

A Bill for an Act Relating to Unclaimed Property.

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

SECTION 1. It is the purpose of this Act to make clear that the laws of this State with respect to unclaimed or abandoned property apply to all property, including property in the possession, custody, or control of the United States of America, its officers, agencies, departments, instrumentalities, and corporations. Section 523A-13, Hawaii Revised Statutes, already provides that intangible property held by a court or other government may be presumed abandoned and, pursuant to sections 523A-17 and 523A-19, Hawaii Revised Statutes, subject to the reporting and delivery requirements of the State's unclaimed property law. This Act sets out separate procedures for the reporting and delivery of all unclaimed or abandoned property, of whatever kind or nature, in the possession, custody, or control of all federal authorities, bodies, or corporations, in recognition of the unique status of the United States, and shall be liberally construed to accomplish such purpose.

SECTION 2. Chapter 523A, Hawaii Revised Statutes, is amended by adding a new part, to be appropriately designated and to read as follows:

**“PART . UNCLAIMED PROPERTY HELD BY THE UNITED STATES**

**§523A- Declaration of policy.** It is the policy of this State to discover property in the custody of officers, departments, and agencies of the United States, which property is unclaimed or abandoned by owners whose addresses are known or presumed to be in this State.

**§523A- Definitions.** For purposes of this part, the following words shall have the following meanings:

“Unclaimed property” means any tangible personal property or intangible personal property, including money, deposits, choses in action in amounts certain, and all debts owed on entrusted funds or other property (except bonuses and gratuities) held by any federal agency or any officer or employee thereof, whether occasioned by contract or operation of law or otherwise, and all interest, income, or increment derived therefrom, less any lawful charges, which has remained unclaimed by the owner for:

- (1) One year from the date of maturity or call for payment, if arising from transactions under the public debt; or
- (2) One year after the property first became payable, demandable or returnable, if arising from any other transaction.

**§523A- Unclaimed property subject to delivery to State; presumptions.**

(a) All intangible unclaimed property is subject to delivery to this State if the last known address of the owner is in this State. If the last known address of an owner is in this State, any other owner's address which is unknown shall be presumed to be in this State. If the last known addresses of owners are in this State and in one or more other states, the addresses of other owners whose addresses are unknown shall be presumed to be within this State if the federal agency or instrumentality having custody of the unclaimed property initially acquired possession in this State or if the federal agency or instrumentality possessing, holding, controlling, or owing such property is a corporation domiciled in this State. If the records of any officer, department, or agency of the United States do not disclose the address of any owner

of unclaimed property, such address shall be presumed to be within this State if the federal agency having custody of the unclaimed property initially acquired possession in this State or is a corporation domiciled in this State. All addresses presumed to be within this State are presumed to be within the city and county of Honolulu. For the purpose of this part, it shall be presumed that the situs of intangible unclaimed property is in this State if the last known or presumed address of the owner is in this State.

(b) All tangible unclaimed property is subject to delivery in this State if the federal agency having custody of the unclaimed property initially acquired possession in this State.

**§523A- Request by director of finance for report of previously unreported information.** On the thirtieth day of June of each year, the director shall request the Comptroller General or other proper officer of the United States to report all previously unreported information relating to unclaimed property as determined by that officer pursuant to federal law.

**§523A- Agreement for State's payment of share of costs.** The director is authorized to enter into agreements establishing the time and manner for paying the State's proportionate share of any actual and necessary cost incurred by the United States in examining its records and reporting information to the State. Said agreements may provide for single payments at stated times over a period of years. The director shall make all payments at the time and in the manner provided in said agreements.

**§523A- Posting copy of report; notice of interest and intention to claim; determination of asserted interest.** (a) When a report is received from the Comptroller General or other proper officer of the United States, the director shall cause the notice described in subsection (b) to be published not later than September 1 of the year immediately following the report required by section 523A- , 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 city and county of Honolulu.

(b) The published notice shall 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); and
- (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.

(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. Any person asserting an interest in property described in the report may elect to claim against the United States, under the laws of the United States, in which event and within ninety days following the date of initial publication such person shall notify the director of such person's asserted interest and intention to so claim. The director shall omit such property from any claim by the State until such time as the asserted interest may be finally determined against the claimant. Such interest shall not thereafter be asserted against the State.

**§523A- State's right unaffected by expiration of time for proceeding.** The expiration of any period of time specified by statute or court order, during

which an action or proceeding may be commenced or enforced to obtain payment of a claim for funds or delivery of property shall not affect the right of this State to acquire possession of unclaimed property in accordance with the provisions of this part.

**§523A- Petition for determination of State's right to custody of unclaimed property; venue; service not required.** (a) Within one hundred twenty days following the date of publication by the director, or whenever it appears, after investigation by the director or otherwise, that there exists or may exist property subject to this part, the attorney general may take action to recover such property. Any proceeding by the attorney general shall be commenced by filing a petition to determine the State's right to custody of all property mentioned in the report and unclaimed within the time and in the manner provided by section 523A-. The petition shall name as respondents all persons known to have been interested and "all persons unknown claiming any title or interest" in or to the property described or referred to in the petition. Known owners may be described as a class when: (i) they own or claim property of the same nature and the value of such property as shown on the account of each such owner or claimant in the records of the United States does not exceed \$500 in value, or (ii) the records of the United States show more than ten such owners or claimants for a particular fund, item, or category of property, or (iii) the records of the United States fail to disclose the number of owners or claimants for a particular fund, item, or category of property with a reasonable degree of certainty. If the records of the United States fail to disclose with reasonable certainty the identity or number of owners or claimants of particular funds or other personal property, or the extent of their interests therein, such persons may be designated and described as a class of "all unknown owners or claimants to the funds or property mentioned in or affected by" the proceeding, and, as the case may be, the petition shall identify and set forth the court actions or proceedings to the credit of which such funds or other property are held, or the accounts or other identifying references under which they are carried upon the records of the United States. The petition shall describe or refer to the property, and may include one or more items, as the attorney general may be advised, without prejudice to the right of the attorney general to commence subsequent proceedings relating to other items not included. The petition shall also state the name of the owner and the last address of the owner as known or as presumed under this part, and shall set forth the facts and circumstances by virtue of which it is claimed that such funds or property are subject to custody by the State. When known owners or claimants are described as a class, the requirements of section 523A- must be met. Any number of respondents may be joined whether they reside in the same or different counties; and any number of causes of action may be joined and need not be separately stated.

(b) The proceeding shall be commenced and heard in the circuit court of the first circuit of the State and venue shall not be affected by the provisions of any other statute.

(c) No summons or other process shall issue to direct the appearance and answer of a respondent.

**§523A- Notice of proceedings.** (a) Commencing within five days after the filing of the petition, notice of the proceeding shall be published once each week for three consecutive weeks in a newspaper of general circulation published within the city and county of Honolulu. At the time the notice is first published, a copy of the petition and notice shall be posted at the courthouse in the county where each respondent was last known or presumed to have had an address. Such petition and such notice shall remain posted for forty-five days.

(b) The notice of proceeding shall advise that the State seeks custody of unclaimed property held by the United States. The names but not the addresses of the respondents shall be contained in the notice with a statement that such persons are believed to live or to have lived within the State and are believed to be or to have been owners of the unclaimed property. The notice shall not contain a description of the unclaimed property but shall advise that such description together with the last known or presumed addresses of owners may be determined by examining the petition filed in the proceeding. The petition and its place of filing shall be sufficiently identified and described. The notice shall specify when answers to the petition must be filed and advise that persons claiming an interest must answer the petition within the time prescribed by law if they elect to pursue their claims against the United States, otherwise their rights to property shall not be preserved, subject to delayed delivery as provided by law. The notice shall advise that section 523A- should be consulted for the time, form, and costs of any answer.

(c) The notice shall be deemed completed forty-five days after the date of first publication, whereupon the court shall have full and complete jurisdiction over the property described in the petition and not claimed within the time or in the manner provided in section 523A- , and shall have full and complete jurisdiction to determine the right of the State to custody and to render an appropriate judgment therefor.

(d) The notice shall be served by first class mail, together with a copy of the petition, on the clerk, registrar, or other person in charge of the federal agency, department, instrumentality, or corporation having possession, custody, or control of such property, together with a statement that no personal claim is made against such clerk, registrar, or other person.

**§523A- Answer; disposition of funds on deposit; dismissal without prejudice.** Any person, whether or not named in the petition, may within fifteen days but not more than sixty days after the date of the first publication of the notice respond to the petition by answer describing the property, asserting an interest as owner or successor, and declaring an intention to claim the same from the United States under the laws of the United States. Such answer shall not be filed unless accompanied by the sum of \$50, and no other answer or response shall be filed by or on behalf of a claimant. The court shall strike from the petition and dismiss from the proceeding all property described in an answer. Such dismissal shall be without prejudice to a subsequent petition should it appear that the claimant is not entitled to the property, and the interest asserted in said answer shall not thereafter be asserted against the State. The funds deposited with any answer shall be transmitted by the court to the director and shall be received for deposit in the general fund as total reimbursement for costs and services expended on behalf of the claimant.

**§523A- Application for judgment relating to property not claimed by answer, and finding and declaration thereon.** Within twenty days following expiration of time for filing an answer under section 523A- , the attorney general shall apply to the court for a judgment relating to all property set forth in the petition and not claimed by answer. The court shall find that such property appears to be or to have been owned by persons residing within this State and remains unclaimed by such persons. The court shall declare that the property, which shall be described, is subject to custody of the State and shall be delivered to and received by the State to be retained until such time as it may be claimed pursuant to law.

**§523A- Request for delivery or payment of unclaimed property described in judgment; receipts.** The director of finance shall request delivery or

payment of all unclaimed property described in the judgment declaring the right of the State to receive custody of such property. The request shall be accompanied by a certified copy of said judgment and shall be directed to such officer, agency, or department of the United States as may have custody, possession or control of such property. The director shall furnish receipts for all property delivered or paid.

**§523A- Disposition of property received.** Property received under this part shall be deposited or sold by the director as though received under part I of this chapter. Property received under this part shall not be subject to claim within two years following the date upon which it is paid to or received by the State. Thereafter, persons claiming an interest in the unclaimed property delivered to the State pursuant to this part shall make their claims in the manner provided in part I of this chapter.

**§523A- Undertaking to hold the United States harmless; intervention by State attorney general.** (a) Upon the payment and delivery of property to the director, the State assumes custody and responsibility for the safekeeping of the property. An officer, department or agency of the United States 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 such property.

(b) The State hereby undertakes to hold the United States harmless against any claim concerning property delivered to the custody of the State in accordance with the provisions of this part. In the event an action or proceeding on such claim is brought against the United States the attorney general shall intervene therein upon receipt of actual notice thereof. The State consents to suit by such claimant in such event and any defense in favor of the United States shall be available to and urged by the State.

(c) If an officer, department, or agency of the United States pays or delivers property to the director in good faith and thereafter another person claims the property from such officer, department, or agency, or another state claims the property under its laws relating to escheat or abandoned or unclaimed property, the director, upon written notice of the claim, shall defend such officer, department, or agency against the claim and indemnify such officer, department, or agency against any liability on the claim.

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

- (1) Payment or delivery was made in a reasonable attempt to comply with this part; and
- (2) The person paying or delivering the property had a reasonable basis for believing, based on the facts then known to the person, that the property was abandoned or unclaimed for the purposes of this part.

(e) If, and as often as may be, required by federal statute, the governor shall certify to the Comptroller General or other proper officer of the United States that the law of this State provides effective means whereby the United States shall be held harmless in the event of claim for property delivered to this State in accordance with the provisions of this part."

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

(Approved May 14, 1988.)