
2 the conference;

3 (3) the conference may be held in person, by telephone, or by electronic means, as
4 determined by the administrator;

5 (4) the request tolls the 90-day period under Sections 1103 and 1104 until notice
6 of a decision under paragraph (7) has been given to the putative holder or the putative holder
7 withdraws the request for the conference;

8 (5) the conference may be postponed, adjourned, and reconvened as the
9 administrator or the administrator's designee determines appropriate;

10 (6) the administrator or administrator's designee with the approval of the
11 administrator may modify a determination made under Section 1012 in part or withdraw it in its
12 entirety; and

13 (7) the administrator or administrator's designee shall issue a decision in a record
14 and provide a copy of the record to the putative holder and examiner not later than [20] days
15 after the conference ends.

16 (c) A conference under subsection (b) is not an administrative remedy and is not a
17 contested case subject to the [state administrative procedures act]. An oath is not required and
18 rules of evidence do not apply in the conference.

19 (d) At a conference under subsection (b), the putative holder must be given an
20 opportunity to confer informally with the administrator or an employee designated by the
21 administrator to act on the administrator's behalf and the person who examined the records of the
22 putative holder to:

23 (1) discuss the determination made under Section 1012; and

1 (2) present any issue the putative holder raises concerning the validity of the
2 determination.

3 (e) If the administrator or the administrator’s designee fails to act within a period
4 prescribed in subsection (b), the failure does not affect a right of the administrator, except that
5 interest does not accrue on the amount for which the holder was determined to be liable under
6 Section 1012 during the period in which the administrator or administrator’s designee failed to
7 act until the earlier of:

8 (1) the date under Section 1103 when the putative holder initiates administrative
9 review or files an action under Section 1104; or

10 (2) the 90-day period for initiating administrative review under Section 1103 or
11 filing an action under Section 1104 and no review was initiated and no action was filed.

12 (f) The administrator may hold an informal conference with the putative holder without a
13 request at any time before a putative holder initiates administrative review under Section 1103 or
14 files suit under Section 1104.

15 **SECTION 1102. REVIEW OF DETERMINATION BY ADMINISTRATOR.** A
16 putative holder may seek relief for a determination under Section 1012 that the putative holder
17 believes is illegal, unjust, incorrect, or in error, in whole or in part, by seeking:

18 (1) administrative review of the determination under Section 1103; or

19 (2) judicial review of the determination under Section 1104.

20 **Comment**

21 A holder who has received a notice of determination of liability under Section 1012 it
22 believes is incorrect or illegal has a series of options for remedies to challenge the determination.
23 He can ask for an informal conference. If he doesn’t ask for an informal conference he can elect
24 to go straight to court either to seek a refund of property turned over to the administrator or file
25 suit for a declaration that the determination is unjust or illegal. Or he can have the informal
26 conference and then go to court, or seek an administrative review, followed by an appeal for trial

1 *de novo* in court. Or he can bypass the administrative review and go to court either before or
2 after an informal conference.

3
4 **SECTION 1103. ADMINISTRATIVE REVIEW.**

5 (a) Not later than 90 days after receiving notice of the administrator's determination
6 under Section 1012, a putative holder may initiate a proceeding under the [state's administrative
7 procedures act] for review of the administrator's determination.

8 (b) A final decision in an administrative proceeding initiated under subsection (a) is
9 subject to judicial review by the [court] [as a matter of right in a *de novo* proceeding on the
10 record in which either party is entitled to introduce evidence in addition to or as a supplement to
11 the record].

12 *Legislative Note:* A state that has or allows judicial review of the decision of an administrative
13 proceeding should delete the brackets at the end of subsection (b) and retain the language
14 creating a right to *de novo* review on the record with either party being free to submit additional
15 evidence to supplement this record. If a *de novo* review is not possible in the state, the state
16 should delete the bracketed language.

17
18 **SECTION 1104. JUDICIAL REMEDY.**

19 (a) Not later than 90 days after receiving notice the administrator's determination under
20 Section 1012, the putative holder may:

21 (1) file an action against the administrator in the [court] challenging all or part of
22 the administrator's determination of liability and seeking a declaration that the determination is
23 unenforceable, in whole or in part; or

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

28 (b) If a putative holder pays or delivers property determined by the administrator to be

1 paid or delivered to the administrator at any time after the putative holder files an action under
2 subsection (a)(1), the court shall continue the action as if it had been filed originally as an action
3 for a refund or return of property under subsection (a)(2).

4 (c) On the final determination of an action filed under subsection (a), the court [may]
5 [shall], on application, award to the [plaintiff] [prevailing party] its reasonable attorney's fees
6 and expenses of litigation.

7 (d) A putative holder that is the prevailing party in an action under subsection (a) for
8 refund of money paid to the administrator is entitled to interest, at the same rate a holder is
9 required to pay to the administrator under Section 1204(a), on the amount refunded, from the
10 date paid to the administrator until the date of the refund.

11 **Legislative Note:** Section 1104(c) presents the same policy choices that are covered in the
12 *Legislative Note to Section 907 concerning the award of attorney's fees.*

13
14

Comment

15 After the administrator has issued a determination of a putative holder's liability under
16 Section 1011, the putative holder who disputes the liability in whole or in part has a series of
17 choices to make, each of which has fairly tight time constraints.

18

19 The first choice is whether to request an informal conference with the administrator or the
20 administrator's designated conferee. This must be done within 30 days of receipt of the notice of
21 determination, but there is no penalty associated with not requesting an informal conference. It
22 is purely voluntary on the part of the putative holder.

23

24 If a putative holder decides not to request an informal conference or is not satisfied with
25 the results of a conference, it is faced with a second choice: it may seek an administrative review
26 under the state's administrative procedures act or it may file for judicial review of the
27 determination.

28

29 This second choice must be made within 90 days of receipt by the putative holder of the
30 notice of determination of liability, except that timely filing of a request for an informal
31 conference tolls the running of the 90-day period until the administrator issues a decision arising
32 out of the informal conference.

33

34 If the putative holder decides to seek administrative review and is not satisfied with the
35 decision of the administrative judge, it may, within the time prescribed in the state's rules, file an

1 action in the appropriate court. If a state has *de novo* judicial review of administrative decisions,
2 either party has the right to supplement the record or present additional evidence.
3

4 If the putative holder decides not to seek administrative review, it may nevertheless,
5 within 90 days following receipt of the notice of determination (unless extended by requesting an
6 informal conference) file an action in the appropriate court seeking either a declaration of
7 whether it is required to pay the determined liability or a refund of any sums paid to the
8 administrator together with interest at the same rate of interest required to be paid to the
9 administrator.
10

11 **[ARTICLE] 12**

12 **ENFORCEMENT BY ADMINISTRATOR**

13 **SECTION 1201. JUDICIAL ACTION TO ENFORCE LIABILITY.**

14 (a) When a determination under Section 1012 becomes final and is not subject to
15 administrative or judicial review, the administrator may commence an action in the [court] or in
16 an appropriate court of another state to enforce the determination and secure payment or delivery
17 of past due, unpaid, or undelivered property. The action must be brought not later than [one] year
18 after the determination becomes final.

19 (b) In an action under subsection (a), if no court in this state has jurisdiction over the
20 defendant, the administrator may commence an action in a federal court or state court having
21 jurisdiction over the defendant.

22 **SECTION 1202. INTERSTATE AND INTERNATIONAL AGREEMENT AND**
23 **COOPERATION.**

24 (a) Subject to subsection (b), the administrator may:

25 (1) exchange information with another state or foreign country relating to
26 property presumed abandoned or relating to the possible existence of property presumed
27 abandoned; and

28 (2) authorize in a record another state or foreign country or a person acting on

1 behalf of the other state or country to examine its records of a putative holder as provided in
2 [Article] 10.

3 (b) An exchange or examination under subsection (a) may be done only if the state or
4 foreign country has confidentiality and security requirements substantially equivalent to those in
5 [Article] 14 or agrees in a record to be bound by this state’s confidentiality and security
6 requirements.

7 **SECTION 1203. ACTION INVOLVING ANOTHER STATE OR FOREIGN**
8 **COUNTRY.**

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

12 (b) On request of another state or foreign country, the [Attorney General] may commence
13 an action on behalf of the other state or country to enforce, in this state, the law of the other state
14 or foreign country against a putative holder of property presumed abandoned and therefore
15 subject to a claim by the other state or country, if the other state or country agrees to pay
16 expenses incurred by the [Attorney General] in the action.

17 (c) The administrator may request the official authorized to enforce the unclaimed
18 property law of another state or foreign country to commence an action to recover property in the
19 other state or country on behalf of the administrator. This state shall pay all expenses, including
20 reasonable attorney’s fees and costs, incurred in an action under this subsection.

21 (d) The administrator may pursue an action on behalf of this state to recover property
22 subject to this [act] but delivered to the custody of another state if the administrator believes the
23 property is subject to the custody of the administrator.

1 (e) The administrator may retain a private attorney in this state or another state or foreign
2 country to commence an action to recover property on behalf of the administrator and may agree
3 to pay attorney's fees based in whole or in part on a percentage of the amount or value of
4 property recovered in the action.

5 (f) Expenses incurred by this state in an action under this section may be paid from
6 property received under this [act] or net proceeds of the property. Expenses paid to recover
7 property may not be deducted from the amount that is subject to a claim under this [act] by the
8 owner.

9 **Comment**

10 A state that requires the approval of its Attorney General to the actions to be taken by an
11 administrator in this section will want to include language that requires such approval to be
12 obtained prior to proceeding with the desired action.

13
14 **SECTION 1204. INTEREST AND PENALTY FOR FAILURE TO ACT IN**
15 **TIMELY MANNER.**

16 (a) A holder that fails to report, pay, or deliver property within the time prescribed by this
17 [act] shall pay to the administrator interest at an annual rate of [[_] percent] [the rate of
18 interest payable to the department of revenue of this state on delinquent taxes] on the property or
19 value of the property from the date the property should have been reported, paid, or delivered to
20 the administrator until reported, paid, or delivered.

21 (b) Except as otherwise provided in Section 1205 or 1206, the administrator may require
22 a holder who fails to report, pay, or deliver property within the time prescribed by this [act] to
23 pay to the administrator, in addition to interest that may be included under subsection (a), a civil
24 penalty of \$[200] for each day the duty is not performed, up to a cumulative maximum amount
25 of \$[5,000].

1 **Legislative note:** *In Section 1204(a), states need to decide a rate of interest to impose on a*
2 *holder that has not performed in a timely manner. If a variable rate is chosen, it is suggested*
3 *that the rate be tied to something that is calculable on its face, such as the prime rate.*
4

5 **SECTION 1205. OTHER CIVIL PENALTIES.**

6 (a) If a holder enters into a contract or other arrangement to evade an obligation under
7 this [act] or willfully fails to perform a duty imposed on the holder under this [act], the
8 administrator may require the holder to pay the administrator, in addition to interest as provided
9 in Section 1104(a), a civil penalty of \$[1,000] for each day the obligation is evaded or the duty is
10 not performed, up to a cumulative maximum amount of \$[25,000], plus [25] percent of the
11 amount or value of any property that should have been but was not reported, paid, or delivered as
12 a result of the evasion or failure to perform.

13 (b) If a holder makes a fraudulent report under this [act], the administrator may require
14 the holder to pay to the administrator, in addition to interest as provided in Section 1204(a), a
15 civil penalty of \$[1,000] for each day from the date the report was made until corrected, up to a
16 cumulative maximum of \$[25,000], plus [25] percent of the amount or value of any property that
17 should have been reported but was not included in the report or was under reported.

18 **SECTION 1206. WAIVER OF INTEREST AND PENALTY.** The administrator:

19 (1) for good cause may waive, in whole or in part, [interest under Section 1204(a) and]
20 penalties under Section 1204(b) or 1205; and

21 (2) shall waive a penalty under Section 1204(b) if the administrator determines that the
22 holder acted in good faith and without negligence.

23 **Legislative Note:** *In a state in which interest on unpaid taxes is not permitted to be waived, the*
24 *bracketed language in Section 1206(1) should be deleted. Otherwise, the state should make a*
25 *policy decision whether the administrator should have the authority to waive the payment of*
26 *interest.*
27

1 [ARTICLE] 13

2 AGREEMENT TO LOCATE PROPERTY OF APPARENT OWNER HELD BY
3 ADMINISTRATOR

4 SECTION 1301. WHEN AGREEMENT TO LOCATE PROPERTY

5 ENFORCEABLE. An agreement by an apparent owner and a person, the primary purpose of
6 which is to locate, deliver, recover, or assist in the location, delivery, or recovery of property
7 held by the administrator, is enforceable only if the agreement:

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

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

11 (3) states the amount or value of the property reasonably estimated or expected to be
12 recovered computed both before and after a fee or other compensation to be paid to the other
13 person has been deducted.

14 SECTION 1302. WHEN AGREEMENT TO LOCATE PROPERTY

15 UNENFORCEABLE.

16 (a) Subject to subsection (b), an agreement under Section 1301 is void and unenforceable
17 if it is entered into during the period beginning on the date the property was paid or delivered by
18 a holder to the administrator and ending 24 months after the payment or delivery.

19 (b) If a provision in an agreement described in subsection (a) applies to mineral proceeds
20 for which compensation is to be paid to the other person based in whole or in part on a portion of
21 the underlying minerals or mineral proceeds not then presumed abandoned, the provision is void
22 and unenforceable regardless of when the agreement is entered into.

23 (c) An agreement under subsection (a) which provides for compensation in an amount

1 that is unconscionable is unenforceable except by the apparent owner. An apparent owner that
2 believes the compensation the apparent owner has agreed to pay is unconscionable or the
3 administrator, acting on behalf of an apparent owner, or both, may commence an action to reduce
4 the compensation to the maximum amount that is not unconscionable. [The court may award
5 reasonable attorney's fees and expenses of litigation to the prevailing party in the action.]

6 (d) An apparent owner or the administrator may assert that an agreement described in this
7 section is invalid on the ground other than it provides for payment of unconscionable
8 compensation.

9 (e) This section does not apply to an apparent owner's agreement with an attorney to
10 pursue a claim for recovery of specifically identified property held by the administrator or to
11 contest the administrator's denial of a claim for recovery of the property.

12 *Legislative Note: Section 1302(c) presents the same policy choices that are covered in the*
13 *Legislative Note to Section 907 concerning the award of attorney's fees.*

14
15 **SECTION 1303. RIGHT OF APPARENT OWNER'S AGENT TO RECOVER**
16 **PROPERTY HELD BY ADMINISTRATOR.**

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

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

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

1 [ARTICLE] 14

2 CONFIDENTIALITY AND SECURITY OF INFORMATION

3 SECTION 1401. PERSONS SUBJECT TO RULES.

4 (a) This [article] applies to the administrator and to an administrator’s agent.

5 (b) A person subject to this [article] is subject to [insert the same criminal penalties
6 imposed in the state for violation of a requirement of maintaining confidentiality of taxpayer
7 information].

8 SECTION 1402. CONFIDENTIAL INFORMATION.

9 (a) In this [article], “sensitive personal information” means:

10 (1) information that identifies or reasonably can be used to identify an individual,
11 such as first and last name in combination with the individual’s:

12 (A) social security number or other government-issued number or
13 identifier;

14 (B) date of birth;

15 (C) home or physical address;

16 (D) electronic-mail address or other online contact information or IP
17 address;

18 (E) financial account number or credit or debit card number;

19 (F) biometric data, health or medical data, or insurance information; or

20 (G) passwords or other credentials that permit access to an online or other
21 account;

22 (2) personally identifiable financial or insurance information, including nonpublic
23 personal information defined by applicable federal law; and

1 (3) any combination of data that, if accessed, disclosed, modified or destroyed
2 without authorization of the owner of the data or is lost or misused, would require notice or
3 reporting under applicable federal and state privacy and data security law, whether or not the
4 administrator or the administrator's agent is subject to the law.

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

7 (1) records of the administrator and the administrator's agent related to the
8 administration of this [act];

9 (2) reports and records of a holder in possession of the administrator or the
10 administrator's agent; and

11 (3) sensitive personal information and other information derived or otherwise
12 obtained by or communicated to the administrator or the administrator's agent from an
13 examination under this [act] of the records of a person.

14 (c) A record or other information that is confidential under law of this state other than this
15 [act], another state, a foreign country, or the United States continues to be confidential when
16 disclosed or delivered under this [act] to the administrator or administrator's agent.

17 **SECTION 1403. WHEN CONFIDENTIAL INFORMATION MAY BE**
18 **DISCLOSED.**

19 (a) The administrator may disclose confidential information concerning property held by
20 the administrator or the administrator's agent only to:

21 (1) an apparent owner or the apparent owner's personal representative, next of
22 kin, attorney-at-law, or agent designated under Section 1303 to have the information;

23 (2) the personal representative of a deceased apparent owner, next-of-kin,

1 attorney-at-law, or agent designated under Section 1303 by the deceased apparent owner or a
2 person entitled to inherit from an apparent owner;

3 (3) another department or agency of this state or the United States;

4 (4) the person that administers the unclaimed property law of another state, if the
5 other state accords substantially reciprocal privileges to the administrator of this state and the
6 other state has legal requirements of confidentiality and security of records substantially
7 equivalent to those of this state; and

8 (5) a person that is the subject of an examination as provided for in Section
9 1004(a)(6).

10 (b) Except as otherwise provided in Section 1402(b), the administrator shall include in
11 published notices and on a website or database required by Section 503(a)(4) the name of each
12 apparent owner of property held by the administrator. The administrator may include on the
13 website or database additional information concerning the apparent owner's property if the
14 administrator believes the information will assist in facilitating identification and return of
15 property to the owner and does not disclose confidential information.

16 (c) The administrator and the administrator's agent may not use confidential information
17 provided to them or in their possession for any purpose except as expressly authorized by this
18 [act] or required by law other than this [act].

19 **SECTION 1404. CONFIDENTIALITY AGREEMENT.** A person to be examined
20 under Section 1002 may require, as a condition of disclosure of the records of the person to be
21 examined, that each person participating in the examination execute and deliver to the person to
22 be examined a confidentiality agreement that:

23 (1) is in a form that is reasonably satisfactory to the administrator; and

1 (2) requires the person participating in the examination to comply with the provisions of
2 this [article] applicable to the person.

3 **SECTION 1405. NO CONFIDENTIAL INFORMATION IN NOTICE.** Except as
4 otherwise provided in Sections 501 and 502, a holder is not required under this [act] to include
5 confidential or nonpublic information or data in a notice the holder is required to provide to an
6 apparent owner under this [act].

7 **SECTION 1406. SECURITY OF INFORMATION.**

8 (a) If a holder is required to include confidential information in a report to the
9 administrator, the information must be provided by a secure means.

10 (b) If confidential information in a record is provided to and maintained by the
11 administrator and administrator's agent as required by this [act], the administrator and
12 administrator's agent shall:

13 (1) implement administrative, technical and physical safeguards designed to
14 protect the security, confidentiality, and integrity of the information as required by law of this
15 state and federal law;

16 (2) protect against reasonably anticipated threats or hazards to the security,
17 confidentiality, or integrity of the information; and

18 (3) protect against unauthorized access to or use of the information which could
19 result in substantial harm or inconvenience to a holder or the holder's customers, including
20 insureds, annuitants, or policy or contract owners or their beneficiaries.

21 (c) The administrator:

22 (1) by rule shall adopt and implement a security plan that identifies and assesses
23 reasonably foreseeable internal and external risks to confidential information in the

1 administrator's possession and seeks to mitigate the risks; and

2 (2) shall ensure that an administrator's agent adopts and implements a similar plan
3 with respect to confidential information in the agent's possession.

4 (d) The administrator and the administrator's agent shall educate and train their
5 employees regarding the plan adopted under subsection (c).

6 (e) The administrator and the administrator's agent shall in a secure manner return or
7 destroy all confidential information no longer reasonably needed under this [act].

8 **SECTION 1407. SECURITY BREACH.**

9 (a) Except to the extent prohibited by law other than this [act], the administrator or
10 administrator's agent shall notify a holder as soon as practicable of:

11 (1) any suspected loss or misuse or an unauthorized access, disclosure,
12 modification, or destruction of any confidential information in the possession of the
13 administrator or administrator's agent; and

14 (2) interference with operations in any system hosting or housing confidential
15 information which:

16 (A) compromises the security, confidentiality, or integrity of the
17 information; or

18 (B) otherwise creates a substantial risk of identity fraud or theft.

19 (b) Except as necessary to inform insurers, legal counsel, investigators, or others as
20 required by law, the administrator and administrator's agent may not disclose, without the
21 express consent in a record of the holder, an event described in subsection (a) to a person whose
22 confidential information was supplied by the holder.

23 (c) If an event described in subsection (a) occurs, the administrator and the

1 administrator's agent shall:

2 (1) take action necessary for the holder to understand and minimize the effects of
3 the event and determine its scope; and

4 (2) cooperate with respect to:

5 (A) any data breach notifications required by law; and

6 (B) a regulatory inquiry, litigation, and other similar action.

7 **SECTION 1408. INDEMNIFICATION FOR BREACH.**

8 (a) If a claim is made or action commenced arising out of an event described in Section
9 1407(a) relating to confidential information possessed by the administrator, this state shall
10 indemnify, defend, and hold harmless a holder and the holder's affiliates, officers, directors,
11 employees, and agents as to:

12 (1) a third-party claim or action; and

13 (2) a liability, obligation, loss, damage, cost, fee, penalty, fine, settlement, charge,
14 or other expense, including reasonable attorney's fees and costs.

15 (b) If a claim is made or action commenced arising out of an event described in Section
16 1407(a) relating to confidential information possessed by an administrator's agent, the
17 administrator's agent shall indemnify, defend, and hold harmless a holder and the holder's
18 affiliates, officers, directors, employees, and agents as to:

19 (1) a third-party claim or action and

20 (2) a liability, obligation, loss, damage, cost, fee, penalty, fine, settlement, charge,
21 or other expense, including reasonable attorney's fees and costs.

22 (c) The administrator shall require an administrator's agent that will receive confidential
23 information required under this [act] to maintain adequate insurance for indemnification

1 obligations of the administrator’s agent under subsection (b). The agent required to maintain the
2 insurance shall provide evidence of the insurance to:

3 (1) the administrator no less frequently than annually; and

4 (2) the holder on commencement of an examination and annually thereafter until
5 all confidential information is returned or destroyed under Section 1406(e).

6 **[ARTICLE] 15**

7 **MISCELLANEOUS PROVISIONS**

8 **SECTION 1501. ADDITIONAL RULES.** In addition to the rules the administrator is
9 required to adopt under this [act], the administrator may adopt under the [state administrative
10 procedures act] rules necessary to administer this [act].

11 **SECTION 1502. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
12 applying and construing this uniform [act] consideration must be given to the need to promote
13 uniformity of the law with respect to its subject matter among states that enact it.

14 **SECTION 1503. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL
15 AND NATIONAL COMMERCE ACT.** This [act] modifies, limits, or supersedes the
16 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but
17 does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or
18 authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15
19 U.S.C. Section 7003(b).

20 **SECTION 1504. TRANSITIONAL PROVISION.**

21 (a) An initial report filed under this [act] for property that was not required to be reported
22 before [the effective date of this [act]], but that is required to be reported under this [act], must
23 include all items of property that would have been presumed abandoned during the 10-year

1 period preceding [the effective date of this [act]] as if this [act] had been in effect during that
2 period.

3 (b) This [act] does not relieve a holder of a duty that arose before [the effective date of
4 this [act]] to report, pay, or deliver property. Except as otherwise provided in Section 610, a
5 holder that did not comply with the law governing unclaimed property before [the effective date
6 of this [act]] is subject to applicable provisions for enforcement and penalties in effect before
7 [the effective date of this [act]].

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

10 **[SECTION 1505. SEVERABILITY.** If any provision of this [act] or its application to
11 any person or circumstance is held invalid, the invalidity does not affect other provisions or
12 applications of this [act] which can be given effect without the invalid provision or application,
13 and to this end the provisions of this [act] are severable.]

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

16

17 **SECTION 1506. REPEALS; CONFORMING AMENDMENTS.**

18 (a)

19 (b)

20 (c)

21 **SECTION 1507. EFFECTIVE DATE.** This [act] takes effect....