

## ACT 55

H.B. NO. 2559

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. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER  
UNIFORM UNCLAIMED PROPERTY ACT**

§ -1 **Short title.** This chapter may be cited as the Uniform Unclaimed Property Act.

§ -2 **Definitions.** As used in this chapter, unless the context otherwise requires:

“Administrator” means the director of finance.

“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.

“Business association” means a corporation, joint stock company, investment company, partnership, unincorporated association, joint venture, limited liability company, business trust, trust company, safe deposit company, financial organiza-

tion, insurance company, mutual fund, utility, or other business entity consisting of one or more persons, whether or not for profit.

“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.

“Financial organization” means a savings and loan association, financial services loan company, bank, banking organization, or credit union.

“Holder” means a person obligated to hold for the account of, or deliver or pay to, the owner of property that is subject to this chapter.

“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.

“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.

“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:

- (1) For the acquisition and retention of a mineral lease, including bonuses, royalties, compensatory royalties, shut-in royalties, minimum royalties, and delay rentals;
- (2) For the extraction, production, or sale of minerals, including net revenue interests, royalties, overriding royalties, extraction payments, and production payments; and
- (3) Under an agreement or option, including a joint operating agreement, unit agreement, pooling agreement, and farm-out agreement.

“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.

“Owner” means a person who has a legal or equitable interest in property subject to this chapter 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.

“Person” means an individual, business association, financial organization, estate, trust, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

“Property” means tangible property described in section -4 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:

- (1) Money, a check, draft, deposit, interest, or dividend;
- (2) A credit balance, customer’s overpayment, gift certificate not exempt under section -3.5, security deposit, refund, credit memorandum, unpaid wage, unused ticket, mineral proceeds, or unidentified remittance;
- (3) Stock or other evidence of ownership of an interest in a business association or financial organization;
- (4) A bond, debenture, note, or other evidence of indebtedness;

- (5) Money deposited to redeem stocks, bonds, coupons, or other securities or to make distributions;
- (6) 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
- (7) 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.

“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.

“State” means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

“Utility” has the same meaning as the term “public utility” under section 269-1.

**§ -3 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, fifteen 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 – Investment Securities, five years after the earlier of:
  - (A) The date of the most recent dividend, stock split, or other distribution unclaimed by the apparent owner; or
  - (B) 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) Debt of a business association or financial organization, other than a bearer bond or an original issue discount bond, five 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 years after the earlier of maturity or the date of the last indication by the owner of interest in the property; provided that 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, five years after the obligation accrued;
- (7) Gift certificate not exempt under section -3.5, five years after December 31 of the year in which the certificate was sold, but if redeemable in merchandise only, the amount abandoned shall be deemed to be one hundred per cent of the certificate's face value;
- (8) Amount owed by an insurer on a life or endowment insurance policy or an annuity that has matured or terminated, five years after the obligation to pay arose or, in the case of a policy or annuity payable upon proof of death, three years after the insured has attained, or would have attained

if living, the limiting age under the mortality table on which the reserve is based;

- (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;
- (11) Property held by a court, government, governmental subdivision, agency, or instrumentality, one year after the property becomes distributable;
- (12) Wages or other compensation for personal services, one year after the compensation becomes payable;
- (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 shall begin to avoid a tax penalty; and
- (15) All other property, five years after the owner's right to demand the property or after the obligation to pay or distribute the property arises, whichever first occurs.

(b) 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, shall also be presumed abandoned.

(c) 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 shall not be an indication of interest in the property by the owner.

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

- (1) 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;
- (2) 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;
- (3) The making of a deposit to or withdrawal from a bank account; and
- (4) 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 shall 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.

(e) Property shall be payable or distributable for purposes of this chapter notwithstanding the owner's failure to make demand or present an instrument or document otherwise required to obtain payment.

**§ -3.5 Gift certificates and gift cards.** (a) This chapter shall not apply to a gift certificate or gift card; provided the gift certificate or gift card has no expiration date, no expiration period, and no type of post-sale charge or fee (including but not limited to service charges, dormancy fees, account maintenance fees, cash-out fees, replacement card fees, and activation or reactivation charges).

(b) This chapter shall not apply to a gift certificate or gift card that has an expiration date, expiration period, or any type of post-sale charge or fee, including but not limited to service charges, dormancy fees, account maintenance fees, cash-out fees, replacement card fees, and activation or reactivation charges if:

- (1) The gift certificate or gift card was issued before January 1, 2010; and
  - (2) It is the policy and practice of the issuer of the gift certificate or gift card to:
    - (A) Honor the gift certificate or gift card after its expiration date or the end of its expiration period; and
    - (B) Eliminate all post sale charges and fees.
- (c) As used in this section, "gift certificate" or "gift card":
- (1) Means a written promise or electronic payment device that:
    - (A) Is usable at a single merchant or an affiliated group of merchants that share the same name, mark, or logo, or is usable at multiple, unaffiliated merchants or service providers;
    - (B) Is issued in a specific amount (which may or may not be denominated on the gift certificate or gift card);
    - (C) May or may not be increased in value or reloaded;
    - (D) Is purchased, or loaded, or both, on a prepaid basis for the future purchase or delivery of any goods or services; and
    - (E) Is honored upon presentation.
  - (2) Shall not include:
    - (A) An electronic payment device linked to a deposit account, or prepaid telephone calling cards;
    - (B) Flexible spending arrangements as defined in section 106(c)(2) of the Internal Revenue Code (26 U.S.C. 106(c)(2)); flexible spending accounts subject to section 125 of the Internal Revenue Code (26 U.S.C. 125), Archer MSAs as defined in section 220(d) of the Internal Revenue Code (26 U.S.C. 129); dependent care reimbursement accounts subject to section 129 of the Internal Revenue Code (26 U.S.C. 129); health savings accounts subject to section 223(d) of the Internal Revenue Code (26 U.S.C. 223(d)), as amended by section 1201 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (P.L. 108-173); or similar accounts for which, under the Internal Revenue Code and its implementing regulations, individuals may pay medical expenses, health care expenses, dependent care expenses, or similar expenses on a pretax basis. As used in this subparagraph, "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended; and
    - (C) Payroll cards or other electronic payment devices that are linked to a deposit account and that are given in exchange for goods or services rendered.

**§ -4 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, shall be 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.

**§ -5 Rules of taking custody.** Except as otherwise provided in this chapter or by other statute of this State, property that is presumed abandoned, whether located in this or another state, shall be 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:
  - (A) The last known address of the person entitled to the property is in this State; or
  - (B) 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.

**§ -6 Dormancy charge.** 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 and 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 canceled. The amount of the deduction shall be limited to an amount that is not unconscionable.

**§ -7 Burden of proof as to property evidenced by record of check or draft.** A record of the issuance of a check, draft, or similar instrument shall be 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 shall be 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 shall be established by the holder.

**§ -8 Report of abandoned property.** (a) A holder of property presumed abandoned shall make a report to the administrator concerning the property.

(b) The report shall be verified and shall 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, 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, the date of the last transaction with the apparent owner with respect to the property, and whether the property is an interest bearing account; and
- (7) Other information that the administrator by rules adopted under chapter 91 prescribes as necessary for the administration of this chapter.

(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 shall be filed before November 1 of each year and cover the twelve months next preceding July 1 of that year; provided that a report with respect to a life insurance company shall be filed before November 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 six months before filing the report, stating 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 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 shall terminate 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).

**§ -9 Payment or delivery of abandoned property.** (a) Except for property held in a safe deposit box or other safekeeping depository, within six months after the final date for filing the report required by section -8, 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 shall be extended until a penalty or forfeiture would no longer result. Tangible property held in a safe deposit box or other safekeeping depository shall not be delivered to the administrator until an additional one hundred twenty days after the time for payment or delivery to the administrator of property presumed abandoned as required by this subsection.

(b) If the property reported to the administrator is a security or security entitlement under article 8 of the Uniform Commercial Code – Investment Securities, the administrator shall be 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 – Investment Securities.

(c) If the holder of property reported to the administrator is the issuer of a certificated security, the administrator shall have the right to obtain a replacement certificate pursuant to section 490:8-405; provided that an indemnity bond shall not be 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 shall not be liable to the apparent owner and shall be indemnified against claims of any person in accordance with section -11.

**§ -10 Notice and publication of lists of abandoned property.** (a) The administrator shall publish a notice not later than March 1 of the year next following the report required by section -8 at least once statewide. The notice shall 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 shall 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 notice shall be given by using one or more of the following methods:

- (1) Posting on the State of Hawaii, department of budget and finance internet website;
- (2) Publication in a daily or weekly publication of statewide circulation; or
- (3) Any other method the administrator deems effective for publicizing the notice.

(c) The administrator shall not be required to advertise the name and address or location of an owner of property having a total value less than \$100, or information concerning a traveler’s check, money order, or similar instrument.

**§ -11 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 chapter;



- (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) Upon payment or delivery of property to the administrator, the state shall assume custody and responsibility for the safekeeping of the property. A holder who pays or delivers property to the administrator in good faith shall be relieved of all liability arising thereafter with respect to the property.

(c) A holder who has paid money to the administrator pursuant to this chapter may subsequently make payment to a person reasonably appearing to the holder to be entitled to payment. 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 shall 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 shall 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 chapter 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 shall be 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.

**§ -12 Crediting of dividends, interest, and increments to owner's account.** If property other than money is delivered to the administrator under this chapter, the owner shall be 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 simple interest at the legal rate of interest established in section 478-2, or any lesser rate the property earned while in the possession of the administrator. Interest shall begin to accrue when the property is delivered to the administrator and ceases on the earlier of the expiration of ten years after delivery or the date on which payment is made to the owner. Interest on interest-bearing property shall not be payable for any property delivered to the administrator before the effective date of this chapter.

**§ -13 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 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 shall 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) Securities listed on an established stock exchange shall 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 valid claim under this chapter before the end of the three-year period shall be entitled to the proceeds of the sale of the securities or the market value of the securities at the time the valid claim is made, whichever is greater, plus dividends, interest, and other increments thereon up to the time the valid claim is made, less any deduction for expenses of sale. A person making a valid claim under this chapter after the expiration of the three-year period shall be 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 shall not be 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) A purchaser of property at a sale conducted by the administrator pursuant to this chapter shall take 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.

**§ -14 Claim of another state to recover property.** (a) After property has been paid or delivered to the administrator under this chapter, 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 -5(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 -5(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) A claim of another state to recover escheated or abandoned property shall be presented in a form prescribed by the administrator, who shall decide the claim within ninety 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) 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.

**§ -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 one hundred twenty 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) Within thirty days after a claim is allowed, the property or the net proceeds of a sale of the property shall 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 -12 and -13.

(d) 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 -12 and -13, may recover from the administrator the amount of the increment.

**§ -16 Action to establish claim.** A person, excluding another state, aggrieved by a decision of the administrator or whose claim has not been acted upon within one hundred twenty days after its filing may maintain an original action to establish the claim in the circuit 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.

**§ -17 Election to take payment or delivery.** (a) The administrator may decline to receive property reported under this chapter that the administrator considers to have a value less than the expenses of notice and sale.

(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 held by the administrator and shall not be presumed abandoned until it otherwise would be presumed abandoned under this chapter.

**§ -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 chapter has no substantial commercial value, the administrator may destroy or otherwise dispose of the property at any time. An action or proceeding shall 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.

**§ -19 Periods of limitation.** (a) The expiration, before or after the effective date of this chapter, of a period of limitation on the owner's right to receive or recover property, whether specified by contract, statute, or court order, shall 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 chapter.

(b) An action or proceeding may not be maintained by the administrator to enforce this chapter in regard to the reporting, delivery, or payment of property more

than ten 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 shall be tolled. The period of limitation shall also be tolled by the filing of a report that is fraudulent.

**§ -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 shall state whether the person is holding property reportable under this chapter, 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 chapter. 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 chapter. 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 ninety 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; provided that 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 chapter;
- (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 subsection, if the other state is bound to keep the documents and papers confidential.

(e) If an examination of the records of a person results in the disclosure of property reportable under this chapter, 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) If, after the effective date of this chapter, a holder does not maintain the records required by section -21 and the records of the holder available for the periods subject to this chapter 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.

**§ -21 Retention of records.** (a) Except as otherwise provided in subsection (b), a holder required to file a report under section -8 shall maintain the records containing the information required to be included in the report for ten years

after the holder files the report, unless a shorter period is provided by rule of the administrator.

(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.

**§ -22 Enforcement.** The administrator may maintain an action in this or another state to enforce this chapter. The court may award reasonable attorney's fees to the prevailing party.

**§ -23 Interstate agreements and cooperation; joint and reciprocal actions with other states.** (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) The administrator may join with another state to seek enforcement of this chapter against any person who is or may be holding property reportable under this chapter.

(c) 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) 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 chapter. 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 chapter.

**§ -24 Interest and penalties.** (a) A holder who fails to report, pay, or deliver property within the time prescribed by this chapter shall pay to the administrator interest at the annual rate of 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 fifty-two-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 chapter, or fails to perform other duties imposed by this chapter, 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 wilfully fails to report, pay, or deliver property within the time prescribed by this chapter, or wilfully fails to perform other duties imposed by this chapter, 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 twenty-five per cent 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 chapter was due, up to a maximum of \$25,000, plus twenty-five per cent 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.

**§ -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 shall be 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 twenty-four months after the date the property is paid or delivered to the administrator. 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 shall be 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 shall be void and unenforceable.

(d) An agreement covered by this section which provides for compensation that is unconscionable shall be 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.

**§ -26 Deposit of funds.** (a) There is established in the state treasury the unclaimed property trust fund, which shall be administered by the administrator. All moneys collected by the unclaimed property program from holders of property presumed abandoned and all proceeds from the sale of unclaimed property, less costs in connection with the sale of the abandoned property, shall be deposited into the unclaimed property trust fund.

(b) Moneys in the unclaimed property trust fund shall be used for the payment of the following:

- (1) Claims for the return of abandoned property to their rightful owners;
- (2) Payment to other states' unclaimed property programs for owners whose last known address was in that other state;
- (3) Any costs incurred in connection with the sale of abandoned property;
- (4) Costs of mailing and publication in connection with any abandoned property;
- (5) Reasonable service charges;
- (6) Costs incurred in examining the records of holders of property and in collecting such property from those holders; and

(7) Any other charges, costs, or expenses incurred in the operation, administration, and enforcement of this chapter.

(c) Except as provided in section -12, moneys in the unclaimed property trust fund shall be invested by the administrator, and all investment earnings shall be deposited to the credit of the general fund.

(d) All unencumbered and unexpended moneys in excess of \$1,300,000 remaining on balance in the unclaimed property trust fund on June 30 of each year shall lapse to the credit of the state general fund.

§ -27 **Foreign transactions.** This chapter does not apply to property held, due, and owing in a foreign country and arising out of a foreign transaction.

§ -28 **Transitional provisions.** (a) An 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 next preceding the effective date of this chapter as if this chapter had been in effect during that period.

(b) 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. 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 chapter shall be subject to the applicable provisions for enforcement and penalties which then existed, which are continued in effect for the purpose of this section.

§ -29 **Rules.** The administrator may adopt, pursuant to chapter 91, rules necessary to carry out this chapter.

§ -30 **Uniformity of application and construction.** This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.”

SECTION 2. Section 523A-63, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§523A-63]]~~ **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.]~~ 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.]~~ chapter.”

SECTION 3. Section 523A-65, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Notwithstanding any other provision of law, the right of the State to maintain an action and to recover presumptively abandoned property and the obligation of the federal government, or any federal agency, entity, officer, or appointee thereof, to comply with the requirements contained in ~~[sections 523A-1 to 523A-64]~~ chapter and ~~sections 523A-51 to 523A-64~~ shall not be affected by any state failure to adhere to ~~sections 523A-54 to 523A-64.~~”

SECTION 4. Chapter 523A, part I, Hawaii Revised Statutes, is repealed.

SECTION 5. On the effective date of this Act, the director of finance shall transfer all of the funds in the unclaimed property trust fund established by section 523A-23.5, Hawaii Revised Statutes, to the unclaimed property trust fund created by section -26 in section 1 of this Act.

## **ACT 55**

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect on July 1, 2009.

(Approved May 1, 2008.)