

**A Bill for an Act Relating to the Uniform Unclaimed Property Act.**

*Be It Enacted by the Legislature of the State of Hawaii:*

**SECTION 1.** Chapter 523, Hawaii Revised Statutes, is repealed.

**SECTION 2.** The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read:

**“CHAPTER  
UNIFORM UNCLAIMED PROPERTY ACT**

**§ -1 Definitions and use of terms.** As used in this chapter, unless the context otherwise requires:

- (1) “Apparent owner” means the person whose name appears on the records of the holder as the person entitled to property held, issued, or owing by the holder.
- (2) “Attorney general” means the chief legal officer of this State.
- (3) “Banking organization” means a bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, or

any organization defined by other law as a bank or banking organization.

- (4) "Business association" means a nonpublic corporation, joint stock company, investment company, business trust, partnership, or association for business purposes of two or more individuals, whether or not for profit, including a banking organization, financial organization, insurance company, or utility.
- (5) "Director" means the director of finance.
- (6) "Domicile" means the state of incorporation of a corporation and the state of the principal place of business of an unincorporated person.
- (7) "Financial organization" means a savings and loan association, cooperative bank, building and loan association, or credit union.
- (8) "Holder" means a person, wherever organized or domiciled, who is:
  - (A) In possession of property belonging to another,
  - (B) A trustee, or
  - (C) Indebted to another on an obligation.
- (9) "Insurance company" means an association, corporation, fraternal or mutual benefit organization, whether or not for profit, which is engaged in providing insurance coverage, including accident, burial, casualty, credit life, contract performance, dental, fidelity, fire, health, hospitalization, illness, life (including endowments and annuities), malpractice, marine, mortgage, surety, and wage protection insurance.
- (10) "Intangible property" includes:
  - (A) Moneys, checks, drafts, deposits, interest, dividends, and income;
  - (B) Credit balances, customer overpayments, gift certificates, security deposits, refunds, credit memos, payroll checks, unused airline tickets, and unidentified remittances;
  - (C) Stocks and other intangible ownership interests in business associations;
  - (D) Moneys deposited to redeem stocks, bonds, coupons, and other securities, or to make distributions;
  - (E) Checks payable under the terms of insurance policies; and
  - (F) Amounts 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.
- (11) "Last known address" means a description of the location of the apparent owner sufficient for the purpose of the delivery of mail.
- (12) "Owner" means a depositor in the case of a deposit, a beneficiary in case of a trust other than a deposit in trust, a creditor, claimant, or payee in the case of other intangible property, or a person having a legal or equitable interest in property subject to this chapter or a person's legal representative.

- (13) "Person" means an individual, business association, state or other government, governmental subdivision or agency, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity.
- (14) "Utility" means a person who owns or operates for public use any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

**§ -2 Property presumed abandoned; general rule.** (a) Except as otherwise provided by this chapter, all intangible property, including any income or increment derived therefrom, less any lawful charges, that is held, issued, or owing in the ordinary course of a holder's business and has remained unclaimed by the owner for more than five years after it became payable or distributable is presumed abandoned.

(b) Property is payable or distributable for the purpose of this chapter notwithstanding the owner's failure to make demand or to present any instrument or document required to receive payment.

**§ -3 General rules for taking custody of intangible unclaimed property.** Unless otherwise provided in this chapter or by other statute of this State, intangible property is subject to the custody of this State as unclaimed property if the conditions raising a presumption of abandonment under sections -2 and -5 to -16 are satisfied and:

- (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:
  - (A) The last known address of the person entitled to the property is in this State, or
  - (B) The holder is a domiciliary or a government or governmental subdivision or agency 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 by law for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property and the holder is a domiciliary or a government or governmental subdivision or agency of this State;
- (5) The last known address of the apparent owner, as shown on the records of the holder, is in a foreign nation and the holder is a domiciliary or a government or governmental subdivision or agency of this State; or
- (6) The transaction out of which the property arose occurred in this State, and:

- (A) (i) The last known address of the apparent owner or other person entitled to the property is unknown, or
- (ii) The last known address of the apparent owner or other person entitled to the property is in a state that does not provide by law for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property, and
- (B) The holder is a domiciliary of a state that does not provide by law for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property.

**§ -4 Travelers checks and money orders.** (a) Subject to subsection (d), any sum payable on a travelers check that has been outstanding for more than fifteen years after its issuance is presumed abandoned unless the owner, within fifteen years, has communicated in writing with the issuer concerning it or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the issuer.

(b) Subject to subsection (d), any sum payable on a money order or similar written instrument, other than a third-party bank check, that has been outstanding for more than seven years after its issuance is presumed abandoned unless the owner, within seven years, has communicated in writing with the issuer concerning it or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the issuer.

(c) A holder shall not deduct from the amount of a travelers check or money order any charge imposed by reason of the failure to present the instrument for payment unless there is a valid and enforceable written contract between the issuer and the owner of the instrument pursuant to which the issuer may impose a charge and the issuer regularly imposes such charges and does not regularly reverse or otherwise cancel them.

(d) No sum payable on a travelers check, money order, or similar written instrument, other than a third-party bank check, described in subsections (a) and (b) may be subjected to the custody of this State as unclaimed property unless:

- (1) The records of the issuer show that the travelers check, money order, or similar written instrument was purchased in this State;
- (2) The issuer has its principal place of business in this State and the records of the issuer do not show the state in which the travelers check, money order, or similar written instrument was purchased; or
- (3) The issuer has its principal place of business in this State, the records of the issuer show the state in which the travelers check, money order, or similar written instrument was purchased, and the laws of the state of purchase do not provide for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property.

(e) Notwithstanding any other provision of this chapter, subsection (d) applies to sums payable on travelers checks, money orders, and similar written instruments presumed abandoned on or after February 1, 1965, except to the extent that those sums have been paid over to a state prior to January 1, 1974.

**§ -5 Checks, drafts, and similar instruments issued or certified by banking and financial organizations.** (a) Any sum payable on a check, draft, or similar instrument, except those subject to section -4, on which a banking or financial organization is directly liable, including a cashier's check and a certified check, which has been outstanding for more than five years after it was payable or after its issuance if payable on demand, is presumed abandoned, unless the owner, within five years, has communicated in writing with the banking or financial organization concerning it or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee thereof.

(b) A holder shall not deduct from the amount of any instrument subject to this section any charge imposed by reason of the failure to present the instrument for payment unless there is a valid and enforceable written contract between the holder and the owner of the instrument pursuant to which the holder may impose a charge, and the holder regularly imposes such charges and does not regularly reverse or otherwise cancel them.

**§ -6 Bank deposits and funds in financial organizations.** (a) Any demand, savings, or matured time deposit with a banking or financial organization, including a deposit that is automatically renewable, and any funds paid toward the purchase of a share, a mutual investment certificate, or any other interest in a banking or financial organization is presumed abandoned unless the owner, within five years has:

- (1) In the case of a deposit, increased or decreased its amount or presented the passbook or other similar evidence of the deposit for the crediting of interest;
  - (2) Communicated in writing with the banking or financial organization concerning the property;
  - (3) Otherwise indicated an interest in the property as evidenced by a memorandum or other record on file prepared by an employee of the banking or financial organization;
  - (4) Owned other property to which paragraph (1), (2), or (3) applies and if the banking or financial organization communicates in writing with the owner with regard to the property that would otherwise be presumed abandoned under this subsection at the address to which communications regarding the other property regularly are sent; or
  - (5) Had another relationship with the banking or financial organization concerning which the owner has:
    - (A) Communicated in writing with the banking or financial organization; or
    - (B) Otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the banking or financial organization and if the banking or financial organization communicates in writing with the owner with regard to the property that would otherwise be abandoned under this subsection at the address to which communications regarding the other relationship regularly are sent.
- (b) For purposes of subsection (a) property includes interest and dividends.

(c) A holder shall not impose with respect to property described in subsection (a) any charge due to dormancy or inactivity or cease payment of interest unless:

- (1) There is an enforceable written contract between the holder and the owner of the property pursuant to which the holder may impose a charge or cease payment of interest;
- (2) For property in excess of \$2, the holder, no more than three months before the initial imposition of those charges or cessation of interest, has given written notice to the owner of the amount of those charges at the last known address of the owner stating that those charges will be imposed or that interest will cease, but the notice provided in this section need not be given with respect to charges imposed or interest ceased before the effective date of this chapter; and
- (3) The holder regularly imposes such charges or ceases payment of interest and does not regularly reverse or otherwise cancel them or retroactively credit interest with respect to the property.

(d) Any property described in subsection (a) that is automatically renewable is matured for purposes of subsection (a) upon the expiration of its initial time period, but in the case of any renewal to which the owner consents at or about the time of renewal by communicating in writing with the banking or financial organization or otherwise indicating consent as evidenced by a memorandum or other record on file prepared by an employee of the organization, the property is matured upon the expiration of the last time period for which consent was given. If, at the time provided for delivery in section -19, a penalty or forfeiture in the payment of interest would result from the delivery of the property, the time for delivery is extended until the time when no penalty or forfeiture would result.

**§ -7 Funds owing under life insurance policies.** (a) Funds held or owing under any life or endowment insurance policy or annuity contract that has matured or terminated are presumed abandoned if unclaimed for more than five years after the funds became due and payable as established from the records of the insurance company holding or owing the funds, but property described in subsection (c)(2) is presumed abandoned if unclaimed for more than two years.

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

(c) For purposes of this chapter, a life or endowment insurance policy or annuity contract not matured by actual proof of the death of the insured or annuitant according to the records of the company is matured and the proceeds due and payable if:

- (1) The company knows that the insured or annuitant has died; or
- (2) (A) The insured has attained, or would have attained if the insured were living, the limiting age under the mortality table on which the reserve is based;

- (B) The policy was in force at the time the insured attained, or would have attained, the limiting age specified in subparagraph (A); and
- (C) Neither the insured nor any other person appearing to have an interest in the policy within the preceding two years, according to the records of the company, has assigned, readjusted, or paid premiums on the policy, subjected the policy to a loan, corresponded in writing with the company concerning the policy, or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the company.

(d) For purposes of this chapter, the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent a policy from being matured or terminated under subsection (a) if the insured has died or the insured or the beneficiary of the policy otherwise has become entitled to the proceeds thereof before the depletion of the cash surrender value of a policy by the application of those provisions.

(e) If the laws of this State or the terms of the life insurance policy require the company to give notice to the insured or owner that an automatic premium loan provision or other nonforfeiture provision has been exercised and the notice, given to an insured or owner whose last known address according to the records of the company is in this State, is undeliverable, the company shall make a reasonable search to ascertain the policyholder's correct address to which the notice must be mailed.

(f) Notwithstanding any other provision of law, if the company learns of the death of the insured or annuitant and the beneficiary has not communicated with the insurer within four months after the death, the company shall take reasonable steps to pay the proceeds to the beneficiary.

(g) Commencing two years after the effective date of this Act, every change of beneficiary form issued by an insurance company under any life or endowment insurance policy or annuity contract to an insured or owner who is a resident of this State shall request the following information:

- (1) The name of each beneficiary, or if a class of beneficiaries is named, the name of each current beneficiary in the class;
- (2) The address of each beneficiary; and
- (3) The relationship of each beneficiary to the insured.

**§ -8 Deposits held by utilities.** A deposit, including any interest thereon, made by a subscriber with a utility to secure payment or any sum paid in advance for utility services to be furnished, less any lawful deductions, that remains unclaimed by the owner for more than one year after termination of the services for which the deposit or advance payment was made is presumed abandoned.

**§ -9 Refunds held by business associations.** Except to the extent otherwise ordered by the court or administrative agency, any sum that a business association has been ordered to refund by a court or administrative agency which has remained unclaimed by the owner for more than one year after it became payable in accordance with the final determination or order providing for the refund, whether or not the final determination or order requires any person entitled to a refund to make a claim for it, is presumed abandoned.

**§ -10 Stock and other intangible interests in business associations.** (a) Except as provided in subsections (b) and (e), stock or other intangible ownership interest in a business association, the existence of which is evidenced by records available to the association, is presumed abandoned and, with respect to the interest, the association is the holder, if a dividend, distribution, or other sum payable as a result of the interest has remained unclaimed by the owner for seven years and the owner within seven years has not:

- (1) Communicated in writing with the association regarding the interest or a dividend, distribution, or other sum payable as a result of the interest; or
- (2) Otherwise communicated with the association regarding the interest or a dividend, distribution, or other sum payable as a result of the interest, as evidenced by a memorandum or other record on file with the association prepared by an employee of the association.

(b) At the expiration of a seven-year period following the failure of the owner to claim a dividend, distribution, or other sum payable to the owner as a result of the interest, the interest is not presumed abandoned unless there have been at least seven dividends, distributions, or other sums paid during the period, none of which has been claimed by the owner. If seven dividends, distributions, or other sums are paid during the seven-year period, the period leading to a presumption of abandonment commences on the date payment of the first such unclaimed dividend, distribution, or other sum became due and payable. If seven dividends, distributions, or other sums are not paid during the presumptive period, the period continues to run until there have been seven dividends, distributions, or other sums that have not been claimed by the owner.

(c) The running of the seven-year period of abandonment ceases immediately upon the occurrence of a communication referred to in subsection (a). If any future dividend, distribution, or other sum payable to the owner as a result of the interest is subsequently not claimed by the owner, a new period of abandonment commences and relates back to the time a subsequent dividend, distribution, or other sum became due and payable.

(d) At the time an interest is presumed abandoned under this section, any dividend, distribution, or other sum then held for or owing to the owner as a result of the interest, and not previously presumed abandoned, is presumed abandoned.

(e) This chapter does not apply to any stock or other intangible ownership interest enrolled in a plan that provides for the automatic reinvestment of dividends, distributions, or other sums payable as a result of the interest unless the records available to the administrator of the plan show, with respect to any intangible ownership interest not enrolled in the reinvestment plan, that the owner has not within seven years communicated in any manner described in subsection (a).

**§ -11 Property of business associations held in course of dissolution.** Intangible property distributable in the course of a dissolution of a business association which remains unclaimed by the owner for more than one year after the date specified for final distribution is presumed abandoned.

**§ -12 Property held by agents and fiduciaries.** (a) Intangible property and any income or increment derived therefrom held in a fiduciary capacity for the



benefit of another person is presumed abandoned unless the owner, within five years after it has become payable or distributable, has increased or decreased the principal, accepted payment of principal or income, communicated concerning the property, or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by the fiduciary.

(b) Funds in an individual retirement account or a retirement plan for self-employed individuals or similar account or plan established pursuant to the Internal Revenue laws of the United States are not payable or distributable within the meaning of subsection (a) unless, under the terms of the account or plan, distribution of all or part of the funds would then be mandatory.

(c) For the purpose of this section, a person who holds property as an agent for a business association is deemed to hold the property in a fiduciary capacity for that business association alone, unless the agreement between the person and the business association provides otherwise.

(d) For the purposes of this chapter, a person who is deemed to hold property in a fiduciary capacity for a business association alone is the holder of the property only insofar as the interest of the business association in the property is concerned, and the business association is the holder of the property insofar as the interest of any other person in the property is concerned.

**§ -13 Property held by courts and public agencies.** Intangible property held for the owner by a court, state, or other government, governmental subdivision or agency, public corporation, or public authority which remains unclaimed by the owner for more than one year after becoming payable or distributable is presumed abandoned.

**§ -14 Gift certificates and credit memos.** (a) A gift certificate or a credit memo issued in the ordinary course of an issuer's business which remains unclaimed by the owner for more than five years after becoming payable or distributable is presumed abandoned.

(b) In the case of a gift certificate, the amount presumed abandoned is the price paid by the purchaser for the gift certificate. In the case of a credit memo, the amount presumed abandoned is the amount credited to the recipient of the memo.

**§ -15 Wages.** Unpaid wages, including wages represented by unpresented payroll checks, owing in the ordinary course of the holder's business which remain unclaimed by the owner for more than one year after becoming payable are presumed abandoned.

**§ -16 Contents of safe deposit box or other safekeeping repository.** All tangible and intangible property held in a safe deposit box or any other safekeeping repository 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, which remain unclaimed by the owner for more than five years after the lease or rental period on the box or other repository has expired, are presumed abandoned.

**§ -17 Report of abandoned property.** (a) A person holding property tangible or intangible, presumed abandoned and subject to custody as unclaimed property under this chapter shall report to the director concerning the property as provided in this section.

(b) The report shall be verified and shall include:

- (1) Except with respect to travelers checks and money orders, the name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of property of the value of \$25 or more presumed abandoned under this chapter;
  - (2) In the case of unclaimed funds of \$25 or more held or owing under any life or endowment insurance policy or annuity contract, the full name and last known address of the insured or annuitant and of the beneficiary according to the records of the insurance company holding or owing the funds;
  - (3) In the case of the contents of a safe deposit box or other safekeeping repository or of other tangible property, a description of the property and the place where it is held and may be inspected by the director and any amounts owing to the holder;
  - (4) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, but items of value under \$25 each may be reported in the aggregate;
  - (5) The date the property became payable, demandable, or returnable, and the date of the last transaction with the apparent owner with respect to the property; and
  - (6) Other information the director prescribes by rule as necessary for the administration of this chapter.
- (c) If the person holding property presumed abandoned and subject to custody as unclaimed property is a successor to other persons who previously held the property for the apparent owner or the holder has changed the holder's name while holding the property, the person shall file with the person's report all known names and addresses of each previous holder of the property.
- (d) The report shall be filed before November 1 of each year as of June 30, next preceding, but the report of any life insurance company shall be filed before May 1 of each year as of December 31 next preceding. On written request by any person required to file a report, the director may postpone the reporting date.
- (e) Not more than one hundred twenty days before filing the report required by this section, the holder in possession of property presumed abandoned and subject to custody as unclaimed property under this chapter shall send written notice to the apparent owner at the apparent owner's last known address informing the apparent owner that the holder is in possession of property subject to this chapter 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 the statute of limitations, and
- (3) The property has a value of \$50 or more.

**§ -18 And publication of lists of abandoned property.** (a) The director shall cause a notice to be published not later than March 1, or in the case of property reported by life insurance companies, September 1, of the year immediately following the report required by section -17 at least once a week for two consecutive weeks in a newspaper of general circulation in the county of this State

in which is located the last known address of any person to be named in the notice. If no address is listed or the address is outside this State, the notice shall be published in the county in which the holder of the property has its principal place of business within this State.

(b) The published notice shall be entitled "Notice of Names of Persons Appearing to be Owners of Abandoned Property" and contain:

- (1) The names in alphabetical order and last known address, if any, of persons listed in the report and entitled to notice within the county as specified in subsection (a);
- (2) A statement that information concerning the property and the name and last known address of the holder may be obtained by any person possessing an interest in the property by addressing an inquiry to the director; and
- (3) A statement that if proof of claim is not presented by the owner to the holder and the owner's right to receive the property is not established to the holder's satisfaction before April 20, or, in the case of property reported by life insurance companies, before October 20, the property will be placed not later than May 1, or in the case of property reported by life insurance companies, not later than November 1, in the custody of the director and all further claims shall thereafter be directed to the director.

(c) The director shall not be required to publish in the notice any items of less than \$50 unless the director considers their publication to be in the public interest.

(d) This section shall not apply to sums payable on travelers checks, money orders, and other written instruments presumed abandoned under section - 4.

**§ -19 Payment or delivery of abandoned property.** (a) Except as otherwise provided in subsections (b) and (c), a person who is required to file a report under section -17, within six months after the final date for filing the report as required by section -17, shall pay or deliver to the director all abandoned property required to be reported.

(b) If the owner establishes the right to receive the abandoned property to the satisfaction of the holder before the property has been delivered or it appears that for some other reason the presumption of abandonment is erroneous, the holder need not pay or deliver the property to the director, and the property will no longer be presumed abandoned. In that case, the holder shall file with the director a verified written explanation of the proof of claim or of the error in the presumption of abandonment.

(c) Property reported under section -17 for which the holder is not required to report the name of the apparent owner shall be delivered to the director at the time of filing the report.

(d) The holder of an interest under section -10 shall deliver a duplicate certificate or other evidence of ownership if the holder does not issue certificates of ownership to the director. Upon delivery of a duplicate certificate to the director, the holder and any transfer agent, registrar, or other person acting for or on behalf of

a holder in executing or delivering the duplicate certificate is relieved of all liability of every kind in accordance with section -20 to every person, including any person acquiring the original certificate or the duplicate of the certificate issued to the director, for any losses or damages resulting to any person by the issuance and delivery to the director of the duplicate certificate.

**§ -20 Custody by State; holder relieved from liability; reimbursement of holder paying claim; reclaiming for owner; defense of holder; payment of safe deposit box or repository charges.** (a) Upon the payment or delivery of property to the director, the State assumes custody and responsibility for the safekeeping of the property. A person who pays or delivers property to the director in good faith is relieved of all liability to the extent of the value of the property paid or delivered for any claim then existing or which thereafter may arise or be made in respect to the property.

(b) A holder who has paid money to the director pursuant to this chapter may make payment to any person appearing to the holder to be entitled to payment and, upon filing proof of payment and proof that the payee was entitled thereto, the director shall promptly reimburse the holder for the payment without imposing any fee or other charge. If reimbursement is sought for a payment made on a negotiable instrument, including a travelers check or money order, the holder shall be reimbursed under this subsection upon filing proof that the instrument was duly presented and that payment was made to a person who appeared to the holder to be entitled to payment. The holder shall be reimbursed for payment made under this subsection even if the payment was made to a person whose claim was barred under section -29(a).

(c) A holder who has delivered property (including a certificate of any interest in a business association) other than money to the director pursuant to this chapter may reclaim the property if still in the possession of the director, without paying any fee or other charge, upon filing proof that the owner has claimed the property from the holder.

(d) The director may accept the holder's affidavit as sufficient proof of the facts that entitle the holder to recover money and property under this section.

(e) If the holder pays or delivers property to the director 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 director, upon written notice of the claim, shall defend the holder against the claim and indemnify the holder against any liability on the claim.

(f) For the purposes of this section, "good faith" means that:

- (1) Payment or delivery was made in a reasonable attempt to comply with this chapter;
- (2) The person delivering the property was not a fiduciary then in breach of trust in respect to the property and had a reasonable basis for believing, based on the facts then known to the person, that the property was abandoned for the purposes of this chapter; and
- (3) There is no showing that the records pursuant to which the delivery was made did not meet reasonable commercial standards of practice in the industry.

(g) Property removed from a safe deposit box or other safekeeping repository is received by the director subject to the holder's right under this subsection to be reimbursed for the actual 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 director shall reimburse or pay the holder out of the proceeds remaining after deducting the director's selling cost.

**§ -21 Crediting of dividends, interest, or increments to owner's account.** Whenever property other than money is paid or delivered to the director under this chapter, the owner is entitled to receive from the director any dividends, interest, or other increments realized or accruing on the property at or before liquidation or conversion thereof into money.

**§ -22 Public sale of abandoned property.** (a) Except as provided in subsections (b) and (c), the director, within three years after the receipt of abandoned property, shall sell it to the highest bidder at public sale wherever in the State affords in the judgment of the director the most favorable market for the property involved. The director may decline the highest bid and reoffer the property for sale if in the judgment of the director the bid is insufficient. If in the judgment of the director the probable cost of sale exceeds the value of the property, it need not be offered for sale. Any sale held under this section shall be preceded by a single publication of notice, at least three weeks in advance of sale, in a newspaper of general circulation in the county in which the property is to be sold.

(b) Securities listed on an established stock exchange shall be sold at prices prevailing at the time of sale on the exchange. Other securities may be sold over the counter at prices prevailing at the time of sale or by any other method the director considers advisable.

(c) Unless the director considers it to be in the best interest of the State to do otherwise, all securities, other than those presumed abandoned under section -10, delivered to the director shall be held for at least one year before the director may sell them.

(d) Unless the director considers it to be in the best interest of the State to do otherwise, all securities presumed abandoned under section -10 and delivered to the director shall be held for a least three years before the director may sell them. If the director sells any securities delivered pursuant to section -10 before the expiration of the three-year period, any person making a claim pursuant to this chapter before the end of the three-year period is entitled to either the proceeds of the sale of the securities or the market value of the securities at the time the claim is made, whichever amount is greater, less any deduction for fees pursuant to section -23(b). A person making a claim under this chapter after the expiration of this period is entitled to receive either the securities delivered to the director by the holder, if they still remain in the hands of the director, or the proceeds received from sale, less any amounts deducted pursuant to section -23(b), but no person has any claim under this chapter against the State, the holder, any transfer agent, registrar, or other person acting for or on behalf of a holder for any appreciation in the value of the property occurring after delivery by the holder to the director.

(e) The purchaser of property at any sale conducted by the director pursuant to this chapter takes the property free of all claims of the owner or previous

holder thereof and of all persons claiming through or under them. The director shall execute all documents necessary to complete the transfer of ownership.

§ -23 **Deposit of funds.** (a) Except as otherwise provided by this section, the director shall promptly deposit in the general fund of this State all funds received under this chapter, including the proceeds from the sale of abandoned property under section -22.

(b) Before making any deposit to the credit of the general fund, the director may deduct:

- (1) Any costs in connection with the sale of abandoned property;
- (2) Costs of mailing and publication in connection with any abandoned property;
- (3) Reasonable service charges; and
- (4) Costs incurred in examining records of holders of property and in collecting the property from those holders.

§ -24 **Filing of claim with director.** (a) A person, excluding another state, claiming an interest in any property paid or delivered to the director may file with the director a claim on a form prescribed by the director and verified by the claimant.

(b) The director shall consider each claim within ninety days after it is filed and give written notice to the claimant if the claim is denied in whole or in part. The notice may be given by mailing it to the last address, if any, stated in the claim as the address to which notices are to be sent. If no address for notices is stated in the claim, the notice may be mailed to the last address, if any, of the claimant as stated in the claim. No notice of denial need be given if the claim fails to state either the last address to which notices are to be sent or the address of the claimant.

(c) If a claim is allowed, the director shall pay over or deliver to the claimant the property or the amount the director actually received or the net proceeds if it has been sold by the director, together with any additional amount required by section -21. If the claim is for property presumed abandoned under section -10 which was sold by the director within three years after the date of delivery, the amount payable for that claim is the value of the property at the time the claim was made or the net proceeds of sale, whichever is greater.

§ -25 **Claim of another state to recover property; procedure.** (a) At any time after property has been paid or delivered to the director under this chapter another state may recover the property if:

- (1) The property was subject to custody by this State because the records of the holder did not reflect the last known address of the apparent owner when the property was presumed abandoned under this chapter, and the other state establishes that the last known address of the apparent owner or other person entitled to the property was in that state and under the laws of that state the property escheated to or was subject to a claim of abandonment by that state;
- (2) The last known address of the apparent owner or other person entitled to the property, as reflected by the records of the holder, is in the other state and under the laws of that state the property has escheated to 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 reflect the actual owner of the property and the last known address of the actual owner is in the other state and under the laws of that state the property escheated to or was subject to a claim of abandonment by that state;
- (4) The property was subjected to custody by this State under section - 3(6) and under the laws of the state of domicile of the holder the property has escheated to or become subject to a claim of abandonment by that state; or
- (5) The property is the sum payable on a travelers check, money order, or other similar instrument that was subjected to custody by this State under section -4, and the instrument was purchased in the other state, and under the laws of that state the property escheated to or became subject to a claim of abandonment by that state.

(b) The claim of another state to recover escheated or abandoned property shall be presented in a form prescribed by the director, who shall decide the claim within ninety days after it is presented. The director shall allow the claim if the director determines that the other state is entitled to the abandoned property under subsection (a).

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

§ -26 **Action to establish claim.** A person aggrieved by a decision of the director or whose claim has not been acted upon within ninety days after its filing may bring an action to establish the claim in the circuit court, naming the director as a defendant. The action shall be brought within ninety days after the decision of the director or within one hundred eighty days after the filing of the claim if the director has failed to act on it. If the aggrieved person establishes the claim in an action against the director, the court shall award the aggrieved person costs and reasonable attorney's fees.

§ -27 **Election to take payment or delivery.** The director may decline to receive any property reported under this chapter which the director considers to have a value less than the expense of giving notice and of sale. If the director elects not to receive custody of the property, the holder shall be notified within one hundred twenty days after filing the report required under section -17.

§ -28 **Destruction or disposition of property having insubstantial commercial value; immunity from liability.** If the director determines after investigation that any property delivered under this chapter has insubstantial commercial value, the director may destroy otherwise dispose of the property at any time. No action or proceeding may be maintained against this State or any officer or against the holder for or on account of any action taken by the director pursuant to this section.

§ -29 **Periods of limitation.** (a) The expiration, before or after the effective date of this Act, of any period of time specified by contract, statute, or court order, during which a claim for money or property can be made or during which an action or proceeding may be commenced or enforced to obtain payment of

a claim for money or to recover property, does not prevent the money or property from being presumed abandoned or affect any duty to file a report or to pay or deliver abandoned property to the director as required by this chapter.

(b) No action or proceeding may be commenced by the director with respect to any duty of a holder under this chapter more than ten years after the duty arose.

**§ -30 Requests for reports and examination of records.** (a) The director may require any person who has not filed a report to file a verified report stating whether or not the person is holding any unclaimed property reportable or deliverable under this chapter.

(b) The director, at reasonable times and upon reasonable notice, may examine the records of any person to determine whether the person has complied with this chapter. The director may conduct the examination even if the person believes the person is not in possession of any property reportable or deliverable under this chapter.

(c) If a person is treated under section -12 as the holder of the property only insofar as the interest of the business association in the property is concerned, the director, pursuant to subsection (b), may examine the records of the person if the director has given the notice required by subsection (b) to both the person and the business association at least ninety days before the examination.

(d) If an examination of the records of a person results in the disclosure of property reportable and deliverable under this chapter, the director may assess the cost of the examination against the holder but in no case shall the charges exceed the value of the property found to be reportable and deliverable. The cost of examination made pursuant to subsection (c) shall be imposed only against the business association.

(e) If a holder fails after the effective date of this Act to maintain the records required by section -31 and the records of the holder available for the periods subject to this chapter are insufficient to permit the preparation of a report, the director may require the holder to report and pay such amounts as may reasonably be estimated from any available records.

**§ -31 Retention of records.** (a) Every holder required to file a report under section -17, as to any property for which it has obtained the last known address of the owner, shall maintain a record of the name and last known address of the owner for five years after the property becomes reportable, except to the extent that a shorter time is provided in subsection (b) or by rule of the director.

(b) Any business association that sells in this State its travelers checks, money orders, or other similar written instruments, other than third-party bank checks on which the business association is directly liable, or that provides such instruments to others for sale in this State, shall maintain a record of those instruments while they remain outstanding, indicating the state and date of issue for three years after the date the property is reportable.

**§ -32 Enforcement.** The director may bring an action in a court of competent jurisdiction to enforce this chapter.

**§ -33 Interstate agreements and cooperation; joint and reciprocal actions with other states.** (a) The director may enter into agreements with other



states to exchange information needed to enable this or another state to audit or otherwise determine unclaimed property that it or another state may be entitled to subject to a claim of custody. The director by rule may require the reporting of information needed to enable compliance with agreements made pursuant to this section and prescribe the form.

(b) To avoid conflicts between the director's procedures and the procedures of administrators in other jurisdictions that enact the Uniform Unclaimed Property Act, the director, so far as is consistent with the purposes, policies, and provisions of this chapter, before adopting, amending, or repealing rules, shall advise and consult with administrators in other jurisdictions that enact substantially the Uniform Unclaimed Property Act and take into consideration the rules of administrators in other jurisdictions that enact the Uniform Unclaimed Property Act.

(c) The director may join with other states to seek enforcement of this chapter against any person who is or may be holding property reportable under this chapter.

(d) At the request of another state, the attorney general of this State may bring an action in the name of the appropriate officer of the other state in any court of competent jurisdiction to enforce the unclaimed property laws of the other state against a holder in this State 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 bringing the action.

(e) The director may request that the attorney general of another state or any other person bring an action in the name of the director in the other state. This State shall pay all expenses including attorney's fees in any action under this subsection. Any expenses paid pursuant to this subsection shall not be deducted from the amount that is subject to the claim by the owner under this chapter.

**§ -34 Interest and penalties.** (a) A person who fails to pay or deliver property within the time prescribed by this chapter shall pay to the director interest at the annual rate of ten per cent 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 fifty-two-week United States Treasury bills on the property or value thereof from the date the property should have been paid or delivered.

(b) A person who wilfully fails to render any report or perform other duties required under this chapter shall pay a civil penalty of \$100 for each day the report is withheld or the duty is not performed, but not more than \$5,000.

(c) A person who wilfully fails to pay or deliver property to the director as required under this chapter shall pay a civil penalty equal to twenty-five per cent of the value of the property that should have been paid or delivered.

(d) A person who wilfully refuses after written demand by the director to pay or deliver property to the director as required under this chapter shall be guilty of a misdemeanor.

**§ -35 Agreement to locate reported property.** All agreements to pay compensation to recover or assist in the recovery of property reported under section -17, made within twenty-four months after the date payment or delivery is made under section -19, are unenforceable.

§ -36 **Foreign transactions.** This chapter does not apply to any property held, due and owing in a foreign country and arising out of a foreign transaction.

§ -37 **Effect of new provisions; clarification of application.** (a) This chapter does not relieve a holder of a duty that arose before the effective date of this chapter to report, pay, or deliver property. A holder who did not comply with the law in effect before the effective date of this chapter is subject to the applicable enforcement and penalty provisions that then existed and they are continued in effect for the purpose of this subsection, subject to section -29(b).

(b) The initial report filed under this chapter for property that was not required to be reported before the effective date of this chapter but which is subject to this chapter shall include all items of property that would have been presumed abandoned during the ten-year period preceding the effective date of this chapter as if this chapter had been in effect during that period.

§ -38 **Rules.** The director may adopt necessary rules, pursuant to chapter 91, to carry out the provisions of this chapter.

§ -39 **Severability.** If any provision of this chapter or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

§ -40 **Uniformity of application and construction.** This chapter shall be applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

§ -41 **Short title.** This chapter may be cited as the "Uniform Unclaimed Property Act".

SECTION 3. This Act shall take effect upon its approval.

(Approved May 18, 1983.)