UNIFORM UNCLAIMED PROPERTY ACT (1995)

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PREFATORY NOTE

Statement of the History of the Act

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

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

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

SECTION 1. DEFINITIONS.

In this [Act]:

(new subsection(1)): "Address" means any description, code or indication of the location of the apparent owner that sufficiently identifies the state of residence of the owner, regardless of whether such description, code or indication of location is sufficient to direct the delivery of mail.

(1) "Administrator" means [insert name of appropriate officer].

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

(3) "Business association" means a corporation, joint stock company, investment company, partnership, unincorporated association, joint venture, limited liability company, business trust, trust company, [land bank], safe deposit company, [safekeeping depository], financial organization, insurance company, mutual fund, utility, or other business entity consisting of one or more persons, whether or not for profit.

(4) ~~"Domicile" means the State of incorporation of a corporation and the State of the principal place of business of a holder other than a corporation.~~ "Domicile" means the State of incorporation of a corporation; the State of formation of a limited partnership, limited liability company, trust, or other entity created by State statute; the State of home office of a federally-chartered entity; and

except as otherwise provided the State of principal place of business for a sole proprietorship or other unincorporated entity. Where the state of domicile of a holder changes subsequent to the date on which property became payable or distributable, the holder's state of domicile for unclaimed property purposes shall be the State where the holder is domiciled at such time as the property is deemed abandoned.

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

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

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

(8) "Mineral" means gas; oil; coal; other gaseous, liquid, and solid hydrocarbons; oil shale; cement material; sand and gravel; road material; building stone; chemical raw material; gemstone; fissionable and nonfissionable ores; colloidal and other clay; steam and other geothermal resource; or any other substance defined as a mineral by the law of this State.

(9) "Mineral proceeds" means amounts payable for the extraction, production, or sale of minerals, or, upon the abandonment of those payments, all payments that become payable thereafter. The term includes amounts payable:

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

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

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

(10) ~~"Money order" includes an express money order and a personal money order, on which the remitter is the purchaser. The term does not include a bank money order or any other instrument sold by a financial organization if the seller has obtained the name and address of the payee~~.“Money order” is an express money order or personal money order, purchased by an individual. The term does not include a bank money order or any other instrument sold by a financial organization, or any instrument on which a business association, financial organization, or insurance company is the remitter.

(11) "Owner" means a person who has a legal or equitable interest in property subject to this [Act] or the person's legal representative. The term includes

a depositor in the case of a deposit, a beneficiary in the case of a trust other than a deposit in trust, and a creditor, claimant, or payee in the case of other property.

(12) "Person" means an individual, business association, financial organization, estate, trust, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

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

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

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

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

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

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

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

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

(viii) funds on deposit or held in trust for the prepayment of a funeral or other final expense; and~~.~~

(ix) the proceeds of sale, less any lawful charges, from the liquidation of the contents of a self-storage or similar leased storage unit or space.

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

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

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

Issues related to this section

1. **Include a definition for "address."**

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

Citation: 1995 Uniform Act (new definitional subsection).

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

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

Citation: 1995 Uniform Act Section 1(4).

3. **Revise definition of "domicile" to address mergers and reincorporations.**

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

Citation: 1995 Uniform Act Section 1(4).

NAUPA research: April 26, 2013 committee discussion.

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

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

Citation: 1995 Uniform Act section 1(10).

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

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

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

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

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

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

7. **Provide for express coverage of unclaimed preneed funeral contracts.**

Objective: address proceeds paid towards the funding of funerals and other final expense which under the design of existing arrangements, are left on deposit in perpetuity with a trustee.

Citation: 1995 Uniform Act Section 1(13) (definitions) (currently no express provisions)
NAUPA legislation: "Property" includes property that is referred to as or evidenced by:

(viii) funds on deposit or held in trust for the prepayment of a funeral or other final expense.

8. **Provide for express coverage of excess proceeds from the sale of tangible goods.**

Objective: to require the reporting of excess proceeds from tangible goods.

Citation: 1995 Uniform Act Section 1 (definitions) (currently no express provisions)

In the definition of property: new ix "Excess proceeds from sale of goods in storage"

Comment

The definitions reflect, pursuant to *Texas v. New Jersey*, 379 U.S. 674, 85 S.Ct. 626, 13 L.Ed. 2d 596 (1965), the fact that the Act applies to persons in other States who are holding property, eliminating any requirement that those persons be engaged in business in the enacting State. The obligation of a holder to report to all States in which a creditor had an address, or in which a transaction took place, or which is the holder's domicile, is now well established in the abandoned property statutes of the States and in the decisions of the Supreme Court. The holder's obligation to report is not confined to situations where the holder is authorized to do business or actually transacts business in a State. These jurisdictional rules are spelled out in detail in Section 4.

Paragraph (2) defines "apparent owner" in terms of reference to the person who appears on the holder's records to be the person entitled to the property. The right of a State to claim abandoned property depends on the information in the holder's records concerning the apparent owner's identification. It is of no consequence that without notice to the holder, the owner may have transferred the property to another person. In *Nellius v. Tampax, Inc.*, 394 A.2d 333 (Del. Ch. Ct. 1978), the court held that the address of the apparent, not the actual, owner controlled. The holder is not required to ascertain the name of the current owner or resolve a dispute between the owner of record and a successor contesting ownership. However, nothing in this Act prohibits the actual owner from recovering the property, pursuant to Sections 10 and 15, from the holder or the administrator. Similarly, the State of last known address of the actual owner can recover the property, pursuant to Section 14, from the State which initially receives custody.

The definition of "business association" in paragraph (3) expressly includes mutual funds, which previously were covered in general terms.

The definition of "holder" in paragraph 5 is a clarification. There had been some confusion in the past over the identity of the holder of an obligation that had been transferred by the original obligor, as in the payment of dividends on corporate stock. As held by the Supreme Court in *Delaware v. New York*, the holder is the person indebted under the applicable state law. Thus, if the original debtor, the dividend-paying corporation, has satisfied its debt under its share contract and under state law by transmitting payment to an intermediary, which has undertaken to make the payment, the intermediary becomes the debtor. The holder thus is "a person obligated," *i.e.*, a person who could be sued successfully by the owner for refusing to make payment.

Although the 1981 Act defined "last known address" as "a description of the location of the apparent owner sufficient for the purpose of the delivery of mail," that Act indicated some uncertainty over whether this was an accurate interpretation of *Texas v. New Jersey*, since this definition was accompanied by a Commissioners' Comment that appeared to be at odds with the definition itself. Thus, the Comment stated that "Where a holder originally had the address of the owner and it has been subsequently destroyed, a computer code may be one way of establishing an address within the state." "Last known address" is no longer defined in the Act; instead, the sections dealing with the jurisdictional rules (Sections 4 and 14) are rewritten so that they define, individually, the rules of the States' priorities of taking.

The touchstone of those rules of priority is *Texas v. New Jersey*, 379 U.S. 674, 85 S.Ct. 626, 13 L.Ed. 2d 596 (1965), in which the Court established as a primary rule that unclaimed property goes to "the State of the last known address of the creditor, as shown by the debtor's books and records." *Id.* at 681-82, 85 S.Ct. at 631, 13 L.Ed. 2d at 601. Where the debtor has "no record of any address at all," the state of corporate domicile could take, *id.* at 682, 85 S.Ct. at 631, 13 L.Ed. 2d at 601, subject to proof by another State "that the last known address of the creditor was within its borders." *Id.*, 13 L.Ed. 2d at 602. See also *Pennsylvania v. New York*, 407 U.S. 206, 32 L.Ed. 2d 693, 92 S.Ct. 2075 (1972).

In *Delaware v. New York*, the Court reaffirmed the rules of *Texas v. New Jersey*: Delaware, as the State of corporate domicile, would take the property initially where the holder's records did not contain a last known address. That delivery of the property to Delaware, however, would not cut off the rights of another State to later claim the property from Delaware. For instance:

> On remand, if New York can establish by reference to debtors' records that the creditors who were owed particular securities distributions had last known addresses in New York, New York's right to escheat under the primary rule will supersede Delaware's right under the secondary rule. As we noted in *Texas*, "the State of corporate domicile should be allowed to . . . retai[n] the property for itself only until some other State comes forward with proof that it has a superior right to escheat." 379 U.S., at 682. Accord, *Pennsylvania*, 407 U.S., at 210-211. If New York or any other claimant State fails to offer such proof on a transaction-by-transaction basis or to provide some other proper mechanism for ascertaining creditors' last known addresses, the creditor's State will not prevail under the primary rule, and the secondary rule will control.

Id. at ____, 113 S.Ct. at 1561-62, 123 L.Ed. 2d at 227-28. (Deletions in original.)

In sum, *Delaware v. New York* requires that some "proper mechanism" show that the owner had an address within the State that asserts a primary claim. A

computer code would appear to be such a means of proof. On the other hand, showing that the transaction took place in the State would not be sufficient proof of an owner's address. *Pennsylvania v. New York*, 407 U.S. 206, 92 S.Ct. 2075, 32 L.Ed. 2d 693 (1972).

For purposes other than these jurisdictional rules -- i.e., the holder's duties of reporting and maintenance of records and the States' duties of publication -- the "last known address" will depend on the nature and extent of the holder's records. Thus, the holder will include in its report the best address it has, which may or may not include a street address, or, for example, an "E mail" address.

The definition of "money order" in paragraph (10) is designed to distinguish between personal money orders issued by business entities which are not financial organizations, which have a seven year holding period, and those issued by financial organizations, which have a five year holding period.

The Act provides exclusively for the disposition of unclaimed intangible property and does not apply to tangible property, with one exception: Section 3 applies to tangible property contained in safe deposit boxes. Paragraph (12), defining property, is not intended as a substantive addition to the coverage of the 1981 Act. It is, however, intended to be all-inclusive; the descriptions of property interests that are set forth as examples are not limiting, but are stated to help holders identify kinds of property interests which otherwise may be overlooked. Thus, "property" is not the check, note, certificate or other document that evidences the property interest, but the underlying right or obligation. See *Blue Cross of Northern California v. Cory*, 120 Cal. App. 3d 723, 174 Cal. Rptr. 901 (1981) ("right to be paid" is the "'intangible personal property' (or 'chose in action') . . . which is recognized in the UPL"). The requirement that the right be "fixed and certain" excludes unliquidated claims from the coverage of the Act, such as disputed tort claims.

Many States already have laws that define utilities. Paragraph (15) gives a State the option to adopt the Act's definition of a utility, or another definition contained in existing law. The term is intended to be broadly applied.

Section 1:
Definition

■ **Adopted**	**with the following modification(s):**
Alabama	1. Omits definition of “Administrator.” 2. Added “industrial loan organization” to definition of “Financial Organization.” 3. Added “in possession of property belonging to another” and “trustee in case of a trust” to definition of “Holder.” 4. Omitted definition of “Money Order.” 5. Added definition of “Rules.” 6. Added definition of “Treasurer.”
Arizona	Exempts de minimis property, property of person maintaining current business relationship with holder, gift certificates, electronic gift cards, nonrefundable tickets, prepaid phone cards, frequent flyer miles, stored value cards, merchandise points.
Indiana	Includes definition of last known address and political subdivision. Exempts property held in safe deposit box, and transactions between business entities and a motor carrier, carrier, and railroad from definition of property.
Kansas	Defines last known address. Limits definition of mineral.
Louisiana	Combines definition of financial organization with business association. Does not include workers' compensation insurance in definition of insurance company. Excludes from definition of "property" any certificate, rebate, coupon, or other instrument issued in connection with a class action judgment or court approved settlement representing a refund on or reduction of the purchase price of an item or services purchased.
North Carolina	Drops definition of "administrator," "money order." Adds definition for Treasurer.
New Jersey	Omits part of the definition of money order.
Vermont	Added a definition for “asset locator.”

■ Adopted as is: HI, ME, MT, NM, NV, VI, WV

■ Did not adopt:

SECTION 2. PRESUMPTIONS OF ABANDONMENT.

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

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

(2) money order, seven years after issuance;

(3) stock or other equity interest in a business association or financial organization, including a security entitlement under [Article 8 of the Uniform Commercial Code], ~~five~~ three years after the earlier of (i) the date of the most recent dividend, stock split, or other distribution unclaimed by the apparent owner, or (ii) the date of the second mailing of a statement of account or other notification or communication that was returned as undeliverable or after the holder discontinued mailings, notifications, or communications to the apparent owner;

(4) interest on debt of a business association or financial organization, ~~other than a bearer bond or an original issue discount bond~~, ~~five~~ three years ~~after the date of the most recent interest payment unclaimed by the apparent owner;~~

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

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

~~(7) gift certificate, three years after December 31 of the year in which the certificate was sold, but if redeemable in merchandise only, the amount abandoned is deemed to be [60] percent of the certificate's face value~~;

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

(8) amount owed by an insurer on a life or endowment insurance policy or an annuity that has matured or terminated, (i)~~, three~~two years after the obligation to pay arose, which~~ or,~~ in the case of a policy or annuity payable upon ~~proof of~~ death~~, three years after the~~ shall be the date of death of the insured; or (ii) one year after the date the insured has attained, or would have attained if living, the limiting age under the mortality table on which the reserve is based in the case of a policy or annuity payable upon death where the insurer does not know whether the insured is deceased as of the time the limiting age is reached;

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

(10)~~ property received by a court as proceeds of a class action, and not distributed pursuant to the judgment, one year after the distribution date~~ property distributable pursuant to a judgment or settlement in a class action, litigation, other dispute

between a judicial or administrative body, one year after the property became distributable.

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

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

(12) wages or other compensation for personal services, , one year after the compensation becomes payable without regard to the medium of payment;

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

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

(14) property in an individual retirement account, defined benefit plan, or other account or plan that is qualified for tax deferral under the income tax laws of the United States, three years after the earliest of the date of the distribution or attempted distribution of the property, the date of the required distribution as

stated in the plan or trust agreement governing the plan, or the date, if determinable by the holder, specified in the income tax laws of the United States by which distribution of the property must begin in order to avoid a tax penalty

(new subsection) property in a college savings plan or prepaid plan established under section 529 of the Internal Revenue Code of the United States, five years from the date of last indication of interest by the owner, provided that the beneficiary has reached, as of five years from the date of last indication of interest by the owner, the age of 26 years. If the beneficiary has not yet reached, as of five years from the date of last indication of interest by the owner, the age of 26 years, the property is not presumed abandoned until such time as the beneficiary reaches the age of 26 years.

(new subsection) property in a Coverdell Education Savings Account established under section 530 of the Internal Revenue Code of the United States , three years from the date of last indication of interest of the owner, provided that the beneficiary has reached, as of three years from the date of last indication of interest of the owner, the age of 33 years. If the beneficiary has not yet reached, as of three years from the date of last indication of interest by the owner the age of 33 years, the property is not presumed abandoned until such time as the beneficiary reaches the age of 33 years. and

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

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

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

If the person entitled to the property abandoned under subsection (a)(8) is the beneficiary of a life insurance policy or annuity and no address was designated in the company's records for the beneficiary, the last known address of the insured or annuitant according to the company's records shall be considered to be the last known address of the beneficiary.

(b) Where there is an ambiguity or conflict under this section as to the applicable period giving rise to a presumption of abandonment, the nature of

the underlying obligation, regardless of the form of payment or account, shall take precedence and dictate the corresponding abandonment period.

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

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

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

(i) the presentment of a check or other instrument of payment of a dividend or other distribution made with respect to an account or underlying stock or other interest in a business association or financial organization or, in the case of a distribution made by electronic or similar means, evidence that the distribution has been received;

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

(iii) the making of a deposit to or withdrawal from a bank account; and

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

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

(f) Actions that do not constitute an owner's indication of interest include ACH transfers, automated postings to accounts, computer system conversions, the non-return of mail, and other actions that are not owner initiated or do not require a direct owner response.

~~(e)~~ (g) Property is payable or distributable for purposes of this [Act] notwithstanding the owner's failure to make demand or present an instrument or document including, without limitation, a death certificate, insurance policy,

savings account passbook, gift certificate, winning racing ticket, or other memorandum of ownership, otherwise required to obtain payment.

Issues related to this section

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

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

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

NAUPA legislation:

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

* * * * *

(12) wages or other compensation for personal services, , one year after the compensation becomes payable without regard to the medium of payment;

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

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

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

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

NAUPA legislation: (new): Where there is an ambiguity or conflict under this

section as to the applicable period giving rise to a presumption of abandonment, the nature of the underlying obligation, regardless of the form of payment or account, shall take precedence and dictate the corresponding abandonment period.

11. Provide specific due diligence and abandonment criteria for tax-advantaged assets represented by Coverdell ESAs, College Savings (529 plans) and certain Health Savings Accounts (HSAs) intended to be used exclusively in retirement; clarify the reporting of Roth IRAs where there is no mandatory date of distribution.

Citation: 1995 Uniform Act Section 2(a)(14) (will additionally require new subsections for College Savings Plans) and section.

Objective: review new types and determine appropriate abandonment periods in view of passive investment characteristics of College Savings Plans and Health Savings Accounts funded expressly for retirement.

Citation: 1995 Uniform Act Section 2(14)(new subsection)

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

14) property in an individual retirement account, defined benefit plan, retiree benefit plan, or other account or plan that is qualified for tax deferral under the income tax laws of the United States, three years after the earliest of the date of the distribution or attempted distribution of the property, the date of the required distribution as stated in the plan or trust agreement governing the plan, or the date, if determinable by the holder, specified in the income tax laws of the United States by which distribution of the property must begin in order to avoid a tax penalty~~,~~ , or the owner reaching the age of 70 ½ years;

(new subsection) property in a Coverdell Education Savings Account established under section 530 of the Internal Revenue Code of the United States , three years from the date of last indication of interest of the owner, provided that the beneficiary has reached, as of three years from the date of last indication of interest of the owner, the age of 33 years. If the beneficiary has not yet reached, as of three years from the date of last indication of interest by the owner the age of 33 years, the property is not presumed abandoned until such time as the beneficiary reaches the age of 33 years.

(new subsection) property in a college savings plan or prepaid plan established under section 529 of the Internal Revenue Code of the United States, five years from the date of last indication of interest by the owner, provided that the beneficiary has reached, as of five years from the date of last indication of interest by the owner, the age of 26 years. If the beneficiary has not yet reached, as of five years from the date of last indication of interest by the owner, the age of 26 years, the property is not presumed abandoned until such time as the beneficiary reaches the age of 26 years.

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

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

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

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

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

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

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

Citation: 1995 Uniform Act Section 2.

NAUPA UUPA revision survey (2013). Chart showing 5 year abandonment states' rates of return is greater than that of 3 year states.

-Reduce all five year abandonment periods to three years *(with life insurance policy proceeds separately addressed)*;

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

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

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

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

15. **Clarify reporting requirements for unclaimed life insurance policies including expressly providing that the death of the insured triggers the running of the abandonment period; that the limiting age should only be used to determine abandonment if the life insurer does not know that the insured is deceased; waiving the requirement of a death certificate or other specific documentation for life insurance property to be deemed payable; and providing relief from interest and penalties where an insurer's failure to timely report policy proceeds is for reason of lack of knowledge of the insured's death. Additionally, reduce abandonment periods for policy proceeds from three years, to two years for policies that have matured or terminated and one year for policies reaching the limiting age.**

Citation: 1995 Uniform Act Section 2(a)(8) 2(e), and 24(a),(b).

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

NAUPA legislation:

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

* * * * *

(8) amount owed by an insurer on a life or endowment insurance policy or an annuity that has matured or terminated: (i) two years after the obligation to pay arose, which in the case of a policy or annuity payable upon death shall be the date of death of the insured; or (ii) one year after the date the insured has attained, or would have attained if living, the limiting age under the mortality table on which the reserve is based in the case of a policy or annuity payable upon death where the insurer does not know whether the insured is deceased as of the time the limiting age is reached;

* * * * *

(e) Property is payable or distributable for purposes of this [Act] notwithstanding the owner's failure to make demand or present an instrument or document, including, without limitation, a death certificate, insurance policy, savings account passbook, gift certificate, winning racing ticket, or other memorandum of ownership, otherwise required to obtain payment.

* * * * *

(24)(a) Except as otherwise provided in subsection (f), a holder who fails to report, pay, or deliver property within the time prescribed by this [Act] shall pay to the administrator interest at the annual rate of [12 percent] [two percentage points above the annual rate of discount in effect on the date the property should have been paid or delivered for the most recent issue of 52-week United States Treasury bills] on the property or value thereof from the date the property should have been reported, paid or delivered.

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

* * * * *

(f) A holder who fails to report, pay or deliver property payable under a life insurance policy or annuity contract upon death within the time prescribed by Section 2.(a)(8)(i) of this [Act] shall not be required to pay interest under subsection (a) above or be subject to penalties under subsection (b) above if the failure to report, pay or deliver the property was due to lack of knowledge of the death giving rise to the payment obligation.

16. Expressly address the abandonment period for a municipal bond.

Objective: resolve ongoing disputes as to when municipal bond interest/principal is reportable.

Citation: 1995 Uniform Act Section 2(a)(11).
NAUPA legislation:

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

17. Expand coverage for unclaimed class action and other settlement proceeds.

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

Citation: 1995 Uniform Act Section 2(10).

NAUPA research: April 26, 2013 committee discussion.

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

18. Reconfigure existing abandonment parameters for unclaimed securities.

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

Citation: 1995 Uniform Act Section 2(3).

NAUPA research:NAUPA only recently received voluminous research from the Investment Company Institute, and this research has not yet been fully evaluated.

NAUPA legislation: drafting of legislation pending completion of research.

19. Provide that the abandonment period for the underlying obligation governs.

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

Citation: 1995 Uniform Act Section 2(new subsection)

Where there is an ambiguity or conflict under this section as to the applicable period giving rise to a presumption of abandonment, the nature of the underlying obligation, regardless of the form of payment or account, shall take precedence and dictate the corresponding abandonment period.

Comment

Section 2 continues the general proposition that all intangible property is within the coverage of this Act. It provides in a single section for all the various periods of abandonment that were separately stated in several sections of the 1981 Act. With limited exceptions this reorganization does not alter the bases for presuming abandonment of the property from that established in the 1981 Act, but merely restates those standards in a unified section, more easily applied, with less repetition. One exception is that whereas the 1981 Act exempted from the presumption of abandonment certain property held by a bank if the bank held other property of the depositor not presumptively abandoned, the present Act does not. It was the conclusion of the Commissioners that an owner's knowledge of some property does not necessarily imply knowledge of all his or her property held by the bank, and that the owner is entitled to the protection of this Act as to all the owner's property.

This section treats underlying bond obligations the same as underlying stock, except as to bearer bonds and original issue discount bonds. Thus, registered interest paying bonds will be presumed abandoned five years after the date of an unpresented instrument issued to pay interest. In the case of bearer bonds, however, although interest held on deposit for more than five years that has not been paid out as a result of failure to present a coupon for payment will be considered abandoned, the underlying principal represented by the bearer certificate, provided such certificate is not held by an agent due to a mail return or other similar circumstance, will not be considered abandoned even if the coupons that were attached to that certificate at the time of original issuance have not been presented for payment. Where interest is accrued but not paid until the return of principal at the time the obligation matures or is called, and there is no making of periodic interest payments, there is not the same motivation for bond holders to communicate with the trustee or paying agent as in the case of interest paying bonds, and a lack of communication should not give rise to a presumption of abandonment. Therefore, bearer bonds and original issue discount bonds are excluded from paragraph (4) of this section, and will fall instead under paragraph (15). Those bonds will be presumed abandoned five years after the issuer's obligation to pay arises, i.e., five years after call or maturity.

The 1981 Act shortened the general dormancy period from 7 years to 5 years. Certain exceptions continue to be appropriate. For instance, statistical evidence indicates that a period of 15 years continues to be appropriate in the case of travelers checks, and seven years in the case of personal money orders and money orders issued by express companies. Also, in certain instances shorter periods are appropriate. For instance, the likelihood of finding the owner of a payroll check is materially decreased after one year. Hence, there is a one year dormancy period for unclaimed wages. Coverage of consumer credits is specifically provided, which is a clarification of the 1981 Act. The term covers

credits owed on consumer transactions such as returns of merchandise, cancellation of layaways, and various kinds of deposits. The existence and amounts of such credits will of course be dependent on the terms of the contract between the holder and the consumer.

The dormancy period for unpaid distributions from retirement accounts and plans has been modified to shorten the period of presumed abandonment from five to three years, since an earlier date of presumed abandonment should be of assistance in assuring that the assets of the plan are ultimately claimed by their owner.

Because the unclaimed property laws are matters of traditional state powers, are laws of general application, and have only a tenuous, remote and peripheral impact on ERISA plans, it has been held that they are not pre-empted by federal law. *Aetna Life Ins. Co. v. Borges*, 869 F.2d 142 (2nd Cir. 1989); *Attorney General v. Blue Cross and Blue Shield of Michigan*, 168 Mich. App. 372, 424 N.W.2d 54 (Ct. App. 1988), *appeal denied*, No. 83788 (March 31, 1989). These cases declined to follow two advisory opinions to the contrary, issued by the Department of Labor (Opinions 78-32A, December 22, 1978, and 79-30A, May 14, 1979). Thereafter, notwithstanding the Second Circuit and Michigan decisions, the Department continued to adhere to its position that unclaimed property laws "relate to" ERISA, and are thus pre-empted, in a letter opinion issued March 3, 1995. 22 BNA Pension & Benefits Reporter 743 (1995). That opinion relied on *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133 (1990), as holding that pre-emption extended to state laws that had only an indirect economic affect on ERISA plans. Subsequently, the Supreme Court in *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, ____ U.S. ____ (63 Law Week 4372, April 26, 1995), expounded a much narrower meaning of *Ingersoll-Rand*. The case held that ERISA does not pre-empt the imposition of statutorily-mandated surcharges on bills of hospital patients whose commercial insurance coverage is purchased by an ERISA plan, or on HMOs insofar as their membership fees are paid by an ERISA plan. The Court emphasized that even though such state statutes would affect choices made by plan administrators, the ERISA pre-emption was not so broad as to nullify those state laws. The Court emphasized the basic presumption that "Congress does not intend to supplant state law" (63 LW at 4374). The Court said that *Ingersoll-Rand* does not hold that "merely economic influence" on administrative decisions will trigger pre-emption. (63 LW at 4376.) *Ingersoll-Rand* was explained to hold only that pre-emption would be found where state law produced "such acute, albeit indirect, economic effects" as to force a certain substantive scheme of coverage or effectively restrict insurance choices. (*Id.* at 4375.) Thus, "the basic thrust of the [ERISA] pre-emption clause, then, was to avoid a multiplicity of regulation in order to permit the nationally uniform administration of employee benefit plans." (*Id.* at 4375.) *See also Mackey v. Lanier Collection Agency & Service, Inc.*, 486 U.S. 825 (1988), holding that ERISA

does not pre-empt a state garnishment statute under which a creditor may reach plan participants' benefits. A state claim under its unclaimed property law would appear to be no more intrusive to the federal regulatory scheme than its garnishment laws. Accordingly, with one exception, the final distribution of assets of a terminated plan, which is governed by 29 U.S.C. sec. 1350, this Act presumes that it is not pre-empted by ERISA.

Intangible property held by a utility other than subscribers' deposits and refunds are subject to the five year rule of subsection (a)(15).

Subsection (e) is intended to make clear that property is reportable notwithstanding that the owner, who has lost or otherwise forgotten his or her entitlement to property, fails to present to the holder evidence of ownership or to make a demand for payment. See *Connecticut Mutual Life Insurance Co. v. Moore*, 333 U.S. 541 (1948), in which the Court stated: "When the state undertakes the protection of abandoned claims, it would be beyond a reasonable requirement to compel the state to comply with conditions that may be quite proper as between the contracting parties." See also *Provident Institution for Savings v. Malone*, 221 U.S.. 660 (1911), involving savings account; *Insurance Co. of North America v. Knight*, 8 Ill. App. 3d 871, 291 N.E.2d 40 (1972), involving negotiable instruments, and *People v. Marshall Field & Co.*, 83 Ill. App. 3d 811, 404 N.E.2d 368 (1980), involving gift certificates. With respect to gift certificates, see also Section 19(a), which invalidates private periods of limitation. Thus, gift certificates will be reportable notwithstanding language on the certificate purporting to avoid escheat by creating an expiration date prior to the time of presumed abandonment. Section (c) also obviates the result reached in *Oregon Racing Comm. v. Multonamah Kennel Club*, 242 Or. 572, 411 P.2d 63 (1963), involving unpresented winning parimutuel tickets.

Since the holder is indemnified against any loss resulting from the delivery of the property to the administrator, no possible harm can result in requiring that holders turn over the property, even though the owner has not presented proof of death or surrendered the insurance policy, savings account passbook, the gift certificate, winning racing ticket, or other memorandum of ownership.

Section 2:
Presumptions of Abandonment

■ Adopted	with the following modification(s):
Alabama	1. Dormancy period for money orders set at five (5) years. 2. Dormancy period for stock or other equity interest in a business or financial organization set at three (3) years. 3. Dormancy period for underlying debt set at three (3) years. 4. Dormancy period for demand, savings or time deposits set at three (3) years. 5. Added three 3) year dormancy period for safe deposit boxes. 6. Dormancy period for money or credits owed as a result of a retail business transaction set at one (1) year. 7. Dormancy period for gift certificates changed to exclude certain exempt gift certificates, as defined in § 35-12-73 (b) (1); and to establish three (3) year dormancy period, as of June 30 of year in which certificate sold, on 60% of the value of gift certificates presumed abandoned. 8. Added two (2) year dormancy period for demutualization proceeds. 9. Dormancy period for miscellaneous intangibles set at three (3) years. 10. Added § 35-12-73 containing exemptions for: a. Electric cooperatives b. Incorporated municipalities and municipal boards and incorporated counties and boards c. Gift certificates or gift cards or in-store merchandise credit issued from business engaged primarily in selling of tangible personal property an retail
Arkansas	An indication of an owner's interest in property includes correspondence from a financial organization to the owner by mail which correspondence is not returned unclaimed or undelivered.
Arizona	Dormancy period for underlying shares is three years; for customer credits five years. Does not include underlying bonds. Adds additional requirement for life or annuity insurers. Requires reporting of state warrants. Special provision for check, draft, or other instrument on which financial organization or business association is directly liable.
Indiana	Activity on other accounts with financial institution constitutes activity in some cases. Dormancy period for property held by courts is five years unless it is for child support. No separate provision for proceeds of class actions.
Hawaii	■ Includes five year abandonment period for money or credits owed to a customer as a result of a retail business transaction. ■ Includes five year abandonment period for non-exempt gift certificates and calls for reporting 100% of the value of such gift certificates. ■ Includes five year abandonment for life insurance property.
Kansas	Dormancy period for customer credits is five years. Gift certificates are not specifically covered but not specifically exempted. Includes proceeds from sale and satisfaction of a lien. Demand or savings account with financial institution not presumed abandoned if correspondence not returned. Check, draft, credit balance, customer overpayment or unidentified remittance issued to sole proprietorship or business association as part of commercial transaction exempted.
Louisiana	Incorporates debt obligation into section pertaining to underlying shares. Demand, savings, or matured time deposits excused from reporting if mail has been sent to owner within 90 days and not returned as undeliverable. Two year dormancy period for mineral proceeds. Limits abandonment of any other property right accrued as a result of the interest and not previously abandoned to stock.

Maine	Different requirements for automatically renewable time deposits and deposits for the benefit of minors. Amount abandoned on gift certificate is amount paid except that it is 60% of face value if there is no dormancy charge or period of limitations on owner's right to redeem certificate at 100% of face value. For deposits, where owner has another relationship with the holder, an indication of interest in the property includes: (i) an indication of interest in the other accounts; or (ii) a memorandum on file indicating that the holder has communicated in writing with the owner with regard to the property at the address to communications regarding the other accounts are regularly sent.
Montana	Patronage refunds owed to a member of a rural electric or telephone cooperative are exempted if they are used by the cooperative for educational purposes.
North Carolina	Changes order of section; activity in one account is an indication of owner interest for all other time deposit, demand or savings accounts held by the same owner; wages have abandonment period of two years and time deposits ten years.
Vermont	Provided three year dormancy periods for securities related property, banking property, and miscellaneous intangible property. Added three additional examples of an indication of an owner's interest in property: in the case of banking or financial organization deposits, first class mail has not been returned as undeliverable; in the case of banking or financial organization deposits, if mail has been returned undeliverable, the dormancy period begins to run from the date the mail was returned, unless the owner has exhibited any other indication of interest as defined in the subsection; and an electronic record of an internet account inquiry or action, when made via the use of the owner's unique personal identification information, subject to additional protections. The dormancy period for gift certificates was omitted, with the express legislative intent of exempting this property type.
West Virginia	Increased dormancy period to seven years for interest bearing and time deposit accounts; two year dormancy for utility deposits; added six month dormancy period for state warrants; added dormancy period of five years for funds held by a fiduciary for payment of bonds after maturity or call date.

- Adopted as is: NM, NV, VI
- Did not adopt: NJ

SECTION 3. CONTENTS OF SAFE DEPOSIT BOX OR OTHER SAFEKEEPING DEPOSITORY. Tangible property held in a safe deposit box or other safekeeping depository in this State in the ordinary course of the holder's business and proceeds resulting from the sale of the property permitted by other law, are presumed abandoned if the property remains unclaimed by the owner for more than five years after expiration of the lease or rental period on the box or other depository.

Comment

Section 3 parallels Section 2(d) of the 1966 Act and Section 16 of the 1981 Act. This section is not intended to cover property left in places other than safekeeping depositories, for example, airport lockers or field warehouses. Its coverage is limited to tangible property held in safe deposit boxes in banks and financial institutions. Intangible property, evidence of which is found in a safe deposit box, is covered by Section 2.

Section 3:
Contents of Safe Deposit Box or Other Safekeeping Depository

■ **Adopted**	**with the following modification(s):**
Arizona	Reduces dormancy period to one year.
Louisiana	Includes only intangible property held in safe deposit box, but reporting section requires that tangible property in safe deposit box be reported.
North Carolina	References other NC statutes relating to safe deposit boxes

■ Adopted as is:	AL, AR,HI, IN, KS, ME, MT, NM, NV, VT, VI, WV
■ Did not adopt:	NJ

SECTION 4. RULES FOR TAKING CUSTODY. Except as otherwise provided in this [Act] or by other statute of this State, property that is presumed abandoned, whether located in this or another State, is subject to the custody of this State if:

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

(2) the records of the holder do not reflect the identity of the person entitled to the property and it is established that the last known address of the person entitled to the property is in this State;

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

(i) the last known address of the person entitled to the property is in this State; or

(ii) the holder is domiciled in this State or is a government or governmental subdivision, agency, or instrumentality of this State and has not previously paid or delivered the property to the State of the last known address of the apparent owner or other person entitled to the property;

(4) the last known address of the apparent owner, as shown on the records of the holder, is in a State that does not provide for the escheat or custodial taking of the property and the holder is domiciled in this State or is a government or governmental subdivision, agency, or instrumentality of this State;

(5) the last known address of the apparent owner, as shown on the records of the holder, is in a foreign country and the holder is domiciled in this State or is a government or governmental subdivision, agency, or instrumentality of this State;

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

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

8) If the last known address of a person other the apparent owner, insured or annuitant who becomes entitled to property through the death of the apparent owner, insured or annuitant is not known to the holder, it is presumed that the last known address of the person entitled to the property is the same as the last known address of the apparent owner, insured or annuitant according to the record of the holder.

Issues related to this section

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

Objective: address the scenario where property is owed to a beneficiary, but the beneficiary has no last known address; treat the last known address of the beneficiary as identical to that of the deceased insured or other original owner.
Citation: 1981 Uniform Act Section 7(b); 1995 Uniform Act Section 4
NAUPA research: none

Comment

Section 4 describes the general circumstances under which a State may claim abandoned intangible property. This section closely follows the language of *Texas v. New Jersey*, in which the court reasoned that unclaimed property is an asset of the creditor and should generally be paid to the creditor State, i.e., the State of residence of the apparent owner. Consistent with that reasoning it held that unclaimed intangible property is subject to escheat or custody as unclaimed property first by the State of the owner's last known address. (See Section 1(7) and the Comment with regard to "last known address.") If that State cannot claim the property, the State of the holder's domicile is entitled to custody. Consistent with the court's concern for a simple rule which would avoid the complexities of proving domicile and residence the court established the priority on the basis of information contained in the holder's records. Where the holder's records do not show that the owner had an address within the State, the second priority claimant, the State of domicile of the holder, is entitled to claim the property. Another State can later assume custody from the State of the holder's domicile by showing that the last known address of the owner was within its borders. Likewise, if the State of last known address does not have an unclaimed property law which applies to the property, the State of the holder's domicile can take the property, again subject to the right of the State of last known address to recover the property if and when it enacts an unclaimed property or escheat law.

Paragraph (1) restates the factual situation in *Texas v. New Jersey*. As the court there said ". . . the address on the records of a debtor, which in most cases will be the only one available, should be the only relevant last known address."

Paragraph (2) covers the situation in which, on the basis of the holder's records, the identity of the person entitled to the property is unknown, and the holder therefore reports to the State of its domicile, but it is later established by another State that the property was owned by or payable to a person whose last known address was within the claiming State. This is a rational extension of *Texas v. New Jersey*. Reunification of the owner with his or her property in this circumstance is impossible, and insofar as that issue is concerned, it makes no difference whether the property is delivered to the State of the holder's domicile or the State of the owner's last known address. However, following the equitable concept of distributing unclaimed property among creditor States articulated by the Supreme Court in *Texas v. New Jersey*, and reaffirmed in *Delaware v. New York*, the subsection directs that where there is no record of a name but there is a record that the last known address was within the State, that State where the owner had an address can claim the property.

Paragraph (3) is the secondary rule of *Texas v. New Jersey*. The Supreme Court ruled that when property is owed to persons for whom there are no addresses, the property will be subject to escheat by the State of the holder's domicile,

provided that another State may later claim upon proof that the last known address of the person entitled to the property was within its borders.

Paragraph (4) provides that if the law of the State of the owner's last known address does not provide for escheat or taking custody of the unclaimed property or if that State's escheat or unclaimed property law is not applicable to the property in question, the property is subject to claim by the State in which the holder is domiciled. In that instance, the State of the owner's last known address may thereafter claim the property if it enacts an applicable unclaimed property law. The holder State will act as custodian and pay or deliver the property to the owner or the State which has priority under *Texas v. New Jersey* upon request. As held in *State v. Liquidating Trustees of Republic Petroleum Co.*, 510 S.W.2d 311 (Texas 1974), *Texas v. New Jersey* dealt only with conflicting claims of two or more States, and provides no basis for a holder to object to the claim of its State of domicile by asserting that another State has a superior claim, if the holder has not already reported the property to that other State. Therefore a State which claims custody on the ground that it is the holder's domicile is not required to prove that the laws of some or all of the other 49 States do not "provide" for the taking of the property; if the holder has not reported and paid the property to another State, as between the domiciliary State and the holder, it will be presumed that such other State's laws do not apply. If another State does claim the property, it may of course proceed under Section 14.

Paragraph (5) provides that when the last known address of the apparent owner is in a foreign nation the State in which the holder is domiciled may claim the property. This issue was not dealt with by the Supreme Court in *Texas v. New Jersey*, but is a rational extension of that ruling.

Paragraph (6) provides for a situation in which neither of the priority claims discussed in *Texas v. New Jersey* can be made, but the State has a genuine and important contact with the property. An example of the type of claim which might be made under paragraph (6) arose in *O'Connor v. Sperry & Hutchinson Co.*, 412 A.2d 539 (Pa.1980). There Pennsylvania sought to escheat unredeemed trading stamps sold by a corporation domiciled in New Jersey to retailers located in Pennsylvania. Pennsylvania took the position that *Texas v. New Jersey* did not create a jurisdictional bar to escheat by other States when the States granted priority were unable to take. There was no first priority claim since there were no addresses of the trading stamp purchasers. The second priority claimant, the State of corporate domicile (New Jersey), was not permitted under its law to escheat trading stamps (see *New Jersey v. Sperry & Hutchinson Co.*, 56 N.J.Super. 589, 153 A.2d 691 (1959), *affirmed per curiam*, 31 N.J. 385, 157 A.2d 505 (1960)) and hence Pennsylvania urged that in order to prohibit a corporate windfall it should be allowed to claim this property. The Pennsylvania Supreme Court affirmed a lower

court decision which overruled Sperry & Hutchinson's motion to dismiss but did not reach the *Texas v. New Jersey* issue.

Gift certificates, unused airline tickets, and other property for which there is no last known address may be claimed by the State where the purchase was made if the State of corporate domicile does not have an abandoned property law covering the property in question under paragraph (6).

Travelers checks and money orders are covered under paragraph (7), which states the rule adopted by Congress in 12 U.S.C. sections 2501 *et seq*. The congressional action was in response to the Supreme Court decision in *Pennsylvania v. New York*, 407 U.S. 206 (1972), which held that the State of corporate domicile was entitled to escheat money orders when there was no last known address of the purchaser although the property had been purchased in other States. Paragraph (7), pursuant to the congressional mandate, substitutes as the test for asserting a claim to travelers checks and money orders the place of purchase rather than the State of incorporation of the issuer.

Wholly foreign transactions are excluded from the coverage of the Act. See Section 26.

Section 4:
Rules for Taking Custody

■ **Adopted**	**with the following modification(s):**
Maine	Includes provision for taking temporary custody of property when holder fails to report it to state of last known address.
North Carolina	Added insurance provision presuming that beneficial owner has same last known address as insured if no address listed.

■ Adopted as is:	AL, AR, AZ, HI, IN, KS, LA, MT, NM, NV, VT, VI, WV
■ Did not adopt:	NJ

SECTION 5. DORMANCY CHARGE. ~~.~~ (a) Except as otherwise provided in (b), a holder may deduct from property presumed abandoned a charge imposed by reason of the owner's failure to claim the property within a specified time ~~only~~ if there is a valid enforceable written contract between the holder and the owner under which the holder may impose the charge and the holder regularly imposes the charge, which is not regularly reversed or otherwise cancelled. ~~. The amount of the deduction is limited to an amount that is not unconscionable~~

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

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

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

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

Issues related to this section

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

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

Citation: 1995 Uniform Act Section 5

Explanation: the comment to the 1995 Act refers to section 2-302 of the Uniform Commercial Code ("UCC") as the source for the term "unconscionability." In case law interpreting the UCC a working definition of unconscionability appears in the Williams v. Walker-Thomas Furniture Co.: "Unconscionability has generally been recognized to include an absence of meaningful choice on the part of one of the parties together with contract terms which are unreasonably favorable to the other party." 350 F.2d at 449. In the arena of unclaimed property, dormancy charges are frequently imposed by businesses under adhesion contracts where no negotiation occurs with the owner. See, e.g. Riggs Nat. Bank of Washington, D.C. v. D.C., 581 A.2d 1229, 1251 (D.C. 1990), which the court stated:

It is generally held that a binding contract between a bank and its depositors is created by a deposit agreement contained on a signature card. *See, e.g., Bennett v. First Nat'l Bank,* 443 F.2d 518, 520 (8th Cir.1971); *Perdue v. Crocker Nat'l Bank,* 38 Cal.3d 913, 919, 702 P.2d 503, 509, 216 Cal.Rptr. 345, 351 (1985), *appeal dismissed* 475 U.S. 1001, 106 S.Ct. 1170, 89 L.Ed.2d 290 (1986); *In re Estate of Cilvik,* 439 Pa. 522, 525, 267 A.2d 836, 838 & n. 2 (1970). Such a contract may be one of adhesion and is therefore subject to judicial scrutiny for unconscionability. *Perdue, supra,* 38 Cal.3d at 922, 702 P.2d at 511–12, 216 Cal.Rptr. at 354. To establish unconscionability, however, the District must prove not only that one of the parties lacked a meaningful choice but also that the terms of the contract are unreasonably favorable to the other party. *Williams v. Walker–Thomas Furniture Co.,* 121 U.S.App.D.C. 315, 319, 350 F.2d 445, 449 (1965); *see also Perdue, supra,* 38 Cal.3d at 924, 216 Cal.Rptr. at 354–55, 702 P.2d at 512–13.[31]

Comment

This section is consistent with those cases which have ruled on the issue of service charges under the 1966 Act and the 1981 Act. Section 5 is a limitation on the deduction of charges based solely on dormancy and is applicable to all intangible property presumed abandoned. This section, which applies to all unclaimed property, replaces similar limitations that were specifically focused on various types of property in the 1981 Act. The limitation of a service charge to an amount that is not unconscionable is new and is drawn from Article 2, Section 302, of the Uniform Commercial Code.

Section 5:
Dormancy Charge

■ Adopted	with the following modification(s):
Alabama	Permits administrative and restocking fee of no more than $25 for layaway or similar agreements to be charged by retailers.
Arizona	State agencies not permitted to deduct dormancy charges.
Indiana	Does not include unconscionability provision. For financial institutions the dormancy charges of the department of financial institutions apply.
Kansas	For property in excess of $100 holder must give written notice before assessing charge. Charges may not be assessed for more than five years. Does not include unconscionability clause. Requirements also apply to stopping interest payments on dormant accounts.
Nevada	The amount of the deduction must not exceed $5 per month.
North Carolina	Omitted unconscionable limit on dormancy charge provision.

■ Adopted as is: AR, HI, LA, ME, MT, NM, VT (Placed in section 8.), VI, WV

■ Did not adopt: NJ

SECTION 6. BURDEN OF PROOF AS TO PROPERTY EVIDENCED BY RECORD OF CHECK OR DRAFT. A record of a liability in a holder's books or records ~~the issuance of a check, draft, or similar instrument~~ is prima facie evidence of an obligation. In claiming property from a holder who is also the issuer, the administrator's burden of proof as to the existence and amount of the property and its abandonment is satisfied by showing issuance of the instrument and passage of the requisite period of abandonment. Defenses of payment, satisfaction, discharge, and want of consideration are affirmative defenses that must be established by the holder.

Issues related to this section

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

Objective: holders are in the best position to explain why records reflecting an outstanding liability do no in fact represent unclaimed property; it is substantially more difficult, if not in many instances impossible for a state to document that an outstanding liability does in fact reflect unclaimed property. Shifting the burden of proof to a holder, which actually created the accounting record, places responsibility on the proper party.

Citation: 1995 Uniform Act Section 6

Comment

This provision clarifies the burden of proof in situations where the obligation evidenced by a negotiable instrument is disputed by the holder, and is consistent with cases which have ruled on the matter. See *Insurance Co. of North America v. Knight*, 8 Ill.App.3d 871, 291 N.E.2d 40 (1972), *app. dismissed* 414 U.S. 804, 38 L.Ed.2d 40, 94 S.Ct. 165 (1973), *Blue Cross of Northern Cal. v. Cory*, 120 Cal. App.3d 723, 174 Cal. Rptr. 901 (1981), and *Revenue Cabinet v. Blue Cross & Blue Shield*, 702 S.W.2d 433, 435 (Ky. 1986). See also *Riggs Nat'l Bank v. District of Columbia*, 581 A.2d 1229 (D.C. App. 1990). It is also consistent with the cases holding that when claiming abandoned property the State steps into the shoes of the owner (see Epstein, McThenia and Forslund, "Unclaimed Property and Reporting Forms," sec. 3.02 (Matt. Bend. 1984), and Article 3-308 of the Uniform Commercial Code. Under U.C.C. Section 3-308(2), "When signatures are admitted or established, production of the instrument entitles a holder to recover on it unless the defendant establishes a defense." The reason for requiring a plaintiff to produce the instrument is "to show that the plaintiff is in fact the holder, and in order to protect the defendant from double liability." 6 Anderson, Uniform Commercial Code, sec. 3-307:4, p. 158 (3rd ed., 1993). The administrator, by proving issuance of the instrument, succeeds to all rights of the payee. Because the issuer is relieved of all liability on the instrument by paying the obligation to the State as unclaimed property, and is indemnified by the State, there is no chance that the issuer would be held liable twice, and therefore the administrator is not required to produce the instrument in order to possess the same rights as a holder in due course.

Section 6:
Burden of Proof as to Property Evidenced by Record of Check or Draft

■ **Adopted**	**with the following modification(s):**
North Carolina	Permits a holder to obtain written acknowledgment that payee is not owed check or other payment

■ Adopted as is: AL, AR, AZ, HI, IN, KS, LA, ME, MT, NJ, NM, NV, VT, VI, WV

■ Did not adopt:

SECTION 7. REPORT OF ABANDONED PROPERTY.

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

(b) The report must be verified and must contain:

(1) a description of the property;

(2) except with respect to a traveler's check or money order, the name, if known, and last known address, if any, and the social security number or taxpayer identification number, if ~~readily ascertainable~~ any, of the apparent owner of property of the value of $50 or more;

(3) an aggregated amount of items valued under $50 each;

(4) in the case of an amount of $50 or more held or owing under an annuity or a life or endowment insurance policy, the full name and last known address of the annuitant or insured and of the beneficiary;

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

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

(7) A verification or attestation of the holder as to the completeness and accuracy of the report. The administrator, in his or her discretion, may (i) accept an

electronic signature or other alternative evidence of verification or attestation or (ii) waive the requirement of verification or attestation; and

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

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

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

~~(e) The holder of property presumed abandoned shall send written notice to the apparent owner, not more than 120 days or less than 60 days before filing the report, stating that the holder is in possession of property subject to this [Act], if:~~

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

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

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

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

(g) The holder of property presumed abandoned shall file with the report an affidavit stating that the holder has complied with subsection (e).

Issues related to this section

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

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

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

24. Eliminate the option of holders not to report owner social security numbers.

Objective: because an owner's social security number is the primary means of locating an owner and verifying the owner's entitlement, reporting the owner's social security number should be a core requirement, not merely permissive "if readily ascertainable."

Citation: 1995 Uniform Act Section 7(b)(2)
NAUPA legislation: "except with respect to a traveler's check or money order, the name, if known, and the last known address if any, and the social security number or taxpayer identification number if any, of the apparent owner of property of the value of $50 or more;"

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

Comment

The $50 minimum provided in subsection (b)(1), (2), and (3) represents an increase from $3.00 in the 1966 Act and $25 in the 1981 Act in order to minimize reporting expenses. Almost every State which enacted the prior Uniform Act now provides for a $25 minimum.

Before filing its report, the holder must send written notice to the apparent owner, if the owner's claim is not barred by the statute of limitations, the property has a value of $50 or more, and the holder's records do not disclose the address to be inaccurate. Other efforts to locate the owner are no longer required.

Subsection (f) provides new flexibility to the holder and to the administrator in cases where the holder's timely compliance is not feasible. In the past, some administrators have felt themselves to be without authority to extend the filing deadlines, or to accept less than a final report. It is now made clear that an extension can be had for good cause, and the holder can limit its exposure to interest by making a partial payment.

Section 7:
Report of Abandoned Property

■ **Adopted**	**with the following modification(s):**
Alabama	1. Add provision covering State of Alabama expired warrants. 2. Omitted provision requiring affidavit from holder that due diligence was done.
Arizona	Does not require due diligence affidavit from holder. State warrants must be reported monthly.
Hawaii	• Adopts November 1 filing date for all holders, but the report for life insurance companies covers the calendar year next preceding November 1. • Holder's notice to owner is to be sent no more than six months before filing report.
Kansas	Aggregate amount is $100. Written notice to owner must contain added information. Holder need not file report if it has no individual property valued over $100 and total value of aggregated property is under $250 unless required to do so by Administrator. Affidavit of compliance not required.
Louisiana	All reports due November 1.
North Carolina	Establishes $10 fee for each request for extension; business association must certify that it is holding abandoned property in its NC income tax return.
Nevada	A person reporting 15 or more items of property shall file electronically.
New Jersey	Many parts of Section 7 adopted.
Vermont	1. Aggregation amount is $25. 2. Report date is May 1, covering the preceding calendar year. 3. Added provision designating appropriate parties to sign the verification and affidavit.

■ Adopted as is: AR, IN, ME, MT, NM, VI, WV

■ Did not adopt:

SECTION 8. PAYMENT OR DELIVERY OF ABANDONED PROPERTY.

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

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

(c) If the holder of property reported to the administrator is the issuer of a certificated security, the administrator has the right to obtain a replacement certificate pursuant to [Section 8-405 of the Uniform Commercial Code], but an indemnity bond is not required.

(d) An issuer, the holder, and any transfer agent or other person acting pursuant to the instructions of and on behalf of the issuer or holder in accordance

with this section is not liable to the apparent owner and must be indemnified against claims of any person in accordance with Section 10.

Issues related to this section

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

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

Citation: 1995 Uniform Act Section 8.

Comment

Subsections (b) and (c) particularize the general duty stated in subsection (a) with respect to investment securities, including securities positions held directly and securities positions held through accounts with brokers or other intermediaries (referred to as security entitlements" under revised Article 8 of the Uniform Commercial Code). UCC Article 8 provides that the issuer of a security, or intermediary with respect to a security entitlement, has a duty to act at the direction of the "appropriate person." Subsection (b) provides that with respect to securities and security entitlements that have been reported as abandoned property pursuant to Section 7, the administrator is an "appropriate person." Accordingly, the administrator has the same rights under UCC Article 8 as other persons who succeed by operation of law to securities or security entitlements, such as the executor or administrator of a decedent. Subsection (c) deals with situations where the holder reporting abandoned property is itself the issuer of a certificated security, and hence does not have the original certificate to turn over to the administrator. Accordingly, subsection (b) provides that the administrator can invoke the provisions of UCC Article 8 governing replacement certificates, without an indemnity bond.

Subsection (d) indemnifies a person causing a replacement certificate to be issued to the administrator from any claims that the person acted wrongfully in so doing. This indemnification is desireable in that it eliminates any duty of the transferring authority to make an independent investigation into whether the listed owner of the security is in fact missing, or into other factors which might affect the administrator's right to obtain custody of the property.

Section 8:
Payment or Delivery of Abandoned Property

■ **Adopted**	**with the following modification(s):**
Kansas	Omits delivery requirements for tangible property in safe deposit box. No aggregate delivery due unless property exceeds $250.
Louisiana	No separate provision for delivery of tangible property in safe deposit box.
New Jersey	Many parts of Section 8 adopted.
Vermont	1. Added dormancy charge section within this section 2. Added provision permitting the treasurer to require that holders of unclaimed mutual funds liquidate the shares and remit the cash proceeds of the sale.

■ Adopted as is: AL, AR, AZ, IN, ME, MT, NC, NM, NV, VI, WV

■ Did not adopt: HI

SECTION 9. NOTICE AND PUBLICATION OF LISTS OF ABANDONED PROPERTY.

~~(a) The administrator shall publish a notice not later than November 30 of the year next following the year in which abandoned property has been paid or delivered to the administrator. The notice must be published in a newspaper of general circulation in the [county] of this State in which is located the last known address of any person named in the notice. If a holder does not report an address for the apparent owner, or the address is outside this State, the notice must be published in the [county] in which the holder has its principal place of business within this State or another [county] that the administrator reasonably selects. The advertisement must be in a form that, in the judgment of the administrator, is likely to attract the attention of the apparent owner of the unclaimed property. The form must contain:~~

~~(1) the name of each person appearing to be the owner of the property, as set forth in the report filed by the holder;~~

~~(2) the last known address or location of each person appearing to be the owner of the property, if an address or location is set forth in the report filed by the holder;~~

~~(3) a statement explaining that property of the owner is presumed to be abandoned and has been taken into the protective custody of the administrator; and~~

~~(4) a statement that information about the property and its return to the owner is available to a person having a legal or beneficial interest in the property, upon request to the administrator.~~

~~(b) The administrator is not required to advertise the name and address or location of an owner of property having a total value less than $50, or information concerning a traveler's check, money order, or similar instrument.~~

Section 9 Owner Notification

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

(1) The notice shall be sent to the apparent owner by mail or, if the owner has consented to electronic notification, the notice may be sent electronically.

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

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

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

(5) A notice may not require or solicit that the owner pay a fee, including but not limited to a percentage of the owner's property, in order for the owner to recover the property from the holder.

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

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

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

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

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

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

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

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

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

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

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

the information or record obtained except as necessary in attempting to locate the apparent owner of unclaimed property.

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

Issues

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

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

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

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

Comment

This section sets forth the minimum requirements for advertisement. The administrator may publish more frequently or extensively. The Act does not establish a specific time for the publication so that the administrator can choose a time that will provide the best exposure and flexibility in scheduling the workload and personnel available.

The advertisement must contain a minimum of two items of information, one of which explains that the abandoned property has been paid into the protective custody of the administrator. Since abandoned property is delivered with the report under the revisions of this Act, this statement is necessary to explain the location of the property and to insure that inquiries are directed to the administrator.

Subsection (b) limits the duty to advertise in recognition of the fact in the specified circumstances the value of the property is so slight as to negate the benefits of the advertising, or the names and addresses of the owners of the instruments are not maintained by the holder, or in the case of travelers checks, after 15 years the advertisement is unlikely to be productive.

Section 9:
Notice and Publication of Lists of Abandoned Property

■ **Adopted**	**with the following modification(s):**
Alabama	Added requirement that Treasurer send postcard to apparent owner within 12 months of receipt of property.
Arizona	Requires an additional publication of a series of display advertisements by department.
Hawaii	• Notice published not later than March 1 of the year following the filing of the report. • Notice not required to be in a newspaper, but may be in a daily or weekly publication, the State of Hawaii department of budget and finance website or any other method deemed effective by the administrator. • Cut-off for not is $100.00.
Kansas	Publication required within the next calendar year in a form likely to attract the owner's attention. $100 minimum for publication.
Louisiana	Contains additional requirement that administrator mail list of names and addresses of owners to legislators.
Maine	Omits requirement that names be published in newspaper in county of last known address or in county of principal place of business of holder if there is no address.
Nevada	Nevada act calls for publication of the city or town in which the last known address of the owner is located.
North Carolina	Treasurer sends annual lists to the county superior court clerks and publishes notice that that the lists are available for inspection at the clerks' offices.

■ Adopted as is:	AR, IN, MT, NM, VI, WV
■ Did not adopt:	NJ, VT

SECTION 10. CUSTODY BY STATE; RECOVERY BY HOLDER; DEFENSE OF HOLDER.

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

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

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

(3) there is no showing that the records under which the payment or delivery was made did not meet reasonable commercial standards of practice.

(b) A holder who pays or delivers property to the administrator in good faith is relieved of all liability arising thereafter with respect to the property. Upon the payment or delivery of property to the administrator, the State assumes custody and responsibility for the safekeeping of the property. A holder who pays or delivers property to the administrator in good faith and who, prior to reporting, if the holder's records contain an address for the apparent owner, which the holder's records do not disclose to be inaccurate, has made reasonable efforts to notify the owner by mail or, if the owner has consented to electronic notice, electronically, in substantial compliance with Section 18 of this Act, is relieved of all liability to the extent of the value of the property so paid or delivered for any liability arising thereafter with respect to the property.

(c) A holder who has paid money to the administrator pursuant to this [Act] may subsequently make payment to a person reasonably appearing to the holder to be

entitled to payment. In the case of a gift card or other gift instrument including a virtual gift card balance that has been transferred to the administrator, the holder shall be required to honor the gift card upon presentment by the owner

Upon a filing by the holder of proof of payment and proof that the payee was entitled to the payment, the administrator shall promptly reimburse the holder for the payment without imposing a fee or other charge. If reimbursement is sought for a payment made on a negotiable instrument, including a traveler's check or money order, the holder must be reimbursed upon filing proof that the instrument was duly presented and that payment was made to a person who reasonably appeared to be entitled to payment. The holder must be reimbursed for payment made even if the payment was made to a person whose claim was barred under Section 19(a).

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

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

(f) If a holder pays or delivers property to the administrator in good faith and thereafter another person claims the property from the holder or another State claims the money or property under its laws relating to escheat or abandoned or unclaimed property, the administrator, upon written notice of the claim, shall

defend the holder against the claim and indemnify the holder against any liability on the claim resulting from payment or delivery of the property to the administrator.

(g) Property removed from a safe deposit box or other safekeeping depository is received by the administrator subject to the holder's right to be reimbursed for the cost of the opening and to any valid lien or contract providing for the holder to be reimbursed for unpaid rent or storage charges. The administrator shall reimburse the holder out of the proceeds remaining after deducting the expense incurred by the administrator in selling the property.

Issues related to this section

27. Clarify situations under which relief from liability is available to holders.

Objective: to clarify that relief from liability is a protection to holders only to the extent that holders have complied with the due diligence and other requirements of the Act; clarify that the release is limited to the value of the property. Conditioning relief from liability on property performance of owner notification will increase the level of due diligence.

Citation: 1995 Uniform Act Section 10(b).

NAUPA Research: Azure Ltd. v. I-Flow Corp.(California case and subsequent amendment of California's law).

NAUPA legislation: Upon the payment or delivery of property to the administrator, the State assumes custody and responsibility for the safekeeping of the property. A holder who pays or delivers property to the administrator in good faith and who, prior to reporting, if the holder's records contain an address for the apparent owner, which the holder's records do not disclose to be inaccurate, has made reasonable efforts to notify the owner by mail or, if the owner has consented to electronic notice, electronically, in substantial compliance with Section 18 of this Act, is relieved of all liability to the extent of the value of the property so paid or delivered for any liability arising thereafter with respect to the property.

The proposed revised section also contains language requiring the holder to honor gift cards when presented, then seek state reimbursement if the cards have been reported as unclaimed property. This is in accordance with the CFPB ruling in order to make the code consistent with the Electronic Fund Transfer Act and Regulation E. See http://files.consumerfinance.gov/f/201304_cfpb_Preemption-Determination.pdf.

Comment

When property is turned over to the State, the holder is relieved of all liability for any turnover made in good faith. Subsection (a) sets forth a definition of good faith which *inter alia* allows the holder to rely on its records if they meet reasonable commercial standards of practice in the industry.

The section also permits the holder to obtain reimbursement for claims it elected to pay to owners who appeared after the property was turned over. If a State in enacting Section 12(b) provides for the payment of interest on property delivered to the administrator, then the holder will add such interest when paying the claim.

If after turnover, any person or another State makes a claim on the holder, the State, upon request, is required to defend the holder and provide indemnification against any liability.

Section 10:
Custody by State; Recover by Holder; Defense of Holder

■ **Adopted**	**with the following modification(s):**
Alabama	1. Defined "good faith" as honest in fact in the conduct or transaction concerned. 2. Added provision releasing and holding holder harmless from any liability for claims, except for fine and penalty provisions within the act.
New Jersey	Many parts of Section 10 adopted.
Vermont	Omitted indemnity section and substituted provision stating that if the holder pays or delivers property in good faith, and thereafter, another person or state claims the property, no lawsuit may be maintained against the holder.
West Virginia	Added section releasing fiduciary from claim of breach of fiduciary obligation if property paid prior to expiration of dormancy period.

■ Adopted as is: AR, AZ, HI, IN, KS, LA, ME, MT, NC, NM, NV, VI

■ Did not adopt:

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

Issues related to this section

28. Eliminate provisions for payment of interest by the state on property during the time the property is in the possession of the state.

Objective: conform the Act to the actual practices of most states (including all adopters of the 1995 Uniform Act) in not calculating and paying interest post-receipt.

Citation: 1995 Uniform Act Section 11.

NAUPA research: The denial of interest to owners has been upheld in the vast majority of cases: for example, see In re Lease Oil Antitrust Litigation, 570 F.3d 244 (5th Cir. 2009), Commonwealth Edison Co. v. Vega, 174 F.3d 870 (7th Cir. 1999), Arnett v. Strayhorn, 515 F. Supp. 2d 690 (W.D. Tex. 2006), Riggs Nat'l Bank v. District of Columbia, 581 A.2d 1229, McKenzie v. Florida Dep't of Fin. Servs., No. 04 CA 755, Order Granting Defendants' Motion for Summary Judgment (Fla. Cir. Ct. (Leon Cty.) Apr. 27, 2005).

11. **Crediting of dividends and increments to owner's account**

NAUPA legislation: Upon the payment or delivery of property to the administrator, the State assumes custody and responsibility for the safekeeping of the property. A holder who pays or delivers property to the administrator in good faith and who, prior to reporting, if the holder's records contain an address for the apparent owner, which the holder's records do not disclose to be inaccurate, has made reasonable efforts to notify the owner by mail or, if the owner has consented to electronic notice, electronically, in substantial compliance with Section 18 of this Act, is relieved of all liability to the extent of the value of the property so paid or delivered for any liability arising thereafter with respect to the property.

Comment

Under this section the owner of interest earning bonds or bank deposits, or dividend paying stock, will generally receive interest or income which the property earned while in the State's custody.

Section 11:
Crediting of Dividends, Interest, and Increments to Owner's Account

■ Adopted	with the following modification(s):
Arkansas	Interest on property ceases to accrue on the earlier of seven years after delivery to the Administrator or payment to the owner.
Arizona	Defines conditions under which holder may cease payment of interest.
Kansas	State does not pay interest on interest bearing accounts.
Nevada	Nevada did not adopt the uniform act provision relating to the payment of interest on interest bearing property.
North Carolina	Modifies terms under which claimant is entitled to income or gain for period when property is in custody of the treasurer.
Vermont	Did not include provision requiring that treasurer pay interest on interest bearing property to owner.
West Virginia	Added provision calling for interest to be paid on non-interest bearing accounts and cut off payment of income or gain after three years.

■ Adopted as is: IN, HI, LA, ME, NM, VI

■ Did not adopt: AL, MT, NJ

SECTION 12. PUBLIC SALE OF ABANDONED PROPERTY.

(a) Except as otherwise provided in this section, the administrator, within three years after the receipt of abandoned property, shall sell it to the highest bidder at a publicly held sale, which may include an Internet auction or any other forum which in the judgment of the administrator will yield the most favorable net proceeds of sale. ~~public sale at a location in the State which in the judgment of the administrator affords the most favorable market for the property~~. The administrator may decline the highest bid and reoffer the property for sale if the administrator considers the bid to be insufficient. The administrator need not offer the property for sale if the administrator considers that the probable cost of sale will exceed the proceeds of the sale. A sale held under this section must be preceded by a single publication of notice, at least three weeks before sale, in a newspaper of general circulation in the [county] in which the property is to be sold.

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

~~(b)~~ (c) Securities listed on an established stock exchange must be sold at prices prevailing on the exchange at the time of sale. Other securities may be sold

over the counter at prices prevailing at the time of sale or by any reasonable method selected by the administrator. If securities are sold by the administrator before the expiration of three years after their delivery to the administrator, a person making a claim under this [Act] before the end of the three-year period is entitled to the proceeds of the sale of the securities ~~or the market value of the securities at the time the claim is made, whichever is greater~~, plus dividends, interest, and other increments thereon up to the time the ~~claim is made~~ securities are sold, less any deduction for expenses of sale. A person making a claim under this [Act] after the expiration of the three-year period is entitled to receive the securities delivered to the administrator by the holder, if they still remain in the custody of the administrator, or the net proceeds received from sale, and is not entitled to receive any appreciation in the value of the property occurring after delivery to the administrator, except in a case of intentional misconduct or malfeasance by the administrator.

~~(c)~~ (d) A purchaser of property at a sale conducted by the administrator pursuant to this [Act] takes the property free of all claims of the owner or previous holder and of all persons claiming through or under them. The administrator shall execute all documents necessary to complete the transfer of ownership.

Issues related to this section

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

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

Citation: 1995 Uniform Act 12(a).

NAUPA research:

Securities liquidation parameters. Many states adopting the 1995 Uniform Act (as well as other states operating under other unclaimed property acts) do not hold securities for three years prior to liquidation, as mandated by the 1995 Uniform Act. If states do not generally follow this directive, it begs the question whether the three year directive should be modified to either a shorter, or more flexible parameter.

Comment

If the security is stock or other intangible interest in a business association, the administrator is permitted to sell the security, but if the missing owner appears and makes claim for the security within three years after the administrator has sold it, the missing owner is entitled to receive the proceeds of the sale or the market value of the securities at the time the claim is made. Thus there is a genuine incentive for an administrator to hold this property for the requisite three-year period.

Subsection (b) permits an administrator to sell securities at prevailing prices directly to the issuing companies.

This section is not intended as a direction to the administrator to sell "money," although money is included in the definition of property, unless it is a collector's specie having value greater than the face value of the money as cash.

Section 12:
Public Sale of Abandoned Property

■ Adopted	with the following modification(s):
Alabama	1. Permits Treasurer to sell securities on receipt. 2. Omits claim for appreciation in value of stock in case of intentional misconduct or malfeasance by administrator.
Indiana	Specifies that no notice is required when securities are sold privately in recognized markets or over the counter.
Kansas	Omits claim against state in case of intentional misconduct or malfeasance by administrator in selling securities.
Louisiana	Requires that securities constituting stock or other interest in a business association be held 3 years and other securities be held one year unless earlier sale is in best interest of the state. Does not include provision that person making claim to securities after three years is not entitled to any appreciation in value except for intentional misconduct or malfeasance by administrator.
Nevada	Securities may be sold at any time after delivery. Administrator may transfer property to a museum if it has historical, artistic, literary, genealogical, military or military historical value. Contents of safe deposit box shall be held for at least 1 year after delivery unless it is a will (which shall be held at for at least 10 years.)
North Carolina	Omits malfeasance by treasurer as exception to the rule that owner is not entitled to appreciation in value if property has been sold.
New Jersey	Omitted misconduct or malfeasance by the administrator as an exception to the rule that the owner is not entitled to appreciation in value of property after delivery to the administrator.
Vermont	1. Property other than securities shall be sold within one year at a public sale, preceded by publication in a newspaper of general circulation or by such other method as the treasurer determines. Publicly traded securities shall be sold within one year after receipt on an established stock exchange. 2. The treasurer is granted discretion in the timing of sales and types of property to be sold.
West Virginia	Claimant of securities within three years of delivery is only entitled to proceeds of sale less expenses if property has been sold.

■ Adopted as is: AR, AZ, HI, ME, MT, NM, VI

■ Did not adopt:

SECTION 13. DEPOSIT OF FUNDS.

[(a) Except as otherwise provided by this section, the] [The] administrator shall promptly deposit in the [general fund] of this State all funds received under this [Act], including the proceeds from the sale of abandoned property under Section 12. [The administrator shall retain in a separate trust fund at least [$100,000] from which the administrator shall pay claims duly allowed.] The administrator shall record the name and last known address of each person appearing from the holders' reports to be entitled to the property and the name and last known address of each insured person or annuitant and beneficiary and with respect to each policy or annuity listed in the report of an insurance company, its number, the name of the company, and the amount due.

[(b) Before making a deposit to the credit of the [general fund], the administrator may deduct:

(1) expenses of sale of abandoned property;

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

(3) reasonable service charges; and

(4) expenses incurred in examining records of holders of property and in collecting the property from those holders.]

Comment

This section increases from $25,000 to $100,000 the sum which is recommended to be retained in a trust account for payment of claims. It is contemplated that the amount of the trust fund which is ultimately established will reflect a State's experience in paying owners' claims.

Section 13:
Deposit of Funds

■ **Adopted**	**with the following modification(s):**
Alabama	Enumerates expenses to be deducted by the administrator before depositing to the general fund.
Arkansas	Specifies how and where the funds are deposited.
Arizona	Specifies use of funds.
Hawaii	Bill established an unclaimed property trust fund. Moneys may be used for 1) Owner Claims 2) Payment to other states for property owned by owners with last known address in the other state 3) Costs incurred for sale of property 4) Costs incurred for mailing and publication 5) Reasonable service charges 6) Examination and collection fees 7) Other operations and administrative costs. Investment earnings from the trust fund to be credited to the general fund. Amounts over $1.3 million will lapse to the credit of the state general fund.
Louisiana	Administrator may deduct up to 7% of collections for costs of administration.
Vermont	1. Property valued at $100 or less that was received by the holder more than 10 years earlier will be deposited in the higher education endowment fund. 2. The treasurer is authorized to withhold information regarding an individual or specific property, when the treasurer deems it necessary in order to return the property to the rightful owner or to otherwise protect the owner. 3. The treasurer may deny requests for lists of owners for 24 months after the date the property is paid or delivered.

■ Adopted as is: IN, KS, ME, MT, NM, NV, WV, VI

■ Did not adopt: NC, NJ

SECTION 14. CLAIM OF ANOTHER STATE TO RECOVER PROPERTY.

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

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

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

(b) Property under the custody of the administrator under this Act is subject to recovery by another State if:~~After property has been paid or delivered to the administrator under this [Act], another State may recover the property if:~~

(1) the property was paid or delivered to the custody of this State because the records of the holder did not reflect a last known location of the apparent owner within the borders of the other State and the other State establishes that the apparent owner or other person entitled to the property was last known to be located within the borders of that State and under the laws of that State the property has escheated or become subject to a claim of abandonment by that State;

(2) the property was paid or delivered to the custody of this State because the laws of the other State did not provide for the escheat or custodial taking of the property, and under the laws of that State subsequently enacted the property has escheated or become subject to a claim of abandonment by that State;

(3) the records of the holder were erroneous in that they did not accurately identify the owner of the property and the last known location of the owner within the borders of another State and under the laws of that State the property has escheated or become subject to a claim of abandonment by that State;

(4) the property was subjected to custody by this State under Section 4(6) and under the laws of the State of domicile of the holder the property has escheated or become subject to a claim of abandonment by that State; or

(5) the property is a sum payable on a traveler's check, money order, or similar instrument that was purchased in the other State and delivered into the custody of this State under Section 4(7), and under the laws of the other State the property has escheated or become subject to a claim of abandonment by that State.

~~(b)~~ (c) A claim of another State to recover escheated or abandoned property must be presented in a form prescribed by the administrator, who shall decide the claim within 90 days after it is presented. The administrator shall allow the claim upon determining that the other State is entitled to the abandoned property under subsection (a).

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

Issues

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

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

Citation: 1995 Uniform Act Section 14

Comment

Section 14 should be read together with Section 4. Sections 4 and 14 are designed to carry out the priority scheme enunciated in *Texas v. New Jersey*, 379 U.S. 674 (1965). In general the State in which the owner had his or her last known address is entitled to claim abandoned property. Where there is insufficient information to permit this assertion of custody, the State of the holder's domicile takes the property subject to a later claim by the State of the last known address.

Paragraph (1) of subsection (a) provides that if property was paid to the State of the holder's domicile because the last known address of the owner was unknown and it is later established by another State that the last known address of the person entitled to the property was in the other State, the State of domicile should pay the property over to the other State.

Paragraph (2) parallels Section 4, paragraph (4), which permits the State of corporate domicile to take if the State of the last known address does not provide for the escheat or custodial taking of the property. If the State of the last known address subsequently enacts an unclaimed property law which covers the property, the taking State must turn it over.

Paragraph (3) addresses the problem of *Nellius v. Tampax, Inc.*, 394 A.2d 333 (Del. Ch. Ct. 1978) in which the holder's records did not reflect the fact that the record owner had sold the property to another. The court concluded, under *Texas v. New Jersey*, that the holder's records were controlling and that it could properly report and deliver the property to the State in which its records showed the owner to be resident. However, as provided in *Texas v. New Jersey* and in paragraph 4, the State of the owner's actual residence could then claim the property from the State to which it was initially reported.

Paragraph (4), paralleling Section 4(6), provides that property initially claimed under a "contacts" test because there was no last known address and the State of domicile had no applicable unclaimed property law may be reclaimed by the State of corporate domicile if it enacts an applicable unclaimed property law.

Subsection (c) provides that the State that initially receives property later claimed by another State may require an indemnification agreement from the claiming State.

Section 14:
Claim of Another State to Recover Property

■ **Adopted**	**with the following modification(s):**
Indiana	Requires that claims be filed within 25 years after property presumed abandoned.
■ Adopted as is:	AL, AR, AZ, HI, KS, LA, ME, MT, NC, NJ, NM, NV, VT, VI, WV
■ Did not adopt:	

SECTION 15. FILING CLAIM WITH ADMINISTRATOR; HANDLING OF CLAIMS BY ADMINISTRATOR.

(a) A person, excluding another State, claiming property paid or delivered to the administrator may file a claim on a form prescribed by the administrator and verified by the claimant.

(b) Within 90 days after a claim is filed, the administrator shall allow or deny the claim and give written notice of the decision to the claimant. If the claim is denied, the administrator shall inform the claimant of the reasons for the denial and specify what additional evidence is required before the claim will be allowed. The claimant may then file a new claim with the administrator or maintain an action under Section 16.

(c) NAUPA legislation: (c) The administrator may waive the requirement of a claim form and pay property directly to a person if :

(1) the person receiving payment is the same person as the apparent owner included in a report of unclaimed property;

(2) the administrator reasonably believes that the person is entitled to the property; and

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

[Renumber existing subsection (c) as (d)]

NOTE: this section could be buttressed by substituting "the administrator reasonably believes" with "the administrator has performed adequate validation." Note also that the "ceiling amount " could be lowered or increased.

(d) Within 30 days after a claim is allowed, the property or the net proceeds of a sale of the property must be delivered or paid by the administrator to the claimant, together with any dividend, ~~interest~~, or other increment to which the claimant is entitled under Sections 11 and 12.

~~(d)~~(e) A holder who pays the owner for property that has been delivered to the State and which, if claimed from the administrator by the owner would be subject to an increment under Sections 11 and 12, may recover from the administrator the amount of the increment.

(f) Not withstanding any provision of this Act to the contrary, any person making a claim for the United States savings bonds escheated to the State under Section [TBD] or for the proceeds from such bonds, may file a claim with the administrator. Upon providing sufficient proof the validity of such person's claim, the administrator may pay such claim.

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

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

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

(3) state taxes, penalties or interest.

Issues related to this section

31. Allow for the waiver of a claim form in certain limited circumstances.

Objective: facilitate the expedited payment of low value claims in situations where the State believes, or has no reason to doubt, that the State has successfully located and owner for which the State is holding property. While a number of some states have instituted the "fast tracking" of claims, the process could be further streamlined through elimination of the claim form, and some states do not believe that claims fast tracking is authorized under existing language.

Citation: 1995 Uniform Act: Section 15

NAUPA legislation: (c) The administrator may waive the requirement of a claim form and pay property directly to a person if :

(1) the person receiving payment is the same person as the apparent owner included in a report of unclaimed property;
(2) the administrator reasonably believes that the person is entitled to the property; and
(3) the property has a value of less than [$250].

[Renumber existing subsection (c) as (d)]

NOTE: this section could be buttressed by substituting "the administrator reasonably believes" with "the administrator has performed adequate validation." Note also that the "ceiling amount " could be lowered or increased.

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

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

Citation: 1995 Uniform Act Section 15.

Comment

A person claiming property from the administrator is not limited to the number of times the claim may be filed or refiled prior to commencing an action under Section 16. The administrator's decision on a claim does not operate as collateral estoppel or *res judicata*. A person who has commenced an action under Section 16 may also reassert a claim before the administrator if the action has been dismissed without prejudice. A claim which has become the subject of a final judgment may not thereafter by refiled with the administrator.

Section 15:
Filing Claim with Administrator; Handling of Claims by Administrator

■ **Adopted**	**with the following modification(s):**
Hawaii	Administrator has 120 days after claim is filed to allow or deny the claim.
Indiana	Requires that claims be filed within 25 years after property presumed abandoned.
Kansas	Does not require payment within 30 days. Sets out procedural requirements.
Nevada	For claims in excess of $2000, the Administrator may require the claimant to furnish a bond and indemnify the State against loss resulting from approval of the claim.
North Carolina	Gives treasurer discretion to direct claims to holders.
Vermont	1. Omitted requirement of decision on claim or payment of claim within a required number of days. 2. Added a provision describing the state's liability to reimburse payments made by the treasurer or to satisfy judgments against the state under this chapter.
West Virginia	Omits payment of dividend, interest or other increment to claimant and to any holder who pays owner.

■ Adopted as is:	AR, AZ, LA, ME, MT, NM, VI
■ Did not adopt:	AL, NJ

SECTION 16. ACTION TO ESTABLISH CLAIM. A person aggrieved by a decision of the administrator or whose claim has not been acted upon within 90 days after its filing may maintain an original action to establish the claim in the [appropriate] court, naming the [administrator] as a defendant. [If the aggrieved person establishes the claim in an action against the administrator, the court may award the claimant reasonable attorney's fees.]

Comment

After property is presumed abandoned and reported to the administrator the administrator must attempt to locate the missing owner. Thereafter, if the property has been delivered to the administrator and the owner or his representative appears, the administrator must pay the claim. The owner's rights are never cut off; under this Act, the owner's rights exist in perpetuity. Although some state administrators have urged legislation that would terminate an owner's right to the property merely by the passage of time, such enactments may be unconstitutional. In *Hamilton v. Brown*, 161 U.S. 256, 275, 16 S. Ct. 585, 592, 40 L. Ed. 691, 699, (1896), the Supreme Court held that any procedure by which the State seeks to cut off the owner's title through escheat must include "actual notice by service of summons to all known claimants, and constructive notice by publication to all possible claimants who are unknown . . . ." Any lesser procedure appears to fall short of due process. The history of escheat, as compared with modern unclaimed property legislation, is discussed in "Unclaimed Property and Reporting Forms," Epstein, McThenia & Forslund, ch. 1 (Matt. Bend. 1984).

In any judicial action commenced to recover the property from the administrator, the claimant may proceed *de novo*, and the court will not be limited to a mere review of the administrator's decision.

Section 16:
Action to Establish Claim

■ Adopted	with the following modification(s):
Alabama	Places burden of proof on claimant
Hawaii	Excludes another state from maintaining an original action.
Indiana	Does not provide for attorney's fees in action to establish claim.
Kansas	Does not provide for attorney's fees.
Louisiana	Does not provide for attorney's fees.
Maine	Does not provide for attorney's fees.
North Carolina	Omits possible award of attorney's fees to aggrieved claimant.

■ Adopted as is: AR, AZ, MT, NM, NV, VT, VI, WV

■ Did not adopt: NJ

SECTION 17. ELECTION TO TAKE PAYMENT OR DELIVERY.

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

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

(c) A holder, with the written consent of the administrator and upon conditions and terms prescribed by the administrator, may report and deliver property before the property is presumed abandoned. Property so delivered shall be presumed abandoned under this [Act] upon its receipt by the administrator. A holder, with the written consent of the administrator and upon conditions and terms prescribed by the administrator, may report and deliver property before the property is presumed abandoned. Property so delivered must be held by the administrator and is not presumed abandoned until it otherwise would be presumed abandoned under this [Act]

Issues related to this section

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

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

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

34. Ensure adequate protection for holders in the premature reporting of property as approved by the state.

Objective: extend release from liability and indemnification to holders who report property, with the permission of the state, prior the property being presumed abandoned; clarify the status of property reported prematurely.

Citation: 1995 Uniform Act Section 17 (b).
NAUPA legislation:

(b) A holder, with the written consent of the administrator and upon conditions and terms prescribed by the administrator, may report and deliver property before the property is presumed abandoned. Property so delivered shall be presumed abandoned under this [Act] upon its receipt by the administrator.

Comment

Subsection 17(b) authorizes the administrator to assume custody of property prior to the time for presuming abandonment. Administrators have expressed a need for this authority to enable them to take possession of property, such as the contents of a safe deposit box repository, when the holder is terminating business but the property is not yet reportable. Additionally, other holders which have conducted business in the State and are ceasing operations might use the provisions of this section. The property must be held by the administrator until the abandonment period runs and then the property will be subject to the other provisions of the Act.

Section 17:
Election to Take Payment or Delivery

- Adopted as is: AL, AR, AZ, HI, IN, KS, LA, ME, MT, NC, NJ, NM, NV, VT, VI, WV
- Did not adopt:

SECTION 18. DESTRUCTION OR DISPOSITION OF PROPERTY HAVING NO SUBSTANTIAL COMMERCIAL VALUE; IMMUNITY FROM LIABILITY. If the administrator determines after investigation that property delivered under this [Act] has no substantial commercial value, the administrator may destroy or otherwise dispose of the property at any time. An action or proceeding may not be maintained against the State or any officer or against the holder for or on account of an act of the administrator under this section, except for intentional misconduct or malfeasance.

Comment

This section provides for the disposition of property which has no commercial value. As an example, the contents of safety deposit boxes often include such items as rent receipts, personal correspondence and lapsed insurance policies. In such cases, these contents might have some personal significance to the owner, which the administrator would take into consideration in determining for what period of time he will hold the property awaiting a claim by the owner. However, in the usual situation there will be no interest to be preserved by maintaining this property under state custody.

Under this section the administrator would be free to retain property having no commercial value. Further, the administrator could transfer it to other agencies or institutions which might have an interest in the property because of its historical value or other independent significance.

Section 18:
Destruction or Disposition of Property Having No Substantial Commercial Value; Immunity from Liability

■ **Adopted**	**with the following modification(s):**
Kansas	Omits claim against state for intentional misconduct or malfeasance.
Louisiana	May not maintain action except for intentional misconduct; omits malfeasance.
North Carolina	Adds subsection relating to disposition of property with historical significance.
New Jersey	Eliminates intentional misconduct or malfeasance exception to liability of state or officer for disposing of property.

■ Adopted as is: AL, AR, AZ, HI, IN, ME, MT, NM, NV, VT, VI, WV

■ Did not adopt:

SECTION 19. PERIODS OF LIMITATION.

(a) The expiration, before or after the effective date of this [Act], of a period of limitation on the owner's right to receive or recover property, whether specified by contract, statute, or court order, does not preclude the property from being presumed abandoned or affect a duty to file a report or to pay or deliver or transfer property to the administrator as required by this [Act].

~~(b) An action or proceeding may not be maintained by the administrator to enforce this [Act] in regard to the reporting, delivery, or payment of property more than 10 years after the holder specifically identified the property in a report filed with the administrator or gave express notice to the administrator of a dispute regarding the property. In the absence of such a report or other express notice, the period of limitation is tolled. The period of limitation is also tolled by the filing of a report that is fraudulent.~~

Issues related to this section

35. Reposition the anti-limitations provision as a stand-alone section.

Objective: Reconfigure sections relating to examination and records retention.

Citation: 1995 Uniform Act Section 19

NAUPA legislation: delete subsection (a) reference and move subsection (b) to Section 20 so that Section 19 reads as follows:

The expiration, before or after the effective date of this [Act], of a period of limitation on the owner's right to receive or recover property, whether specified by contract, statute, or court order, does not preclude the property from being presumed abandoned or affect a duty to file a report or to pay or deliver or transfer property to the administrator as required by this [Act].

Comment

Subsection (a) is consistent with cases such as *People v. Marshall Field & Co.*, 83 Ill. App. 3d 811, 404 N.E.2d 368 (1980), *Screen Actors Guild, Inc. v. Cory*, 91 Cal.App.3d 111, 154 Cal.Rptr. 77 (1979), and *State v. Jefferson Lake Sulphur Co.*, 36 N.J. 577, 178 A.2d 329 (1962). It also abrogates another contractual condition often asserted as a defense to reporting property otherwise presumed abandoned, the failure to present the evidence of indebtedness.

Subsection (a) is written to insure also that although the owner's claim against the holder may be barred by the statute of limitations prior to the effective date of the Act, the holder is not relieved of his obligation to pay abandoned property to the administrator. The Comment to Section 16 of the 1966 Act noted that local law must be consulted in order to ascertain whether legislation constitutionally may be enacted reviving a cause of action barred by the statute of limitations. This issue has been litigated in several States, *e.g.*, *Country Mutual Insurance Co. v. Knight*, 40 Ill.2d 523, 240 N.E.2d 612 (1968); *Douglas Aircraft Co. v. Cranston*, 24 Cal.Rptr. 851, 374 P.2d 819 (1962); *cf. Standard Oil v. New Jersey*, 5 N.J. 281, 74 A.2d 565 (1950). Even though the statute of limitations has run before the effective date of the Act, the holder may be required to report and deliver the property to the State if the holder does not regularly enforce the statute. *See South Carolina Tax Commission v. Metropolitan Life Insurance Co.*, 266 S.C. 34, 221 S.E.2d 522 (1975). *But see State of Washington v. Puget Sound Power & Light Co.*, 103 Wash.2d 501, 694 P.2d 7, 10 (1985).

Subsection (b) provides that an administrator must commence an action against a holder within 10 years after the time the property was first reported or specifically placed in issue. The 1995 amendment clarifies existing law and codifies the holdings of abandoned property cases that have ruled on issues of limitations. See *Blue Cross of Northern California v. Cory*, 174 Cal. Rptr. 901, 913, 120 Cal. App.3d 743 (App., 1981) (no statute of limitations will commence to run against the State until after the holder duly reports in compliance with the unclaimed property act); *Travelers Express Co., Inc. v. Cony*, 664 F.2d 763 (9th Cir. 1981) (statute of limitations commences to run only after filing of report which contains written explanation of why property is not subject to the act); *Employers Insurance of Wausau v. Smith*, 453 N.W.2d 856 (Wis. 1990) (filing of report essential to running of statute of limitations, since unclaimed property act depends on self-reporting); *Sennet v. Insurance Co. of North America*, 432 Pa. 5215, 247 A.2d 774, 777-78 (1968) (same; "INA simply has to take its stand: if it reports the holding [of funds in issue] (as a precautionary measure), the statute will run; if it does not, the Commonwealth is not precluded . . . ."); *State of New Jersey v. U.S. Steel Corporation*, 22 N.J. 341, 126 A.2d 168 (1956) (same); *Treasurer and Rec. Gen. v. John Hancock Mut. Life Ins. Co.*, 388 Mass. 410, 446 N.E.2d 1376 (1983) (same). The provision also parallels the Internal Revenue Code, 26 U.S.C. sec. 6501(c). Since the Unclaimed Property Act is based on a theory of truthful self-

reporting, a holder which conceals property, wilfully or otherwise, cannot expect the protection of the stated limitations period.

Section 19:
Periods of Limitation

■ **Adopted**	**with the following modification(s):**
Arizona	Action must be filed within four years. If holder omits property that is properly includible that is more than 25% of property stated in report, department may begin action to enforce within six years.
Kansas	Action must be filed within five years.
North Carolina	Reduces time period in which enforcement action may be brought by treasurer to five years.
Vermont	Added (5) property valued at $100.00 or less more than 10 years after the abandoned property was received from the holder under section 1248 of this title shall be paid by the treasurer into the higher education endowment trust fund created by 16 V.S.A. § 2885 under authority of this subsection. (However, claims still paid).

■ Adopted as is: AL, AR, HI, IN, LA, ME, MT, NJ, NM, NV, VI, WV

■ Did not adopt:

SECTION 20. REQUESTS FOR REPORTS AND EXAMINATION OF RECORDS.

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

(b) The administrator, at reasonable times and upon reasonable notice, may examine the records of any person to determine whether the person has complied with this [Act]. The administrator may conduct the examination even if the person believes it is not in possession of any property that must be reported, paid, or delivered under this [Act]. The administrator may contract with any other person to conduct the examination on behalf of the administrator.

(c) The administrator at reasonable times may examine the records of an agent, including a dividend disbursing agent or transfer agent, of a business association or financial association that is the holder of property presumed abandoned if the administrator has given the notice required by subsection (b) to both the association or organization and the agent at least 90 days before the examination.

(d) Documents and working papers obtained or compiled by the administrator, or the administrator's agents, employees, or designated representatives, in the course of conducting an examination are confidential and are not public records, but the documents and papers may be:

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

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

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

(4) disclosed to the abandoned property office of another State for that State's use in circumstances equivalent to those described in this subdivision, if the other State is bound to keep the documents and papers confidential.

~~(b)~~ (e) An action or proceeding may not be maintained by the administrator to enforce this [Act] in regard to the reporting, delivery, or payment of property more than 10 years after the holder specifically identified the property in a report filed with the administrator or gave express notice to the administrator of a dispute regarding the property. In the absence of such a report or other express notice, the period of limitation is tolled. The period of limitation is also tolled by the filing of a report that is fraudulent.

(f) Any action or proceeding maintained by the administrator under this section

may include property that first became reportable during the relevant time period as well as any property reflected on the holder's books and records as being held for or owed to an owner at any point during the relevant time period.

(g) A holder required to file a report under Section 7 shall maintain for a period of 10 years after the holder files the report, all underlying source documents, work papers, records, and other information utilized in determining (i) whether property was unclaimed and (ii) the amount of property reportable. A business association or financial organization that sells, issues, or provides to others for sale or issue in this State, traveler's checks, money orders, or similar instruments other than third-party bank checks, on which the business association or financial organization is directly liable, shall maintain a record of the instruments while they remain outstanding, indicating the State and date of issue, for three years after the holder files the report.

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

~~(f)~~ (i) If, after the effective date of this [Act], a holder does not maintain the records required by Section 21 and the records of the holder available for the periods subject to this [Act] are insufficient to permit the preparation of a report, the administrator may require the holder to report and pay to the administrator the amount the administrator reasonably estimates, on the basis of any available records of the holder or by any other reasonable method of estimation, should have been but was not reported.

36. Update and consolidate provisions related to limitations on audit periods and examination of records.

Objective: centralize all provisions relating to auditing in a single section; provide clarity as to records to be retained by a holder; revise the period for which a state may conduct an audit of a holder.

Citation: 1995 Uniform Act Section 19(b) ~~,~~20 and 21.

NAUPA legislation (including repositioning of Section 19(b) as 20(e):

(a) The administrator may require a person who has not filed a report, or a person who the administrator believes has filed an inaccurate, incomplete, or false report, to file a verified report in a form specified by the administrator. The report must state whether the person is holding property reportable under this [Act], describe property not previously reported or as to which the administrator had made inquiry, and specifically identify and state the amounts of property that may be at issue.

(b) The administrator, at reasonable times and upon reasonable notice, may examine the records of any person to determine whether the person has complied with this [Act]. The administrator may conduct the examination even if the person believes it is not in possession of any property that must be reported, paid, or delivered under this [Act]. The administrator may contract with any other person to conduct the examination on behalf of the administrator.

(c) The administrator at reasonable times may examine the records of an agent, including a dividend disbursing agent or transfer agent, of a business association or financial association that is the holder of property presumed abandoned if the administrator has given the notice required by subsection (b) to both the association or organization and the agent at least 90 days before the examination.

(d) Documents and working papers obtained or compiled by the administrator, or the administrator's agents, employees, or designated representatives, in the course of conducting an examination are confidential and are not public records, but the documents and papers may be:

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

(2) used in joint examinations conducted with or pursuant to an

agreement with another State, the federal government, or any other governmental subdivision, agency, or instrumentality;

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

(4) disclosed to the abandoned property office of another State for that State's use in circumstances equivalent to those described in this subdivision, if the other State is bound to keep the documents and papers confidential.

(e) An action or proceeding may be maintained by the administrator to enforce this [Act] in regard to the reporting, delivery, or payment of any property within 10 years after the property should have been reported, delivered or paid. Notwithstanding the foregoing, if a holder: (i) fails to report an amount that is in excess of twenty-five percent of the amount in the aggregate that was included on a report filed during this time period or (ii) fails to report an amount for a distinct property type that is in excess of twenty-five percent of the amount for that property type that was included on a report filed during this time period, an action or proceeding may be maintained by the administrator within 15 years after the property should have been reported, delivered or paid. The period of limitation is tolled for any years in which the holder fails to file any report and is also tolled by the filing of a report that is knowingly false or fraudulent.

(f) Any action or proceeding maintained by the administrator under this section may include property that first became reportable during the relevant time period as well as any property reflected on the holder's books and records as being held for or owed to an owner at any point during the relevant time period.

(g) A holder required to file a report under Section 7 shall maintain for a period of 10 years after the holder files the report, all underlying source documents, work papers, records, and other information utilized in determining (i) whether property was unclaimed and (ii) the amount of property reportable. A business association or financial organization that sells, issues, or provides to others for sale or issue in this State, traveler's checks, money orders, or similar instruments other than third-party bank checks, on which the business association or financial organization is directly liable, shall maintain a record of the instruments while they remain outstanding, indicating the State and date of issue, for three years after the holder files the report.

(h) If, after the effective date of this [Act], a holder does not maintain the records required by subsection (e) and the records of the holder available for the periods subject to this [Act] are insufficient to permit the preparation of a report, the administrator may require the holder to report and pay to the administrator the amount the administrator reasonably estimates, on the basis of any available records of the holder or by any other reasonable method of estimation, should

have been but was not reported.

Issues related to this section

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

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

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

NAUPA research: position paper drafted; including

1. The total amounts collected on behalf of the states by contingent fee auditors.
2. The total identified by contingent fee auditors but not collected by the states, because the property was instead claimed by owners through holder due diligence.
3. The total amounts paid to owners by states from collections made by contingent fee auditors.

Comment

This section is designed to facilitate compliance with the Act. Subsection (a) provides for the filing of a negative report if the administrator requires such a report and will minimize disruption which would otherwise be caused to the holder if an examination of records instead were conducted by the administrator. Subsection (b) is based on Section 30 of the 1981 Act. Aside from the requirement that the administrator conduct the examination at reasonable times and upon reasonable notice, the only limitations on the administrator's right to examine are constitutional limitations. Even though the Fourth Amendment does not extend as broadly to corporations as to individuals, *Oklahoma Press Pub. Co. v. Walling*, 327 U.S. 186, 90 L.Ed. 614, 66 S.Ct. 494 (1946), inspections of commercial property may be unreasonable if they are not authorized by law or are unnecessary for the furtherance of a governmental interest. *Donovan v. Dewey*, 452 U.S. 594, 56 L.Ed.2d 486, 98 S.Ct. 1942 (1980). This Act is deemed to meet that standard. Also, since one of the dual purposes of this Act is the collection of revenue, reference may be made to the cases holding that it is not an unreasonable search to require taxpayers to produce their books and records. See Annot., "Constitutionality of statutory provisions for examination of records, books, or documents for taxation purposes," 103 ALR 522.

Subsection (c) is intended to provide a useful method whereby the administrator can conduct a single examination of a dividend disbursing agent or transfer agent serving in such capacity for numerous business associations.

Subsection (f) permits the use of estimates in instances where the holder has failed to report and deliver property that is abandoned and no longer has reasonably accessible records sufficient to prepare a specific report. Additionally, if the holder fails to maintain records of the last known address, States can assert claims based on any other records which might exist. Resort may be had to computer codes. While the holding in *Texas v. New Jersey* is intended to prevent multiple liability of holders, this subsection, viewed as a penalty for failure to maintain records of names and last known address, is not inconsistent with that decision. That part of subsection (f) which permits the State to make estimates was prospective only from the date of adoption of the 1981 Act. This Act expressly states the bases on which estimates may be made. Thus, the State may use estimating techniques -- where a holder has not maintained records as required by statute -- based on industry averages, and may rely on inferences that may be based on statistics drawn from a broader basis than that of the holder in question who has failed to keep records. This section, together with Section 23, also clarifies the administrator's authority to enter into agreements to enforce the State's custodial powers in all States.

Section 20:
Requests for Reports and Examination of Records

■ **Adopted**	**with the following modification(s):**
Arizona	Omits statement that Administrator may contract with another person to conduct examinations. Lowers charge for cost of examination. Requires that method of estimation be agreed to by holder or be a statistically valid sampling method.
Kansas	Does not apply to certain financial institutions and insurance companies that provide a letter from an independent CPA or resolution from board of directors certifying compliance with Act. Administrator may assess hourly rate costs of examination plus necessary expenses.
New Jersey	The Uniform Act section was adopted in large part with some additions and omissions.
West Virginia	Added limitation on examinations of banks.

■ Adopted as is: AL, AR, HI, IN, LA, ME, MT, NC, NM, NV, VT, VI

■ Did not adopt:

SECTION 21. RETENTION OF RECORDS.

(a) ~~Except as otherwise provided in subsection (b), a holder required to file a report under Section 7 shall maintain the records containing the information required to be included in the report for 10 years after the holder files the report, unless a shorter period is provided by rule of the administrator.~~ Except as otherwise provided in subsection (b) or (c), a holder required to file a report under section 7 shall maintain for a period of 10 years after filing the report, all underlying source documents, work papers, records, and other information utilized in determining (i) whether property was unclaimed and (ii) the amount of property reportable.

(b) A business association or financial organization that sells, issues, or provides to others for sale or issue in this State, traveler's checks, money orders, or similar instruments other than third-party bank checks, on which the business association or financial organization is directly liable, shall maintain a record of the instruments while they remain outstanding, indicating the State and date of issue, for three years after the holder files the report.

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

Issues

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

Citation: 1995 Uniform Act Section 21(a).

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

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

(b) [unchanged]

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

Comment

This section does not require that the holder in the first instance obtain the address of the owner. For example, a record of the address of the purchaser or recipient of a gift certificate customarily is not obtained.

Initially, the period for which records of address must be obtained is established at 10 years from the date the property was first reportable as abandoned property. However, this section permits a State to shorten this period by rule. Because the reporting practices of holders vary, an administrator will want to consider such factors as the burden imposed on the holder in maintaining such records, the opportunity of returning the property, and the type of business of the holder. For example, in the case of property that would be reportable in the aggregate without the name and address of the apparent owner under Section 7, a State might adopt a rule providing for a relatively short record retention period on condition that the holder maintain a record sufficient to satisfy the requirements of *Texas v. New Jersey* that there be a last known address or that the State can prove that the last known address of the creditor was within its borders.

Subsection (b) is designed to assure that the information required for asserting a claim to travelers checks and money orders is retained by the issuers of travelers checks and money orders.

Section 21:
Retention of Records

■ **Adopted**	**with the following modification(s):**
Arizona	Requires records to retained for five years.

■ Adopted as is: AL, AR, HI, IN, KS, LA, ME, MT, NC, NJ, NM, NV, VT, VI, WV

■ Did not adopt:

SECTION 22. ENFORCEMENT. ~~The administrator may maintain an action in this or another State to enforce this [Act]. The court may award reasonable attorney's fees to the prevailing party.~~ **"LEGAL PROCEEDINGS AND ENFORCEMENT."**

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

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

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

Issues related to this section

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

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

Citation: 1995 Uniform Act Section 22. NAUPA legislation:
Change section title from "**Enforcement"** to **"Legal Proceedings and Enforcement."**
(a)The administrator may maintain an action to enforce this Act. In a situation where no district court in this State can obtain jurisdiction over the person involved, the administrator may commence such an action in a federal court or state court of another state having jurisdiction over that person. The court may award reasonable attorney's fees to the prevailing party.
(b) The administrator, for and on behalf of this State, may commence an action against the United States government or any agency or subdivision thereof for an adjudication that the proceeds of United States savings bonds subject to the provisions of this Act that are payable to the State.
(c) The administrator shall be deemed an indispensable party to any judicial or administrative proceedings concerning the disposition and handling of unclaimed property that is or may be payable or distributable into the protective custody of the administrator. The administrator shall have a right to intervene and participate in any judicial or administrative proceeding when to do so will be in the best interest of this state, the apparent owner or the unclaimed property or to conserve and safeguard the unclaimed property against dissipation, undue diminishment or adverse discriminatory treatment.

Comment

Although generally an action would be brought in an administrator's own State, action to enforce the Act may also be brought in the courts of another State. See Section 23. See also, *Commonwealth of Pennsylvania v. Kervick*, 60 N.J. 289, 288 A.2d 289 (1972).

Section 22: Enforcement

■ Adopted	with the following modification(s):
Alabama	Provides for enforcement by Attorney General in § 35-12-92.
Arizona	Does not provide for attorney's fees.
Indiana	Does not provide for attorney's fees.
Kansas	Specifies several causes of action.
Louisiana	Does not provide for attorney's fees.
Maine	Does not provide for attorney's fees.
North Carolina	Treasurer granted subpoena power; omits attorney's fees to prevailing party.

■ Adopted as is: AR, HI, MT, NM, NV, VT, VI, WV

■ Did not adopt: NJ

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

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

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

~~(b)~~ (c)The administrator may join with another State to seek enforcement of this [Act] against any person who is or may be holding property reportable under this [Act].

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

~~(d)~~ (e)The administrator may request that the attorney general of another State or another attorney commence an action in the other State on behalf of the administrator. With the approval of the attorney general of this State, the

administrator may retain any other attorney to commence an action in this State on behalf of the administrator. This State shall pay all expenses, including attorney's fees, in maintaining an action under this subsection. With the administrator's approval, the expenses and attorney's fees may be paid from money received under this [Act]. [The administrator may agree to pay expenses and attorney's fees based in whole or in part on a percentage of the value of any property recovered in the action.] Any expenses or attorney's fees paid under this subsection may not be deducted from the amount that is subject to the claim by the owner under this [Act].

Issues

40. Relax formality of requirements for interstate cooperation.

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

Citation: 1995 Uniform Act Section 23(a).

Comment

To avoid conflicts between the administrator's procedures and the procedures of administrators in other jurisdictions that enact the Uniform Unclaimed Property Act, the administrator, before adopting, amending or repealing rules, should advise and consult with administrators in other jurisdictions that adopt this Act substantially and take into consideration the rules of administrators in other jurisdictions that enact the Uniform Unclaimed Property Act.

Cooperation among States is essential if abandoned property programs are to be efficiently administered. In recent years several States have joined together to audit major holders. Additionally, several States have entered into agreements to act as collection agents for each other. Interstate cooperation and the development of uniform reporting forms and uniform regulations will be of assistance to holders as well as program administrators. This section encourages joint agreements and cooperation among the States. An agreement among the States might expressly relieve holders from reporting piecemeal to separate States. Instead, they might be able to file a single report of all abandoned property, wherever located, and regardless of the address of the owner.

Reciprocal agreements envisioned under subsection (c) do not require the consent of Congress under the Compact Clause of the Constitution, Art. I, ' 10, cl. 3. The Supreme Court has held that the restriction of the Compact Clause is limited to combinations or agreements that tend to increase the political power of the States to such an extent that it interferes with the supremacy of the United States. *United States Steel v. Multi-State Tax Commission*, 434 U.S. 452 (1978). In *Multi-State Tax Commission* the Court upheld a tax compact, that had not been approved by Congress creating a permanent administrative body to perform audits of multi-state taxpayer operations, and at the request of a member State, to sue to enforce the audits in the courts of the member States.

This section simply authorizes an economical approach to enforcing a State's claim under *Texas v. New Jersey*. Each State retains discretion to bring suit or to decide against such action, remaining free to adopt its own abandoned property policies. The position of the States will not be politically improved at the expense of the federal government although the process for claiming abandoned property will be more efficient.

Action by one State for another is expressly permitted by this section. In some cases the administrator of a State may deem it wise to seek counsel in a foreign jurisdiction. There may be small claims which would not justify individual action by the claimant State in a foreign forum, but if several States join forces and retain counsel in the holder State to sue for all of them, it might be administratively justified. This section expressly permits such joint action.

Section 23:
Interstate Agreements and Cooperation; Joint and Reciprocal Actions with Other States

■ **Adopted**	**with the following modification(s):**
Indiana	Provides that final audit reports are public records.
Kansas	Administrator to consult and advise with other administrators before enacting legislation.
New Jersey	The Uniform Act section was adopted with some additions.

■ Adopted as is: AL, AR, AZ, HI, LA, ME, MT, NC, NM, NV, VT, VI, WV

■ Did not adopt:

SECTION 24. INTEREST AND PENALTIES.

(a) A holder who fails to report, pay, or deliver property within the time prescribed by this [Act] shall pay to the administrator interest at the annual rate of [12 percent] [two percentage points above the annual rate of discount in effect on the date the property should have been paid or delivered for the most recent issue of 52-week United States Treasury bills] on the property or value thereof from the date the property should have been reported, paid or delivered.

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

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

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

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

(f) A holder who fails to report, pay or deliver property payable under a life insurance policy or annuity contract upon death within the time prescribed by Section 2.(a)(8)(i) of this [Act] shall not be required to pay interest under subsection (a) above or be subject to penalties under subsection (b) above if the failure to report, pay or deliver the property was due to lack of knowledge of the death giving rise to the payment obligation.

Issues related to this section

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

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

Citation: 1995 Uniform Act Section 24

Comment

A major weakness of the 1966 Act was its ineffective penalty provision. Although the 1981 Act increased penalties for non-compliance, voluntary compliance with the Act continued to be a problem. In this Act, compliance failures not accompanied by willfulness are dealt with by moderate increases in the applicable penalties, and the administrator simultaneously is given authority to waive both interest and penalties where the holder has attempted in good faith to comply, or where the failure has been due to excusable neglect. Where the holder's failure is willful or fraudulent, and not in good faith, penalties are increased more substantially.

Criminal penalties, which were the sole enforcement mechanism of the 1954 Act and which were retained in the 1981 Act have been eliminated, as they were not effective and rarely, if ever, pursued.

The provision for the discretionary waiver of interest upon a showing of good cause is intended to apply to situations in which the holder has attempted to comply with the Act. Establishment of "good cause" is likely to be difficult where the holder has failed to file a report.

Section 24:
Interest and Penalties

■ Adopted	with the following modification(s):
Alabama	1. Omits interest penalty. 2. Provides for civil penalty of $100 per day up to $5000 for failure to report, make delivery or perform other duties required by the act.
Arizona	Modifies interest rate. No civil penalty for simple failure to report. Substantially reduces other penalties.
Indiana	Modifies interest and penalty rates. Willful refusal to pay or deliver property is a Class B misdemeanor.
Kansas	Modifies interest and penalties. Willful refusal to pay or deliver property is a class B misdemeanor. Administrator has discretion to waive or reduce penalties and interest in an appropriate circumstance.
Montana	Civil penalties chargeable by the administrator for late filing or failure to perform other duties reduced by one-half.
North Carolina	Modifies interest rate provision and omits penalty for simple failure to report.
New Jersey	The Uniform Act section was adopted in large part; although amounts of penalties were changed and the waiver section was modified.
New Mexico	Amounts of penalties were reduced.
Vermont	1. A court of competent jurisdiction may impose the civil penalties provided for under this section. 2. The treasurer may seek an injunction to require compliance.

■ Adopted as is: AR, HI, LA, ME, NV, VI, WV

■ Did not adopt:

SECTION 25. AGREEMENT TO LOCATE PROPERTY.

(a) An agreement by an owner, the primary purpose of which is to locate, deliver, recover, or assist in the recovery of property that is presumed abandoned is void and unenforceable if it was entered into during the period commencing on the date the property was presumed abandoned and extending to a time that is 24 months after the date the property is paid or delivered to the administrator. A person who solicits an owner to enter into a contract during this period commits an unfair and deceptive trade practice, regardless of whether the owner executes the agreement. This subsection does not apply to an owner's agreement with an attorney to file a claim as to identified property or contest the administrator's denial of a claim.

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

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

(d) An agreement covered by this section which provides for compensation that is unconscionable is unenforceable except by the owner. An

owner who has agreed to pay compensation that is unconscionable, or the administrator on behalf of the owner, may maintain an action to reduce the compensation to a conscionable amount. The court may award reasonable attorney's fees to an owner who prevails in the action.

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

Comment

This section is intended to enhance the likelihood that the owner of the abandoned property will be located by the efforts of the State, and will receive a return of the property without payment of a "finder's fee." In the past, it appears to have been the practice in many States for unclaimed property locators or heir finders to utilize the State's lists of names and addresses of missing owners to contact them and propose to find their property for them for a fee, before the State has had an opportunity to locate the missing owners. Some States have enacted legislation that prohibits examination of these lists by anyone except an apparent owner or other person having a legal interest in the property, but in many States that kind of provision may be in conflict with the State's public records laws.

Subsections (b) and (d) apply to agreements entered into at any time. These subsections apply to all finders' and locators' contracts, regardless of when the contract is made, including agreements with an owner as a result of a holder providing to private parties, the holder's information regarding an inactive account.

This section is not intended to apply to situations such as the probating of an estate, which may incidentally include a necessity of locating unclaimed property. Agreements in such cases do not have as their principal purpose, the rendition of services to locate, deliver or recover unclaimed property. This section also does not apply to agreements for legal representation of an owner who is claiming property the identity of which is already known to the owner.

Issues related to this section

42. Classify the solicitation of execution or of an agreement to locate property during which period such an agreement would be void and unenforceable as an unfair and deceptive trade practice.

Objective: to render agreements that are inconsistent with the unclaimed property not merely unenforceable, but to also provide for sanctions against holders and locators who seek to enter into such contracts with owners

Citation: 1995 Uniform Act Section 25(a).

NAUPA legislation: (a) An agreement by an owner, the primary purpose of which is to locate, deliver, recover, or assist in the recovery of property that is presumed abandoned is void and unenforceable if it was entered into during the period commencing on the date the property was presumed abandoned and extending to a time that is 24 months after the date the property is paid or delivered to the administrator. A person who solicits an owner to enter into a contract during this period commits an unfair and deceptive trade practice, regardless of whether the owner executes the agreement. This subsection does not apply to an owner's agreement with an attorney to file a claim as to identified property or contest the administrator's denial of a claim.

Section 25:
Agreement to Locate Property

■ Adopted	with the following modification(s):
Arkansas	Limits fee to 10%.
Arizona	Limits fee to 30%.
Indiana	Limits fee to 10% unless the property is $50 or less.
Kansas	Limits fee to 15%. Omits unconscionability clause. Permits state to pay owner directly regardless of instruction to contrary.
Louisiana	Omits sentence regarding owner's agreement with attorney to file claim. Limits fee to 10%.
Maine	Limits fee to 15%. Person who makes claim for compensation in violation of section commits unfair trade practice.
Nebraska	Limits fee to 15%.
Nevada	Nevada provision limits fee to no more than 10 percent of the total value of the property.
North Carolina	Grants owners additional defenses to locator contracts. Requires fee and annual registration of locators.
Vermont	1. Asset locator is required to register with the treasurer's office and post a performance bond of not less than $10,000. 2. No claim form may be sent to an asset locator without the prior written permission of the owner or the owner's legal representatives. Claims will be paid to the owner, not to the asset locator. 3. Owners may not assign rights or property interests to an asset locator and no power of attorney containing provisions contrary to this section is enforceable. 4. Fees limited to 10%.

■ Adopted as is:	AL, HI, MT, NM, VI
■ Did not adopt:	NJ, WV

SECTION 26. FOREIGN TRANSACTIONS. This [Act] does not apply to property held, due, and owing in a foreign country and arising out of a foreign transaction.

Section 26:
Foreign Transactions

■ **Adopted**	**with the following modification(s):**
New Mexico	Adds additional exemptions. See “Additions/Exclusions”
■ Adopted as is:	AL, AR, AZ, HI, IN, KS, LA, ME, MT, VT, VI, WV
■ Did not adopt:	NC, NJ, NV

SECTION 27. TRANSITIONAL PROVISIONS.

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

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

Comment

Paragraph (a) is retained from the 1981 Act and deals with the problem of how far back a holder must check its records to determine what property not subject to the prior Act must be paid to the State under this Act. Thus, property which was not covered by any unclaimed property law prior to adoption of the 1981 Act, but was covered by that Act, continues to be covered by this Act if the obligation was incurred not more than 10 years prior to adoption of the 1981 Act and the statute of limitations is not tolled under Section 19(b). For example, if a State enacts this Act effective January 1, 1996 for property not previously presumed abandoned, the holder must report it if, as of January 1, 1986, it had been unclaimed for the abandonment period. A similar provision is found in Section 11(g) of the 1966 Act.

Paragraph (b) provides that if a State had an unclaimed property law prior to the adoption of this Act, a holder is not relieved of his duty to report and pay over the property abandoned under the Act then existing. Except as otherwise provided in Section 19(b), a holder who did not comply with the law in effect before the effective date of this Act is subject to the applicable provisions for enforcement and penalties which then existed and which are continued in effect for the purpose of this section.

Section 27: Transitional Provisions

■ **Adopted**	**with the following modification(s):**
Vermont	1. No income or gain shall be realized or accrued to the benefit of the owner while property is in custody of treasurer prior to effective date of act. 2. Expiration of a period of limitation shall not preclude the property from being presumed abandoned or affect a duty to file a report or to pay property to the treasurer 3. If holder has not maintained records as required by the former unclaimed property law and there are insufficient records after the effective date of this law, the treasurer may make reasonable estimates. 5. Dormancy charges as provided in Section 1248 (e) only apply to contracts entered into after the effective date of the act. 6. The money paid into the higher education trust fund for fiscal year 2007 shall not exceed $600,000.

■ Adopted as is: AL, AR, HI, IN, KS, LA, ME, MT, NC, NM, NV, VI, WV

■ Did not adopt: AZ, NJ

SECTION 28. RULES. The administrator may adopt [pursuant to the Administrative Procedures Act] rules necessary to carry out this [Act].

Section 28: Rules for Taking Custody

■ **Adopted**	**with the following modification(s):**
Nevada	Administrative regulations adopted under prior law remain in effect if they do not conflict with provisions of the new act.
■ Adopted as is:	AL, AR, HI, IN, KS, LA, ME, MT, NC, NJ, NM, VT, VI, WV
■ Did not adopt:	AZ

SECTION 29. UNIFORMITY OF APPLICATION AND CONSTRUCTION. This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among States enacting it.

Section 29: Uniformity of Application and Construction

- Adopted as is: AL, AR, HI, IN, KS, LA, ME, MT, NM, NV, VI, VT, WV
- Did not adopt: AZ, NC, NJ

Section 30: Short Title

- Adopted as is: HI, IN, LA, ME, MT, NM, NV, VI, WV
- Did not adopt: AL, AR, AZ, KS, NC, NJ, VT

SECTION 30. SHORT TITLE. This [Act] may be cited as the Uniform Unclaimed Property Act (1995).

Section 30:
Short Title

- Adopted as is: HI, IN, LA, ME, MT, NM, NV, VI, WV
- Did not adopt: AL, AR, AZ, KS, NC, NJ, VT

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

Section 31:
Severability Clause

- Adopted as is: AR, HI, KS, LA, MT, VT, VI
- Did not adopt: AL, AZ, IN, ME, NC, NJ, NM, NV, WV

SECTION 32. EFFECTIVE DATE. This [Act] takes effect ..... .

Section 32:
Effective Date

- Adopted as is: HI, LA, ME, VI
- Did not adopt: AL, AR, AZ, IN, KS, MT,NC, NJ, NM, VT, WV

SECTION 33. REPEALS. The following acts and parts of acts are repealed:

(a)

(b)

(c)

Section 33: Repeals

- Adopted as is: AR, HI, KS, VT, VI
- Did not adopt: AL, AZ, IN, LA, ME, MT, NC, NJ, NM, WV

Additions / Exclusions

Alabama	Provides protection of confidentiality of certain owner information contained in a holder's report.
Arizona	Establishes FDIC temporary custody trust fund to hold FDIC monies for 10 years. Holder reports deemed confidential and information may only be disclosed under specified circumstances. Establishes Unclaimed Property Assistance Office for 10 years to assist holders. Department may issue private holder rulings under defined circumstances. Abates interest for errors or delays caused by Department.
Indiana	Exempts most property of rural electric, telephone, or agricultural cooperatives; overpayments of utility bills that become property of a municipality; deposits required by a municipality owned utility; business to business credit memorandum or credit balance. Requires cooperation by all other state entities in identifying holders and discovering unclaimed property.
Hawaii	• Excludes gift certificates with no expiration date and no post-sale fees. • Excludes gift certificates with expiration date and post-sale fees if issuer honors gift certificates after expiration date and eliminates post-sale fees. • Definition of gift certificate does not include prepaid telephone calling cards • Excludes flexible spending arrangements as defined by the Internal Revenue Code • Excludes payroll cards or other electronic devices linked to a deposit account given in exchange for goods or services rendered.
Kansas	Does not apply to stock or other intangible property in dividend reinvestment plan unless owner has not communicated in any manner in 5 years or 5 years have elapsed since location of owner became unknown as shown by returned mail. Exempts patronage dividend or capital credit held or owing by cooperative or public utility. All public entities to provide information necessary to carry out Act.
Maine	Prearranged funeral or burial plan funds abandoned 3 years after death. Demutualization proceeds abandoned 2 years after the earlier of the date of distribution or date of last contact with policyholder. Administrator may retain property with historic significance. Information from holder reports or otherwise communicated to Administrator concerning abandoned property is confidential.
North Carolina	Excludes from coverage of act: forfeited reservation deposits; gift certificates without expiration date or with statement that gift certificate does not expire, or states that expiration date is not applicable in NC; prepaid telephone calling cards; buyer deposits that dealer may retain; credit balances to or for the benefit of another business association; treasurer may conduct precompliance review with holder at holder's request. A fee of up to $500 per day may be charged.
Nevada	1. Excludes gaming chips and tokens from the unclaimed property law. 2. In receivership proceeding, any dividend to be paid to creditors that is unclaimed for 3 years reverts to the general fund of the estate and will be applied in a specified manner.
New Jersey	Added demutualization provision; dormancy period for non-traditional IRAs; prohibition against aggregation of dividends and mineral proceeds.
New Mexico	Exempts funds in a credit union member's share account and telephone, water or agricultural cooperatives, if the bylaws of the organizations provide for charitable or educational use of funds; adds additional notice requirements for mineral ownership proceeds.

Vermont	1. Added section covering demutualization proceeds. 2. The treasurer is required to post notice to owners of amounts of $100 or more by posting on the treasurer's website on the internet and may use additional methods set forth in the provision (newspaper publication, individual contact by regular or electronic mail or by telephone.) 3. A new section is included describing the payment of claims to estates or property of $100 or less belonging to more than one person. 4. The section relating to multiple claimants of unclaimed property valued at $100 or less shall be repealed on July 1, 2009 and the treasurer is required to file a report with the legislative committees on government operations describing the office's experience with this provision on or before January 15, 2009. The report will include a recommendation that the subsection be made permanent or repealed.
West Virginia	Limits access to records to owners, next of kin, personal representative, attorneys and heirs conducting an audit.

Issues

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

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

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

NAUPA research: position paper completed. See Memo on Business to Business

Issues

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

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

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

NAUPA research: position paper completed. See memo on Derivative Rights Doctrine.

NEW SECTION: AUDIT APPEALS PROCESS

~~2.~~3. Create a uniform audit appeals process for holders disputing findings from an unclaimed property audit.

Citation: none (new section required).

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

NAUPA legislation:

Section ___ Appeal of Examination Findings.

(a) Within 30 days from the date of the final examination report, a holder may file an appeal of the audit findings with the administrator.

a. The appeal must be in writing, dated and signed by the holder, and include the following information:

i. the names of all parties involved in the audit at issue;

ii. the specific findings the holder is protesting including any amounts in question, property types, and the years audited. The holder is presumed to have agreed to any findings not contested

iii. a clear and concise description of each error that the holder is alleging the administrator made in his or her findings;

iv. the argument and legal authority upon which each assignment of error is made; provided, that the applicant shall not be bound or restricted in any hearing to the arguments and legal authorities contained and cited in said appeal;

v. the relief requested; and

vi. whether or not the holder is requesting a hearing.

b. Within five days of filing the appeal, the holder shall secure the payment of the audit findings in their entirety by making payment to the administrator or the administrator's agent. If the holder is successful in the appeal, the disputed amount of the audit findings, with any interest earned thereon, will be returned to the holder within thirty (30) days of the date of the final determination.

c. If an appeal is not filed within 30 days, the holder will be presumed to have agreed to the final examination report. The holder shall make

payment of the audit findings to the administrator or the administrator's agent within 45 days of the date pf the final examination report.

d. For purposes of this section a "final examination report" is a report issued by the administrator or the administrator's agent and contains findings that specify the property types audited, the years audited, and the final amount due the State.

e. The administrator may in his or her discretion extend the time periods provided for in this section to allow the holder to remediate the findings included in a final examination report.

(b) If the holder requests a hearing, the administrator or designated hearing examiner, appointed at the discretion of the Administrator, shall schedule a hearing, to be conducted within 60 days of the receipt of the holder's written appeal. The administrator or designated hearing examiner shall notify the holder of the date, time, and place of the hearing.

a. The holder may present witnesses and documents at the hearing.

b. Failure to appear for the scheduled hearing shall be treated as a withdrawal of the Request for Hearing, and the Administrator or designated hearing examiner will make a final determination based upon the record.

c. The administrator or designated hearing examiner may reschedule a hearing upon determining that good cause exists.

(c) After the hearing is held or the record is complete, the Administrator or designated hearing examiner will issue a written decision to the holder as soon as practicable. The written decision will include findings of fact and conclusions of law.

(d) The administrator shall prepare an official record of the appeal that includes, but is not limited to, a transcript of all testimony and all papers, motions, documents, evidence and records as were before the administrator, all staff memoranda submitted in connection with the case, and a statement of matters officially noted.

Any party adversely affected by the administrator's decision is entitled to judicial review thereof under the provisions of the _____. The review shall be conducted by the court without a jury and shall be upon the record made before the administrator, except that in cases of alleged irregularities in procedure before the agency, not shown in the record, testimony thereon may be taken before the court. The court may hear oral

arguments and require written briefs.

NEW SECTION: LIMIT THE ASSIGNMENT OF HOLDER LIABILITY TO A THIRD PARTY.

~~3.~~4. LIMIT THE ASSIGNMENT OF HOLDER LIABILITY TO A THIRD PARTY.

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

Citation: none (new section required).

NAUPA legislation: Limitations on Assignment or Transfer of Liability

(a) A holder may not assign or otherwise transfer its obligation to pay or deliver property or to comply with the duties of this Act, other than to a parent, subsidiary, or affiliate of the holder. The assignor or transferor shall remain the holder for purposes of the application of Section 4 of the Act.

(b) A holder's successor by merger or consolidation or person or entity that acquires all or substantially all of a holder's capital stock or assets shall be responsible for the payment or deliver of property or to comply with the duties of this Act with respect to property held and owing by the predecessor entity.

(c). Nothing in this section shall prohibit a holder from contracting with a third party for the physical act of reporting of unclaimed property, provided that a holder shall remain responsible to the administrator for the complete, accurate and timely reporting and delivery of property, and liable to the administrator for any failure on the part of the third party to report and deliver the property. -

NEW SECTION: PROVIDE FOR THE ELECTRONIC IMAGING AND STORAGE OF HARD COPY RECORDS IN THE POSSESSION OF THE STATE.

5. Electronic imaging.

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

Citation: none (new section required).

NAUPA legislation:

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

The administrator shall develop procedures for the storage, retention and disposal of records filed, submitted or otherwise created under this Act. Electronic records shall be maintained in an unalterable readable electronic media in accordance with industry standards, reviewed for accuracy and indexed, and shall have the same force and effect as the original records whether the original records are in existence or not.

NEW SECTION: UNITED STATES SAVINGS BONDS; PROCEDURE FOR ESCHEAT

6. Savings Bonds

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

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

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

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

Issue: Include the "Kansas Provision" covering unredeemed **U.S. Savings Bonds.**

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

Citation: none

NEW SECTION: CONFIDENTIALITY OF INFORMATION

~~4.~~7. Confidentiality

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

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

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

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

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

(c)The administrator shall include on the Internet database provided for in Section 9(b)(3) of this Act the names of all apparent owners of property presumed abandoned and in the custody of the State. The administrator may include

additional information concerning an apparent owner's property on the Internet database that, in the discretion of the administrator, will assist in facilitate the identification and claiming of property.

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

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

Citation: none.

NEW SECTION: LIFE INSURANCE ABANDONMENT

~~5.~~8. Life insurance

PROPOSED REVISIONS TO SECTION 2. PRESUMPTIONS OF ABANDONMENT

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

* * * * *

(8) amount owed by an insurer on a life or endowment insurance policy or an annuity that has matured or terminated: (i)~~,~~ ~~three~~two years after the obligation to pay arose, which ~~or,~~ in the case of a policy or annuity payable upon ~~proof of~~ death~~, three years after the~~ shall be the date of death of the insured; or (ii) one year after the date the insured has attained, or would have attained if living, the limiting age under the mortality table on which the reserve is based in the case of a policy or annuity payable upon death where the insurer does not know whether the insured is deceased as of the time the limiting age is reached;

* * * * *

(e) Property is payable or distributable for purposes of this [Act] notwithstanding the owner's failure to make demand or present an instrument or document, including, without limitation, a death certificate, insurance policy, savings account passbook, gift certificate, winning racing ticket, or other memorandum of ownership, otherwise required to obtain payment.

II. PROPOSED REVISIONS TO SECTION 24. INTEREST AND PENALTIES

(a) Except as otherwise provided in subsection (f), ~~A~~a holder who fails to report, pay, or deliver property within the time prescribed by this [Act] shall pay to the administrator interest at the annual rate of [12 percent] [two percentage points above the annual rate of discount in effect on the date the property should have been paid or delivered for the most recent issue of 52-week United States Treasury bills] on the property or value thereof from the date the property should have been reported, paid or delivered.

(b) Except as otherwise provided in subsections (c) and (f), a holder who fails to report, pay, or deliver property within the time prescribed by this [Act], or fails to

perform other duties imposed by this [Act], shall pay to the administrator, in addition to interest as provided in subsection (a), a civil penalty of [$200] for each day the report, payment, or delivery is withheld, or the duty is not performed, up to a maximum of [$5,000].

* * * * *

(f) A holder who fails to report, pay or deliver property payable under a life insurance policy or annuity contract upon death within the time prescribed by Section 2.(a)(8)(i) of this [Act] shall not be required to pay interest under subsection (a) above or be subject to penalties under subsection (b) above if the failure to report, pay or deliver the property was due to lack of knowledge of the death giving rise to the payment obligation.

III. PROPOSED NEW SECTION ON DMF MATCHING

Identification of Unclaimed Life Insurance Benefits

(a) As used in this section:

(1) "Contract" means an annuity contract. It shall not include an annuity used to fund an employment-based retirement plan or program in which the insurance company is not committed by terms of the annuity contract to pay death benefits to the beneficiaries of specific plan participants.

(2) "Death Master File" means the United States Social Security Administration's Death Master File or any other database or service that is at least as comprehensive as the Death Master File for determining that a person has reportedly died.

(3) "Death Master File Match" or "match" means a search of the Death Master File that results in a match between a person on the Death Master File and the Social Security number or name and date of birth of an insured, annuity owner, or retained asset account holder.

(4) "Policy" means any policy or certificate of life insurance that provides a death benefit. The term "Policy" shall not include (i) any policy or certificate of life insurance that provides a death benefit under an employee benefit plan (a) subject to The Employee Retirement Income Security Act of 1974 [29 USC 1002], as periodically amended, or (b) under any Federal employee benefit program, or (ii) any policy or certificate of credit life or accidental death insurance.

(5) "Retained Asset Account" means any means or mechanism whereby the settlement of proceeds payable under a Policy or Contract is accomplished by the insurer or an entity acting on behalf of the insurer establishing an account with check or draft writing privileges, where those proceeds are retained by the insurer, pursuant to a supplementary contract.

(b) An insurer shall perform a comparison of its insureds' in-force Policies, Contracts and Retained Asset Accounts against a Death Master File, as well as any Policies that have lapsed or terminated within the last fifteen (15) years, on at least a semi-annual basis, to identify potential matches of its insureds, annuitants or account holders. Notwithstanding the foregoing, Policies that have lapsed or terminated may be excluded from further comparisons after having been included in a previous Death Master File comparison. In performing the comparisons, an insurer shall implement reasonable procedures to account for common variations in data that would otherwise preclude an exact match against the DMF. For those potential matches identified as a result of a Death Master File Match, the insurer shall:

(1) within 90 days of a Death Master File Match:

(A) complete a good faith effort, which shall be documented by the insurer, to confirm the death of the insured, annuitant, or retained asset account holder against other available records and information;

(B) review its records to determine whether the deceased insured has purchased any other products with the insurer; and

(C) determine whether benefits are due in accordance with the applicable Policy, Contract or Retained Asset Account; and, if benefits are due in accordance with the applicable Policy, Contract or Retained Asset Account:

(i) use good faith efforts, which shall be documented by the insurer, to locate the beneficiary or beneficiaries; and

(ii) provide the appropriate claims forms or instructions to the beneficiary or beneficiaries to make a claim, including the need to provide an official death certificate, if applicable under the Policy, Contract or Retained Asset Account.

(2) with respect to group life insurance, confirm the possible death of an insured as required in subdivision (1) of this subsection when the insurer maintains at least the following information of those covered under a policy or certificate:

(A) Social Security number or name and date of birth;

(B) beneficiary designation information;

(C) coverage eligibility;

(D) benefit amount; and

(E) premium payment status.

(c) To the extent permitted by law, the insurer may disclose minimum necessary personal information about the insured or beneficiary to a person who the insurer reasonably believes may be able to assist the insurer locate the beneficiary or a person otherwise entitled to payment of claims proceeds.

(d) An insurer or its service provider shall not charge insureds, account holders, or beneficiaries for any fees or costs associated with a search or verification conducted under this section.

(e) The benefits from a life insurance Policy, Contract, or a Retained Asset Account, plus any applicable accrued interest shall first be payable to the designated beneficiaries or owners and, in the event the beneficiaries or owners cannot be found, shall escheat to the State as unclaimed property pursuant to *[s]*.

(f) An insurer shall notify the *[Insert the state agency for unclaimed property]* upon the expiration of the statutory time period for escheat that:

(1) a Policy or Contract beneficiary or Retained Asset Account holder has not submitted a claim with the insurer; and

(2) the insurer has complied with subsection b of this Section and has been unable, after good faith efforts documented by the insurer, to contact the Retained Asset Account holder, beneficiary or beneficiaries.

(g) Following such notice, an insurer shall submit the unclaimed Policy or Contract benefits or unclaimed Retained Asset Accounts, plus any applicable accrued interest, to the *[Insert the state agency for unclaimed property]*, in accordance with [*Insert section on unclaimed insurance*], or as otherwise directed by *[Insert the state agency for unclaimed property]*.

(h) The *[Insert the state agency for unclaimed property]* shall notify the *[Insert the state agency for insurance]* if it has reason to believe an insurer has failed to meet any requirement of this section. The *[Insert the state agency for insurance]* shall determine whether such failure constitutes a violation of *[Insert state unfair claims practices statute]*.

IV. PROPOSED NEW SUBSECTION TO SECTION 2

If the person entitled to the property abandoned under subsection (a)(8) is the beneficiary of a life insurance policy or annuity and no address was designated in the company's records for the beneficiary, the last known address of the insured or annuitant according to the company's records shall be considered to be the last known address of the beneficiary.

Memorandum: Opposing Reducing Restrictions on Locator Contracts

Memorandum: Delegation of Holder Reporting Obligations

Memorandum: Limitations and Retention of Records

Memorandum: Life Insurance Recommendations