

ALABAMA DEPARTMENT OF REVENUE

3304

HJUD

HB 182

180

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date October 24, 1984

REQUEST

Bill/Resolution No: HB 182 #1
Title: Uniform Unclaimed Property

Sponsor: Governor
Requestor: _____
Date of Request: October 22, 1984

FISCAL DETAIL

Agency Affected: Department of Revenue
Program Category Affected: Collection and Management
BRU, Program of Subprogram(s) Affected: Audit Division
Audit Division

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
200 TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
300 CONTRACTUAL	-0-	60.5	25.0	30.0	35.0	40.0
400 SUPPLIES	-0-	5.0	5.0	5.0	5.0	5.0
500 EQUIPMENT	-0-	7.5	-0-	-0-	-0-	-0-
600 LANDS & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
700 GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
800 MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING	-0-	73.0	30.0	35.0	40.0	45.0
CAPITAL						
	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE						
	-0-	750.0	3,000	2,000	2,000	2,000
FUNDING: (Thousands of Dollars)						
GENERAL FUND	-0-	73.0	30.0	35.0	40.0	45.0
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL	-0-	73.0	30.0	35.0	40.0	45.0

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

ANALYSIS: Attach a separate page for analysis.

Prepared By: Maureen O'Brien
Division: Audit Division

Phone: 465-2320
Date: October 22, 1984

Approved by Commissioner: [Signature]
Agency: REVENUE

Date: 2/5/85

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

EXPENDITURE/REVENUE ANALYSIS

1.18.2 295
Contractual \$60.5

In the first full year of operation, the unclaimed property program will expend \$48.0 for contractual services related to creating a record keeping and data processing system. Other contractual costs of \$12.5 include postage related to mass mailouts of instructional materials and forms, advertising costs to locate unclaimed property owners, and printing costs.

Supplies \$5.0

Supplies required include file folders, typing and data processing supplies, and consumable equipment (i.e. calculator, typewriter, file cabinet).

Equipment \$7.5

Includes the purchase of data processing equipment, specifically one Wang word processor at \$4.0 and a Wang printer at \$3.5.

All funding will be out of the general fund.

Revenues

The Department's of Law and Administration estimated several years ago that the state could expect a windfall of between four and five million dollars. Other states' experiences reveal that in the first full year of operation, additional revenues received were \$730,000 (Idaho), \$5,000,000 (Nevada), and \$10,000,000 (Washington). These states had active unclaimed property programs prior to adopting the 1981 Uniform Act. Consequently their results may not be reflective of the amount Alaska could reasonably expect to receive in the first year. Due to the transient nature of this state's population, we can expect a high incidence of unclaimed bank accounts, deposits and wages.

ANALYSIS OF LEGISLATION
RELATING TO UNCLAIMED PROPERTY

This bill applies to a wider range of abandoned intangible personal property than does the present AS 09.50.070, and provides for simple transfer of the custody of the property from the holder to the state rather than transfer of the title. Savings accounts, deposits, drafts, money orders, traveler's checks, safe deposit box contents, and wages are among the various property interests held by banking or financial organizations or by business associations which are covered by the bill (AS 34.45.110-160). Also included is money owed by any insurance company, specifically including money owed under a life insurance or annuity agreement (AS 34.45.170), deposits held by utilities (AS 43.45.180), refunds held by business associations (AS 34.45.190), undistributed dividends, stock, and payments relating to a debt held by a corporation (AS 43.45.200), unclaimed property of a dissolved corporation (AS 43.45.210), intangible property held by fiduciaries, agents, courts and public agencies (AS 43.45.220-230), and unclaimed gift certificates. In general, any of these abandoned property interests may be claimed by the state if the records of the holder indicate that the amount held belongs to a person whose last known address was in this state. Holders of these property interests would be subject to the reporting requirements of the bill as set out in AS 34.45.280.

Abandonment would generally be presumed to have occurred if the owner has not claimed the property or contacted the holder in any way concerning it for a period of seven years (AS 34.45.110), except that a fifteen year period is established for traveler's checks, and a one year period is set for deposits held by utilities, unclaimed wages and property held by courts and public agencies. Stock may be presumed abandoned (AS 43.45.200) if at least seven dividends have been paid and unclaimed in a seven year period; otherwise the period continues to run until seven dividends have been paid and unclaimed.

Holders of property would be required to file an annual report with the Department of Revenue (AS 34.45.280) after first sending a notice to the last known address of each owner whose property is presumed abandoned. The department would then be required to publish a list of the names of owners believed to have abandoned property interests under the bill, and to otherwise exercise due diligence to ascertain the whereabouts of the owners (AS 34.45.310). The holder would then be required to pay or deliver the reported property to the department (AS 34.45.320). Thereafter, the holders would be

(Unclaimed Property Bill Analysis continued)

relieved of all liability related to the disposition of the abandoned property. An owner may forever claim personal property from the department. Also, a person may make a claim in court against the department, but not against the holder (AS 34.45.330).

AS 34.45.170 provides that proceeds of a life insurance policy are presumed abandoned if the insurer is aware that the insured has died even though actual proof of death has not been furnished to the insurer. Subsection (d) provides that the application of an automatic premium loan provision will not be used to consume the proceeds of a policy and prevent the policy from being matured under subsection (a) if the insured has died or if the beneficiaries have otherwise become entitled to the proceeds of the policy.

The bill allows the department to offer to sell all abandoned personal property, within three years of receipt, except securities which generally must be held one year (AS 34.45.360). If the department sells any property, it must sell to the highest bidder at public sale.

The proceeds from the sale of personal property, along with all other funds received by the department under the bill would be deposited in the general fund of the state, but \$100,000 would be retained in a separate trust fund (AS 34.45.370). The department would be required to make prompt payment from the trust fund for any claim it determines to be valid, brought by the owners of the property. The department is authorized to hold a hearing to determine the merits of any claim to abandoned property; an owner aggrieved by a decision of the department would be required to follow established grievance procedures of the department and may appeal the department's final decision (AS 34.45.400).

Another state may make a claim to abandoned property if it appears the property should escheat to that state (AS 34.45.460). This section (as well as section 34.45.120), codifies court decisions determining rights among states to claim abandoned property. The bill would allow for reciprocal action by states in that the attorney general may bring an action in our courts on behalf of another state, and the department may request that the attorney general of another state bring a similar action on our behalf in the other state.

(Unclaimed Property Bill Analysis continued)

The Department of Revenue is authorized to adopt regulations to carry out the provisions of the bill (AS 34.45.730), may examine the books and records of a person whom the department has reason to believe had failed to report property subject to the bill (AS 34.45.290), and may bring an action to compel delivery of property wrongfully withheld by a holder (AS 34.45.450). The bill provides civil penalties for those who fail to comply with the provisions of the bill. Criminal sanction would be incurred by those who knowingly make false reports or refuse to deliver property as required under the bill (AS 34.45.470).

This bill has been patterned after the Uniform Unclaimed Property Act (1981). The procedures set out in the Uniform Act are designed to safeguard the interests of both the state and the rightful owner of the property, if any. The reporting requirements imposed upon a holder, combined with the broader investigation and enforcement powers of the Department of Revenue makes it possible for the state to ascertain the whereabouts of abandoned property held in the state. Under existing law, the department has no express enforcement power either to locate or claim abandoned property. The Department of Law instead must bring an action in superior court to claim any amount of unclaimed property, including amounts under \$1. There is no specific provision in the current law authorizing any department to locate abandoned property and only financial institutions are expressly required to report unclaimed property. (AS 09.50.140).

The official comments of the National Conference of Commissioners on Uniform State Laws offer additional explanation of the purposes of and the need for each part of this bill, and are available from the Department of Revenue.

HB 182

STATE OF ALASKA
DEPARTMENT OF REVENUE
DIVISION OF AUDIT

M E M O R A N D U M

TO: Royce Weller
Special Assistant
Office of the Commissioner

FROM: Steve Kettel *Steve*
Chief of Audit Services

DATE: January 23, 1986

SUBJECT: David J. Epstein

The Uniform Law Commission has agreed to fly David J. Epstein to Juneau to testify on the Unclaimed Property bill (HB 182). I have talked with David and his schedule is always busy, but except for the last week of February he should be available on a couple weeks notice.

Mr. Epstein is currently Special Counsel to the National Association of Unclaimed Property Administrators, Advisor to the Consumer and Monetary Affairs Subcommittee of the U.S. House of Representatives, and served as Reporter to the Uniform Law Revision Commission on the 1981 Uniform Unclaimed Property Act.

I would like to see a joint Senate/House judiciary meeting scheduled to hear Mr. Epstein.

Royce Weller,
Please give me a
Call.
Payer.

116182



Uniform Law Memo

Published by the National Conference of Commissioners on Uniform State Laws

Winter 1981-82

NEW FOCUS on 'W.C. FIELDS ACT'

Uhe Uniform Unclaimed Property Act was one of four new proposals completed by Uniform Law Commissioners during their 1981 annual meeting. An article explaining that act follows. Outlines of the other three new proposals – Uniform Conservation Easement Act, Model State Administrative Procedure Act and Model Real Estate Cooperative Act – begin on page 10.

CHARLOTTE MOULTON

W.C. Fields had a lifelong phobia about theft and poverty, even after he became a world famous comedian and actor. At age 19, he decided to open a bank account everywhere he went.

According to biographer Robert Lewis Taylor, Fields began with banks in large cities and worked down to those that might occupy a corner of a village feed store.

"Sometimes he hopped off trains and opened an account while the engine took on water," Taylor says. "He piled the bank books in a corner of his wardrobe trunk and, for the most part, forgot them."

After Fields' death on Christmas Day 1946, his executors located 30 accounts. But his friends felt that much of his wealth was never found.

Millions of other Americans, most less wealthy than Fields, have forgotten money stashed in banks, savings and loan associations or credit unions. They have also neglected to provide addresses for dividend checks and have left safe-



deposit boxes unopened. Many have failed to collect utility deposits and racetrack winnings. Traveler's checks and money orders have remained uncashed, gift certificates unrepresented and airline

Fields Act RE-VIEWED

tickets unused. Proceeds of insurance policies have never reached beneficiaries because deaths went unreported.

This accumulation adds up to billions of dollars. Every state but Colorado has for years been claiming abandoned property after it has lain dormant for varying lengths of time. Thirty-one have used the Uniform Disposition of Unclaimed Property Act, adopted by ULC in 1954, revised in 1966 and often casually referred to as the "W. C. Fields Act."

At the August 1981 meeting in New Orleans, ULC put the finishing touches on a third version, which has already provided the ground work for a new law in the District of Columbia. There banks and savings and loan associations alone were said to be holding more than \$51.2 million in 43,000 accounts not touched for five years or more.

Like its predecessors, the 1981 Uniform Unclaimed Property Act lays down rules for determining when property is actually abandoned and — when it is — for determining which state gets it. The revision was needed to make the act conform to a 1965 U.S. Supreme Court decision, to strengthen its enforcement provisions and to encourage cooperation among states, particularly those which in the last decade have been energetically trying to pry dormant funds away from holders.

Streamlines Transfers

The 1981 act is designed to help locate rightful owners of abandoned property and to streamline its transfer to the states if they can't be found. The states act as permanent custodians and will return property to owners at any time. Until the owners show up, the funds go into the public treasury for the benefit of taxpayers instead of adding to the financial well-being of banks and other holders.

Under earlier acts, if a state court could assert personal jurisdiction over a property holder, the state could claim the holder's dormant funds. But the Supreme Court applied a different rule in *Texas v. New Jersey*, which dealt with a claim by four states to about \$26,000 in small debts owed

by Sun Oil Co. to about 1,730 small creditors over periods ranging from seven to 40 years.

Texas claimed on the ground that most of the amounts were on the books of Sun's offices in that state or were owed to persons whose last known address was in Texas; Florida, on behalf of persons whose last known address was there; New Jersey, because Sun was incorporated there; and Pennsylvania, as the state of the company's main office.

The Supreme Court ruled that the state of the owner's last known address was entitled to the funds.

A few states changed their laws to reflect the holding, but other statutes remained under a cloud. Many financial institutions argued that their duty was unclear and most made little effort to contact "missing" customers. Meanwhile state officials became increasingly aware of unclaimed property as a source of desperately needed revenue.

States which did press forward with revenue raising programs, which included serious attempts to find lost customers, were California, Florida, Illinois, Massachusetts and Minnesota.

Dormancy Shortened

A major consideration for ULC drafters was the length of the dormancy or holding period before a state takeover could occur. The prior act used seven years. Ten years was a common dormancy period for bank deposits but 13 states had longer ones with Delaware topping all others at 25 years.

The drafting committee chose five years, with exceptions of 15 years for traveler's checks, seven years for money orders and one year for unpaid wages, utility deposits utility refunds and property held by the state itself.

After first attempting to notify owners in writing, all property holders are required under the 1981 act to file annually with a state administrator a list of property which has been ignored by the owner for the indicated dormancy period. The administrator then advertises property with a value of \$25 or more for two consecutive weeks in an appropriate local newspaper. For amounts of more than \$50, the administrator mails the owner a notice that his property is slated for state custody. Six months from the date of filing, amounts still unclaimed go to the administrator of the state where the apparent owner lives or lived.

If the address is not available, or if it's in a state without an unclaimed property act or in a foreign country, the state of the holder's domicile may take custody, pending proof that the funds belong

elsewhere. If the last-known-address state later enacts a law, the taking state must relinquish its take. Property such as gift certificates and unused airline tickets for which there is no last known address may be claimed by the state of purchase if the state where the issuer is incorporated does not have a pertinent law.

Interstate Cooperation

To save expense and help states collect out-of-state funds belonging to them, the 1981 act breaks new ground. It authorizes agreements under which states may exchange information and jointly audit holders or sue them. The administrator also may sue on behalf of another state and ask another state to do the same for him, provided the state making the request foots the bill.

The National Association of Unclaimed Property Administrators is active in developing such programs, which could simplify matters for holders as well, since they would likely file a single report to a group of states instead of to each separately.

The steady trend toward automation makes interstate cooperation easier and more rewarding. A number of states are already engaged in such joint efforts.

The agreements do not require the consent of Congress because under Supreme Court rulings they do not interfere politically with federal supremacy.

The Association issues a newsletter and sponsors informative annual meetings to keep interested per-

sons abreast of what is going on in the field. Any official dealing with unclaimed property may receive the newsletter by writing Ms. Vivian Herbert, Administrator of Unclaimed Property Division, State Treasurer's Office, P.O. Box 3-R, Richmond, VA 23207.

To correct a weakness in earlier versions of the act, holders are given considerable economic incentive to obey the law. Although states are free to fix an interest penalty for non-compliance, drafters suggested 18 per cent, or 10 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 52-week U.S. Treasury bills.

Non-Reporting Penalties

For willful non-reporting, a penalty ranging from \$100 to \$5,000 a day is mentioned. For willful failure to pay or deliver property, the act exacts a civil penalty of 25 per cent of value. A state could also impose criminal penalties but the drafters felt economic sanctions would be more effective.

The 1981 act requires a holder searching for dormant funds to check his records back 10 years from the date the law is passed. If the funds have already been turned over to a non-eligible state, the state that should get them may claim them. Penalties are *not* retroactive.

Massachusetts' experience shows how a state can add income without hiking taxes and at the

KEY POINTS

In addition to imposing record-keeping obligations on property holders, other key features of the 1981 act:

- Provide that upon reasonable notice an administrator may examine any holder's records, regardless of a holder's claim to have no reportable property.

- Require an administrator to hold most property for a year before selling it at public auction within the second year. Stocks will generally be held three years with missing owners entitled to dividends and interest for this period.

- Recommend that a state maintain a separate trust fund of not less than \$100,000 to insure payment of belated claims.

- Bar activity by heir finders (who for a fee locate owners of dormant funds) for two years after state receipt of the property.

- Provide for lawsuits by owners aggrieved at an administrator's decision.

- Presume that proceeds of a life insurance policy are abandoned if the company knows the insured has died. Under the old version, proceeds usually were not reportable until the 103rd anniversary of the decedent's death.

- Allow the administrator to destroy incidental property received that is of insubstantial commercial value.

FIELDS ACT Re-Viewed

same time provide windfalls to many missing or forgetful property owners.

From 1950 to 1975, when the law specified a 14-year dormancy period, state receipts averaged \$250,000 a year. Payouts for the entire period were \$350,000. The dormancy period was then reduced — first to 10 years, then to seven in 1980 — and audits of holders were stepped up. Receipts in 1980 climbed to \$25 million, 25 to 30 per cent of which is expected to be paid to owners. In 1981 the dormancy period was cut to five years.

Illinois Experience

Illinois took in \$8.7 million in the fiscal year ended June 30, 1981, about \$953,000 of which was unearched by state examiners and should have been reported earlier. Payments on 1,994 claims totaled \$903,000. Over three years, examinations have resulted in a take of \$2.9 million, according to Michael E. Fryzel, Administrator of the Unclaimed Property Division of the Illinois Department of Financial Institutions.

Since the law was enacted in 1962, Illinois has received \$74.3 million and has paid out \$5.9 million on 10,029 claims. Most of the funds have come from banks, followed by savings and loan associations, credit unions, insurance companies and retail establishments and other business corporations — in that order.

A major concern of ULC drafters was the widespread bank practice of discontinuing interest and imposing service charges on dormant accounts without adequately informing depositors of what to expect. Small accounts were simply wiped out.

It has been argued that the cost of posting interest and mailing statements for small accounts more than justifies this practice.

Charlotte Moulton, U.S. Supreme Court correspondent for United Press International 1949-78, now acts as a consultant to the Uniform Law Commissioners.

"I don't consider that a valid argument," said Fryzel. "These banks pay simple interest of five to six per cent on accounts while for years they have had use of the depositors' money invested at 12, 13 or 14 per cent. Statements and posting are part of the cost of doing business and they knew that when they took the accounts."

Fryzel said a suit by Illinois against the Lakeview Trust and Savings Bank in Chicago declares that a financial institution must have a valid, written, enforceable contract with its customers before it can stop interest on and service charge dormant accounts; and that if the bank pays back the interest and charges when an account is reactivated, the state must be treated the same way when dormant funds are turned over.

A precedent was established by a California suit against the giant Bank of America which resulted in a 1980 court order that an estimated \$20 million in service charges, unpaid interest and penalties be returned to customers.

In a highlight of the bank's lax performance, California Controller Ken Cory found his own name on the list of "missing" depositors, as well as those of actress Lucille Ball, comedian Bob Hope and former Gov. Edmund G. Brown, Sr.

In Florida persons reported unlocatable have included Gov. D. Robert Graham and former state Supreme Court Justice Fred Karl.

Safe Box Surprises

Those abandoned safe-deposit boxes yield some of the more dazzling examples of unclaimed property. Among the discoveries of Virginia officials were a rare Fairchild fountain pen with a 14K point and mother-of-pearl staff; and a ring, perhaps a copy of royal jewelry, dating from the French Revolution. For appraisals of such finds, the state has gone afield as far as the curator of gems at the Smithsonian Institution and the Louvre in Paris. Auctions of safe-deposit box items are in progress in New York City.

Virginia struck a small "gold mine" in 1980 in the form of almost \$7,000 in gold-backed Liberty Bonds and coupons — some dating to 1917. The U.S. Treasury redeemed them.

Uniform Law Commissioners

NEWS

AN OUTLINE OF THE UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT

(Chicago) -- An astonishing number of Americans treat their financial assets rather casually. They deposit money in banks and forget about it. Or they buy stock and move without leaving the company an address for their dividend checks.

Billions of dollars lie abandoned in such financial pockets, as well as in insurance companies, utilities and pension funds - even in gambling houses and race tracks. Many times the rightful owner has died and the heirs do not know that a windfall - whether large or small - could be theirs.

All states, except Colorado, have laws providing for state takeover of abandoned property at the end of varying dormancy periods (a period during which the property has been ignored by the owner). But these statutes have been widely disregarded. Further, conflict had arisen among the states over which one should be entitled to a particular sum of money.

The U.S. Supreme Court entered the picture in 1965 when four states claimed about \$26,000 in small debts owed by Sun Oil Co. to about 1,730 small creditors over periods ranging from seven to 40 years. Texas claimed on the ground that most of the amounts were on the books of Sun's offices in that state or were owed to persons whose last known address was there; and New Jersey and Pennsylvania, because Sun was incorporated and had its main office in those states, respectively.

The Supreme Court decided that the state of the property owner's last known address was entitled to the funds.

This rule required revision of a Uniform Disposition of Unclaimed Property Act drawn up by the National Conference of Commissioners on Uniform State Laws and adopted by 31 states since 1954. Now the Uniform Law Commissioners (ULC) have developed a new proposal designed to reunite owners with their property and in the process to streamline its transfer to state custody.

Rightful owners may claim their funds at any time from either the holder or the state, but if no one comes forward, taxpayers reap a benefit.

Some states, notably Minnesota, Massachusetts, California and New York, already have undertaken aggressive programs of this kind. The District of Columbia recently enacted a new statute using early drafts of the Uniform Act as a model.

-more-

The proposal applies to a broad array of property, ranging from stocks, bonds, dividends, travelers checks, money orders and the contents of safe deposit boxes to utility deposits, uncashed airline tickets, gift certificates and par-mutuel tickets.

State dormancy periods can now be as high as 10, 15 or even 20 years. Drafters chose five years, with exceptions of 15 years for travelers checks and one year for unpaid wages.

After first attempting to notify owners in writing, all property holders would be required to file annually with a state administrator a list of property which has become dormant. The administrator would then advertise the property which has a value of \$25, or more, for two consecutive weeks in an appropriate local newspaper. For amounts of more than \$50, the administrator would mail the owner a notice that his property was slated for state custody. Six months from the date of filing, amounts still unclaimed would go to the state administrator.

Holders are given considerable economic incentive to obey. Although state would be free to fix an interest penalty for non-compliance, drafters suggest 18 per cent. For willful non-reporting, a penalty ranging from \$100 to \$5,000 a day is mentioned; and for willful failure to pay or deliver property, 25 per cent of its value. States also could impose criminal penalties.

The new Uniform Act mandates that after enactment, a property holder must report property as if the new law had been in effect 10 years earlier, but penalties would not be retroactive.

A prime concern is a prevalent practice by banks to ignore the outdated uniform law and help themselves to millions of dollars in dormant accounts simply by discontinuing interest and imposing service charges on them. Small deposits are wiped out. As in the past, banks are forbidden to proceed in this way unless the depositor is informed in writing.

Besides imposing record-keeping obligations on property holders, the Uniform Act also:

- *Provides that upon reasonable notice an administrator may examine any holder's records, regardless of a holder's claim to have no reportable property.

- *Requires an administrator to hold most property for a year before selling it at public auction within the second year. Stocks will generally be held three years, with missing owners entitled to dividends and interest for this period.

- *Recommends that a state maintain a separate trust fund of not less than \$100,000 to insure payment of belated claims.

*Bars activity by heir finders (who for free locate owners of dormant funds) for two years after state receipt of property.

*Provides for lawsuits by owners aggrieved at an administrator's decision.

*Presumes that proceeds of a life insurance policy are abandoned if the company knows the insured has died. Under the old act, proceeds usually were not reportable until the 103rd anniversary of the decedent's death.

The ULC, now in its 95th year, is comprised of more than 300 state-appointed practicing lawyers, judges, law professors and government officials.

For further information contact John McCabe or Sabryna-Joi King at (312) 321-9710.

UNIFORM UNCLAIMED PROPERTY ACT (1981)

If an individual abandons an automobile on a street in almost any city in the United States, it is generally a problem of litter, of junk. Nobody is likely to want it, although abandonment provides another person with the opportunity to take it if he wants to do so. Abandonment implies opportunity to others - an opportunity that most people don't bother about.

An automobile is tangible property, an object composed of steel, cloth, plastic, and other substances. Abandonment as a legal doctrine concerns property rights between people, and the object is merely the object of those rights, but having an object such as an automobile makes the task of determining rights relatively simple.

But what about intangible property? It poses a question of pure rights normally identified only by a piece of paper. For example, a share of stock has no tangible presence, only a certificate as evidence of its existence. Sometimes, the evidence may exist in the records of somebody, somewhere, and may not be in the hands of the owner (for example, uncertificated shares of stock). And values may be very great. Besides shares of stock, bank accounts, bank checks, and traveler's checks are other good examples of valuable intangible property. What happens when the rights represented are abandoned?

Actually, the problem is twofold. The first step is ascertaining that property is, in fact, abandoned. Has the owner relinquished the property, or is it simply that he or she, or a proper successor, has not notified the record keeper of the intent to continue as owner? If that question can be convincingly answered in the favor of abandonment, then the next question becomes, "Who gets it?"

Since 1954, the ULC has offered to the states an act known as the Uniform Disposition of Unclaimed Property Act. It was revised in 1966. Thirty-one states and the District of Columbia adopted a version of it. It answered the key questions in this manner. Abandonment would be presumed after notice to

owners and a sufficient time lapse (generally seven years) to signify that the original owner had, in fact, abandoned the intangible property. As to the second question, the state got it, but, in a sense, the original owner never lost it. The state took the property, held it for a prescribed time, and then disposed of it by sale. However, an original owner could show up and claim the property, or the proceeds of sale, at any time. The state performed a perpetual custodial function on behalf of the original owner.

In 1981, these general principles remain good. The Uniform Unclaimed Property Act (1981) conforms to them faithfully. Two distinct problems prompted a revision in 1981. These problems were: (1) jurisdiction over unclaimed property under the Act; and, (2) interstate cooperation. The 1981 revision remedies these problems. In addition, it updates the existing text of the earlier Acts, a matter of clarification, in the main.

The ULC was aware of the potential for "multiple liability" between states under the earlier Acts. They tied jurisdiction to the ability of a state's courts to assert personal jurisdiction over the holder (or debtor). The prior Acts leavened potential conflicts between states with a reciprocity provision.

In Texas v. New Jersey, 379 U.S. 670 (1965), the U.S. Supreme Court applied a different rule. The Court held that the state of the owner's last known address, as shown by the holder's books and records, has jurisdiction. After that case, the existing Uniform Act's basic jurisdictional approach was untenable. The 1981 revision realigns all of the jurisdictional content of the Act in conformity with Texas v. New Jersey, taking into account some tricky individual problems.

Interstate cooperation, also, needed some work beyond the basic problem of sorting out jurisdiction. There will be times when a state will become a custodian of property, to discover that another state should have been. A procedure for dealing with claims of other states is, therefore, needed. And more than simple reciprocity is essential to real resolution of interstate problems. The new Act attends to this issue, as well.

The 1981 Act addresses the problem of jurisdiction in this fashion. First, determine the last known address of the owner (or creditor). If that fails, then allow jurisdiction to vest, based on combinations of the domicile of the holder and the situs of the transaction out of which the property arose. Another key factor in determining jurisdiction is the fact

that the owner's last known address is in a jurisdiction without an escheat or custodial taking of property statute, or in a foreign country. These rules conform to the Texas v. New Jersey case and cover all contingencies.

Several new provisions enhance interstate cooperation. If a state has assumed custody of abandoned, intangible property, the 1981 Act provides another state with a procedure to claim it, if the second state can find grounds to assert its primacy over the initial state's assumption of custody.

In addition, the 1981 Act authorizes the unclaimed property administrator in each adopting state to enter into agreements with other states for exchange of information on claims, to enforce claims, and to sue for other states and allow other states to sue for his or her state. This provision allows states to pool resources in administering and enforcing this Act.

As the earlier Acts did, the 1981 Act basically provides a procedure for determining whether intangible property is abandoned, for transferring it to the state when it has been abandoned, and for an owner to reclaim it.

Each holder is required to report on property held beyond the time of its presumed abandonment. The debtor must notify the owner at his last known address, with a couple of exceptions. The unclaimed property administrator, then, has the further obligation of giving public notice of property transferred into the state's custody. Property is kept for a basic period, generally three years, and then is sold. Proceeds go to the general fund. As noted before, an owner or successor can claim the property while still held, or the proceeds after sale. No creditor is ever precluded from a claim. With updating, these provisions of the 1981 Act continue the principles of the earlier Acts.

Of particular importance is the factual question of abandonment. If property remains unused or unacknowledged for a specific period of time, its abandonment is presumed. The older Acts used a seven-year period as the general measure. The 1981 Act uses five years, in general. However, for specific types of property (i.e. utility deposits), the presumptive period is as short as one year. Seven years remain for certain property, such as stocks, and traveler's checks are not considered abandoned until fifteen years have passed. Each type of intangible property was studied to determine a relevant period after which abandonment could be presumed.

There are other improvements to the procedures, as well. The 1981 Act provides for civil enforcement with interest penalties based on the value of the property. This replaced the largely ineffective criminal provisions in the earlier Acts. The 1981 Act allows the unclaimed property administrator to destroy incidental property received that is of insubstantial commercial value. These are examples of updating provisions to be found in the 1981 Act.

The 1954 and 1966 Acts served the adopting states well, considering the subsequent legal problems. The ULC hopes the new Act, which solves those problems in an updated version, will prove even more useful to state government.

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Escheat of personal property of intestate domiciled or resident in other state, 50 ALR2d 1375.

Uniform Disposition of Unclaimed Property Act, 98 ALR2d 304.

State regulation of land ownership by alien corporation, 21 ALR4th 1329.

Sec. 09.50.070. Property subject to escheat. When no claim of ownership has been made to bank deposits, cash, or personal property for more than seven years, the property escheats to and becomes the property of the state. (§ 14.01 ch 101 SLA 1962; am § 2 ch 78 SLA 1972)

Cross references. — For passing of intestate estate to state if there is no taker, see AS 13.11.025; for escheat of unclaimed assets of an estate, see AS 13.16.600.

NOTES TO DECISIONS

Escheats are purely statutory. Kennedy v. Gatz, 194 F. Supp. 795.

It is strictly within the power of the state to prescribe the conditions of escheat. Kennedy v. Gatz, 194 F. Supp. 795 (D. Alas. 1961).

Article does not qualify contracts of banks with depositors. This article does not qualify any contract between a national bank and its customer, but deals only with property the title to which has failed under a rule substantially as of the common law. Territory of Alas. v. First Nat'l Bank, 22 F.2d 377 (9th Cir. 1927).

Escheat vests on death of intestate. — The escheat actually occurs, or takes place, or becomes vested immediately upon the death of the intestate; the right instantly accrues to the sovereign, as some of the authorities express it, as "the last heir"; and the proceedings required by law, in the nature of office found, are merely proceedings to establish by legal proof that right which has already accrued or become vested or fixed. United States v. Fish, 5 Alaska 31 (1914).

Subject to being divested if heirs later establish claim. — As to real estate the escheat actually occurs or becomes vested immediately upon the death of the

intestate, subject to be divested if there are in fact heirs who later make themselves known. Kennedy v. Gatz, 194 F. Supp. 795 (D. Alas. 1961).

Presumption that heirs exist is rebutted by showing no probate proceedings or claim. — While the presumption obtains that a decedent leaves next of kin capable of inheriting, this presumption is rebutted by the absence of the deceased for a period of 10 years without any claim made for the property or institution of probate proceedings and default in asserting claim, after notice, after a show cause order in escheat proceedings. Territory of Alas. v. First Nat'l Bank, 41 F.2d 186 (9th Cir. 1930).

Death is presumed from absence and intestacy presumed from no administration proceedings. — Upon the proof of absence for the statutory period the presumption of death arises, and with the presumption of death, when no administration has been had, for more than 10 years, which is longer than the statutory period, the presumption of intestacy must obtain. Territory of Alas. v. First Nat'l Bank, 41 F.2d 186 (9th Cir. 1930).

Sec. 09.50.080. Enforcement of rights by state. The state may maintain an action to recover the possession of escheated property, or for the enforcement of its rights to the property. (§ 14.02 ch 101 SLA 1962)

Sec. 09.50.090. Transmittal of personal property to state. [Repealed, § 5 ch '78 SLA 1972.]

Sec. 09.50.100. Action by attorney general. When the attorney general is informed or has reason to believe that any real or personal property has escheated to the state, the attorney general shall bring an action in the superior court to establish whether or not the property has escheated to the state. (§ 14.04 ch 101 SLA 1962)

Sec. 09.50.110. Time within which to claim escheated property. Within seven years after the judgment, a person not a party to the escheat proceeding may bring an action in the superior court to prove the person's claim to the property. If the plaintiff establishes the claim and that the plaintiff had no knowledge of the prior escheat proceeding, the court shall award the property to the plaintiff. If it is determined that the plaintiff is entitled to the property or the proceeds from the sale of the property, the commissioner of revenue shall deliver the property or the proceeds to the plaintiff upon payment of the costs of the escheat proceedings, the cost of sale and other expenses connected with the conversion of the property to cash. The rents, profits, interest, or dividends which accrue to the state during its possession of the property are the property of the state and may not be recovered. The time limitation of seven years does not apply to a minor or person of unsound mind, but that person may bring an action to prove a claim only within one year after the disability ceases. (§ 14.05 ch 101 SLA 1962)

NOTES TO DECISIONS

Right of heir is foreclosed if claim is not made. — The right of the heirs is no greater than the right of the owner, and when the right of the owner escheats by reason of absence, the right of the heir is foreclosed, if claim is not made, after an order to show cause is published in escheat proceedings. *Territory of Alas. v. First Nat'l Bank*, 41 F.2d 186 (9th Cir. 1930).

Proof required. — Proof should be clear and conclusive, both as to the identity of the deceased and his relationship to the petitioners, in order to effect recovery of moneys left by deceased and covered into the state treasury by escheat. In re *Miller's Estate*, 8 Alaska 542 (1935).

Proof must be clear and convincing. — Persons seeking the return of property escheated to the state as unclaimed have the burden of proving their relationship to the decedent by clear and convincing evidence. *Waks v. State*, Sup. Ct. Op. No. 111 (File No. 163), 375 P.2d 136 (1962).

And must be of a higher degree than preponderance of the evidence. — Public policy dictates that a higher degree of proof than a preponderance of the evidence should be required of one seeking to establish a claim to money or other property of a decedent which has escheated to the state. *Waks v. State*, Sup. Ct. Op. No. 111 (File No. 163), 375 P.2d 136 (1962).

Facts asserted must be highly probable. — The claimants must induce belief in the mind of the judge or jury that the facts which they assert are not merely probably true, but that they are highly probable. *Waks v. State*, Sup. Ct. Op. No. 111 (File No. 163), 375 P.2d 136 (1962).

But not true beyond a reasonable doubt. — The claimants are not required to discharge the greater burden of persuasion that the facts asserted are almost certainly true, true beyond a reasonable doubt, or conclusive. *Waks v. State*, Sup. Ct. Op. No. 111 (File No. 163), 375 P.2d 136 (1962).

Claimant's recovery limited by statute. — Upon establishment of the heirship the claimant becomes entitled to what the statute gives him and no more. *e. Kennedy v. Gatz*, 194 F. Supp. 795 (D. Alas. 1961).

Sec. 09.50.120. Sale of property by state. (a) The commissioner of revenue may sell personal property which has escheated to the state as the commissioner considers advantageous and shall execute the proper conveyance. When the value of the property exceeds \$50, the sale shall be at public auction to the highest and best bidder after public notice of the time and place of the auction has been given by posting notices in three public places in the political subdivision where the property is to be sold, and by publication once in a newspaper of general circulation nearest the place of sale 10 days before the auction.

(b) The commissioner of revenue may sell real property which has escheated to the state with the approval of the governor, and the governor shall sign the conveyance on behalf of the state. Sale of real property shall be at public auction to the highest and best bidder after public notice of the time and place of the auction has been given by publication once a week for four weeks in a newspaper of general circulation nearest the property to be sold. (§ 14.06 ch 101 SLA 1962)

Sec. 09.50.130. Claims to escheated property of value of \$1,000 or less. When property or the proceeds from the sale of the property which has escheated to the state amounts to \$1,000 or less and a rightful owner is discovered and makes a written claim to the property, supported by convincing proof of ownership, the commissioner of revenue, with approval of the attorney general, shall either return the property if still unliquidated, or issue a voucher for the amount of the proceeds or for the amount of money which has escheated in favor of the owner. (§ 14.07 ch 101 SLA 1962; am § 3 ch 78 SLA 1972)

Sec. 09.50.140. Duty of banks and financial institutions to report escheated property. Every bank, banker, or financial institution having custody of a fund or other property to which no owner is known to them or the owner of which has not been heard from by them for more than seven years shall inform the attorney general of that fact. (§ 14.08 ch 101 SLA 1962)

NOTES TO DECISIONS

Requiring bank to report is reasonable. — The mere requirement that banking associations furnish information touching the status of certain of their accounts, as provided in this section is not an undue or unreasonable interference with the conduct of their business. *Territory of Alas. v. First Nat'l Bank*, 22 F.2d 377 (9th Cir. 1927).

Bank account may not be disturbed until adjudged escheated. — The attorney general cannot disturb any bank account, or the bank's full control over it, unless and until, with the information he seeks from the bank, or otherwise, he shall have secured a valid judicial determination that the depositor died intestate, without heirs, in which case the deposit,

like other property, is subject to escheatment. In essence the result is the same as where, in the case of an administered estate, the probate court requires the deposit to be delivered to the administra-

tor, and ultimately, upon a finding of no heirs, turns it over to the state. Territory of Alas. v. First Nat'l Bank, 22 F.2d 377 (9th Cir. 1927).

Sec. 09.50.150. Escheat of money or property of defunct organizations or corporations. When an organization or corporation becomes defunct and leaves money or property belonging to it, and no person institutes a proceeding to have the money or property distributed within four years after the organization becomes defunct, the money or property escheats to the state and shall be delivered to the commissioner of revenue. If the person in possession of the money or property refuses to deliver it to the state, the attorney general shall bring an action to recover the money or property for the state. (§ 14.09 ch 101 SLA 1962)

Sec. 09.50.160. Recovery by claimant of money or property of defunct organizations or corporations. A person having a claim or interest in money or property of a defunct organization or corporation may bring an action for recovery of escheated money or property only within seven years after the corporation or organization becomes defunct. (§ 14.10 ch 101 SLA 1962)

Article 3. Abatement of Lewd Houses

Section	Section
170. Abatement of places used for immoral act	210. Order of abatement
180. Injunction	220. Proceeds of sale
190. Dismissal	230. Release of premises to owner
200. Contempt proceeding	240. Fine for contempt as lien on premises

Collateral references. — 24 Am. Jur. 66 C.J.S., Nuisances, §§ 45, 77, 102 — 2d, Disorderly Houses, §§ 23 — 36. 169.

Sec. 09.50.170. Abatement of places used for immoral act. A person who erects, establishes, continues, maintains, uses, owns, or leases a building, structure, or other place used for the purposes of lewdness, assignation, or prostitution or any other immoral act is guilty of maintaining a nuisance, and the building, structure, or place, or the ground itself in or upon which or in any part of which the lewdness, assignation, or prostitution is conducted, permitted, or carried on, continues or exists, and the furniture, fixtures, and other contents constitute a nuisance and may be enjoined and abated. (§ 20.01 ch 101 SLA 1962)

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date 1/14/86

REQUEST

Bill/Resolution No: HB 182
Title: Uniform Unclaimed Property Act

Sponsor: Governor
Requestor: _____
Date of Request: January 14, 1986

FISCAL DETAIL

Agency Affected: Department of Revenue
BRU: Audit

Components:
Audit Administration

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
OPERATING						
100 PERSONAL SERVICES	-0-	95.2	113.6	113.6	113.6	113.6
200 TRAVEL	-0-	2.0	2.0	2.0	2.0	2.0
300 CONTRACTUAL	-0-	57.0	57.0	57.0	57.0	57.0
400 SUPPLIES	-0-	2.5	2.5	2.5	2.5	2.5
500 EQUIPMENT	-0-	7.5	4.0	-0-	-0-	-0-
600 LANDS & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
700 GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
800 MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING	-0-	164.2	179.1	175.1	175.1	175.1
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	2000.0	4000.0	2000.0	2000.0	2000.0

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	164.2	179.1	175.1	175.1	175.1
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL	-0-	164.2	179.1	175.1	175.1	175.1

POSITIONS:

FULL-TIME	-0-	3.0	3.0	3.0	3.0	3.0
PART-TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

ANALYSIS: Please see attached.

Prepared By: Steven E. Kettel
Division: Audit Division

Phone: 465-2320
Date: January 14, 1986

Approved by Commissioner: [Signature]
Agency: Revenue

Date: January 14, 1986

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

Analysis of Costs

I. <u>Personal Service Costs</u>	<u>9 month</u>	<u>12 month</u>
Clerk Typist III	21.0	28.0
Tax Examiner I	22.5	30.0
Unclaimed Property Administrator	<u>41.7</u>	<u>55.6</u>
Total	\$95.2	\$113.6
II. <u>Travel</u>		
Training and Seminars by NAUPA	<u>\$2.0</u>	
III. <u>Contractual</u>		
Advertising	24.0	
Postage	6.0	
Data Processing Costs	15.0	
Telecommunications	5.0	
Forms Design and Printing	<u>7.0</u>	
Total	<u>\$57.0</u>	
IV. <u>Supplies</u>		
DP supplies, envelopes, office supplies		
Software	2.5	
V. <u>Equipment</u>		
Wang mini-computer	4.0	
Wang Printer	<u>3.5</u>	
Total	<u>\$7.5</u>	

Description of Unclaimed Property Program

Passage of this bill will require the Department of Revenue to establish a system for handling abandoned property by developing an accounting and recordkeeping system, acquiring a communications network and advertising statewide to locate abandoned or unclaimed property owners. To perform these functions additional staffing in the form of a Clerk Typist III, a tax examiner and an unclaimed property administrator is necessary.

The unclaimed property program requires that annual reports of unclaimed property be filed by holders (banks, insurance companies, utilities). Upon receipt the department must process the information and prepare the data for capture by a Wang mini-computer. On March 1 and September 1 of each year, the department will advertise throughout the state the list of persons having unclaimed property held for them by the holder. We anticipate that respondents to the advertisement will first call and then write, providing sufficient information to prove ownership in the property. A statewide toll free number will be staffed by examiners which are linked with on-line data files and who will be able to assist in matching the owner with their property.

The examiner will assist in locating holders of unclaimed and abandoned property through a compliance effort, and will also review and audit reports filed by holders. Independent efforts to locate property owners will be made by cross-matching the names provided by holders with permanent fund dividend files, drivers license and fishing license records, and voter's registration lists.

Other states have joined to form two support organizations, in which the Department of Revenue will participate: the National Association of Unclaimed Property Administrators (NAUPA) and the Unclaimed Property Clearinghouse. NAUPA is an organization which provides training, an exchange of ideas and information, program development for new members and a lobbying effort at the national level. The Clearinghouse audits large holders, especially eastern stock transfer agents, on behalf of the member states.

ANALYSIS OF LEGISLATION
RELATING TO UNCLAIMED PROPERTY

This bill applies to a wider range of abandoned intangible personal property than does the present AS 09.50.070, and provides for simple transfer of the custody of the property from the holder to the state rather than transfer of the title. Savings accounts, deposits, drafts, money orders, traveler's checks, safe deposit box contents, and wages are among the various property interests held by banking or financial organizations or by business associations which are covered by the bill (AS 34.45.110-160). Also included is money owed by any insurance or annuity agreement (AS 34.45.170), deposits held by utilities (AS 43.45.180), refunds held by business associations (AS 34.45.190), undistributed dividends, stock, and payments relating to a debt held by a corporation (AS 43.45.200), unclaimed property of a dissolved corporation (AS 43.45.210), intangible property held by fiduciaries, agents, courts and public agencies (AS 43.45.220-230), and unclaimed gift certificates. In general, any of these abandoned property interests may be claimed by the state if the records of the holder indicate that the amount held belongs to a person whose last known address was in this state. Holders of these property interests would be subject to the reporting requirements of the bill as set out in AS 34.45.280.

Abandonment would generally be presumed to have occurred if the owner has not claimed the property or contacted the holder in any way concerning it for a period of seven years (AS 34.45.110), except that a fifteen year period is established for traveler's checks, and a one year period is set for deposits held by utilities, unclaimed wages and property held by courts and public agencies. Stock may be presumed abandoned (AS 43.45.200) if at least seven dividends have been paid and unclaimed in a seven year period; otherwise the period continues to run until seven dividends have been paid and unclaimed.

Holders of property would be required to file an annual report with the Department of Revenue (AS 34.45.280) after first sending a notice to the last known address of each owner whose property is presumed abandoned. The department would then be required to publish a list of the names of owners believed to have abandoned property interests under the bill, and to otherwise exercise due diligence to ascertain the whereabouts of the owners (AS 34.45.310). The holder would then be required to pay or deliver the reported property to the department (AS 34.45.320). Thereafter, the holders would be relieved of all liability related to the disposition of the abandoned property. An owner may forever claim personal property from the department. Also, a person may make a claim in court against the department, but not against the holder (AS 34.45.330).

AS 34.45.170 provides that proceeds of a life insurance policy are presumed abandoned if the insurer is aware that the insured has died even though actual proof of death has not been furnished to the insurer. Subsection (d) provides that the application of an automatic premium loan provision will not be used to consume the proceeds of a policy and prevent the policy from being matured under subsection (a) if the insured has died or if the beneficiaries have otherwise become entitled to the proceeds of the policy.

The bill allows the department to offer to sell all abandoned personal property, within three years of receipt, except securities which generally must be held one year (AS 34.45.360). If the department sells any property, it must sell to the highest bidder at public sale.

The proceeds from the sale of personal property, along with all other funds received by the department under the bill would be deposited in the general fund of the state, but \$100,000 would be retained in a separate trust fund (AS 34.45.370). The department would be required to make prompt payment from the trust fund for any claim it determines to be valid, brought by the owners of the property. The department is authorized to hold a hearing to determine the merits of any claim to abandoned property; an owner aggrieved by a decision of the department would be required to follow established grievance procedures of the department and may appeal the department's final decision (AS 34.45.400).

Another state may make a claim to abandoned property if it appears the property should escheat to that state (AS 34.45.460). This section (as well as section 34.45.120), codifies court decisions determining rights among states to claim abandoned property. The bill would allow for reciprocal action by states in that the attorney general may bring an action in our courts on behalf of another state, and the department may request that the attorney general of another state bring a similar action on our behalf in the other state.

The Department of Revenue is authorized to adopt regulations to carry out the provisions of the bill (AS 34.45.730), may examine the books and records of a person whom the department has reason to believe had failed to report property subject to the bill (AS 34.45.290), and may bring an action to compel delivery of property wrongfully withheld by a holder (AS 34.45.450). The bill provides civil penalties for those who fail to comply with the provisions of the bill. Criminal sanction would be incurred by those who knowingly make false reports or refuse to deliver property as required under the bill (AS 34.45.470).

Unclaimed Property Bill Analysis
Page 3

This bill has been patterned after the Uniform Unclaimed Property Act (1981). The procedures set out in the Uniform Act are designed to safeguard the interests of both the state and the rightful owner of the property, if any. The reporting requirements imposed upon a holder, combined with the broader investigation and enforcement powers of the Department of Revenue makes it possible for the state to ascertain the whereabouts of abandoned property held in the state. Under existing law, the department has no express enforcement power either to locate or claim abandoned property. The Department of Law instead must bring an action in superior court to claim any amount of unclaimed property, including amounts under \$1. There is no specific provision in the current law authorizing any department to locate abandoned property and only financial institutions are expressly required to report unclaimed property (AS 09.50.140).

The official comments of the National Conference of Commissioners on Uniform State Laws offer additional explanation of the purposes of and the need for each part of this bill, and are available from the Department of Revenue.

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF REVENUE

POUCH 5
JUNEAU, ALASKA 99811
PHONE: (907) 465-2300

OFFICE OF THE COMMISSIONER

October 7, 1985

The Honorable Michael M. Miller
Chairman, House Judiciary Committee
Pouch V
Juneau, AK 99811

Subject: HB 182, Uniform Unclaimed Property Act

Dear Representative Miller:

The Department of Revenue is sincerely interested in working with you towards passage of HB 182 in the upcoming session. In a period of declining state revenues, this piece of consumer protection legislation will provide a relatively painless method of increasing receipts for the general fund. The fiscal note conservatively estimates that the state may be entitled to as much as \$3 million dollars of unclaimed property from such sources as abandoned savings accounts, insurance policies, securities and wages. Other states adopting this legislation in the recent past have received a windfall averaging ten dollars per each state citizen per year. For instance, three western states have reported that in the first full year of operation additional revenues received totaled \$730,000 (Idaho), \$5,000,000 (Nevada) and \$10,000,000 (Washington). Unlike Alaska, these states had active unclaimed property programs prior to adopting the 1981 Uniform Act. Due to the transient nature of this state's population, we can expect a higher incidence of unclaimed bank accounts, deposits and wages than our neighbors to the south. It has been the experience of other states that 25% of abandoned property is ultimately claimed by the rightful owners. The remaining 75% is available to the general fund.

In the last decade many states have become increasingly aware of the opportunities for collecting and returning to their residents unclaimed money, and using the "windfall" unreturned funds as general fund receipts for the benefit of all citizens of the state. As these states have sought to enforce their unclaimed property laws with enhanced vigor, legal obstacles have arisen. Conflicting interests between states and the lack of voluntary compliance by property holders are examples of problems states faced before enactment of the Uniform Act in 1981. To date, thirty-one states and the District of Columbia have enacted the Uniform Act or similar legislation.

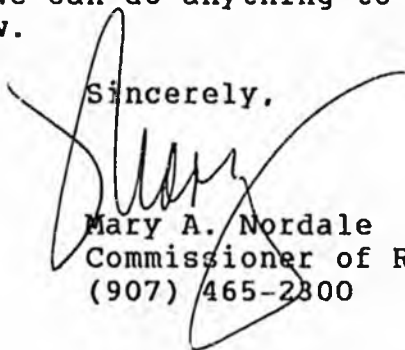
The Honorable Michael M. Miller
Page 2

Alaska's current unclaimed property law is behind the times. Enacted prior to statehood, it has not kept pace with the national trend in unclaimed property legislation. A recent U.S. Supreme Court decision in fact, places Alaska in an inferior position to other states which have enacted the Uniform Act in collecting certain types of unclaimed property.

Finally, this legislation is in the best interests of our citizens. Current law contains no prohibition against banks suspending interest payments or charging away dormant accounts through the levying of service charges. Likewise, insurance companies currently may reduce life insurance proceeds or cash values in the event the insured cannot be located. The proposed legislation puts an end to these financial institutions practices and places the state in the place of the consumer. Also, the department has records available to it (which banks, corporations and insurance companies do not) to successfully locate the missing property owner. The fiscal note attached to the bill will give this department the resources necessary to advertise when it comes into possession of unclaimed property.

Mike, I realize this important legislation is quite complex and not easily understood by those outside the financial community. My staff has prepared both a general explanation of the bill's provisions and a section by section analysis. I have enclosed a copy of both for your review. If we can do anything to help speed this bill along, please let me know.

Sincerely,



Mary A. Nordale
Commissioner of Revenue
(907) 465-2800

MAN:SEK:kg
Enclosures
85:117

cc: John L. Sund
Max F. Gruenberg, Jr.
Robin L. Taylor
Don Clocksin
Fritz Pettyjohn
Randy Phillips

UNIFORM UNCLAIMED PROPERTY

AS 34.45.110 establishes as a general proposition that all intangible property held or owing in the ordinary course of the holder's business is within the coverage of this Act. This section provides that unless a different time period is specified all intangible property which has remained unclaimed for more than 5 years is presumed abandoned. Sections .130-.260 deal with specific types of property and prescribe the events which raise a presumption of abandonment.

The general dormancy period of Alaska's current escheat property law is 7 years. Some legislatures have recently shortened that time period. Given the greater mobility of the population in 1985 as compared with that of a quarter century ago when the 7-year dormancy period was first established, a reduction of the general dormancy period to 5 years is warranted. Additionally, the experiences of those states with shorter abandonment periods reveal that they are able to return to owners a substantially higher percentage of property reported as abandoned. There are exceptions in this Act to the 5-year dormancy period, however. For instance, statistical evidence indicates that a period of 15 years continues to be appropriate in the case of travelers checks. A majority of travelers checks will ultimately be presented for payment within the 15-year period. Also, in certain instances a shorter period is appropriate. For instance, the likelihood of finding the owner of a payroll check is materially decreased after one year. Hence, Section .250 has a one year dormancy period for unpaid wages.

Subsection (b) is intended to make clear that property is reportable notwithstanding that the owner, who has lost or otherwise forgotten his entitlement to property, fails to present to the holder evidence of his ownership or to make a demand for payment. Since the holder is indemnified against any loss resulting from the delivery of the property to the Department, no possible harm can result in requiring that holders turn over property, even though the owner has not presented proof of death or surrendered the insurance policy, savings account passbook, the gift certificate, winning racing ticket, or other memorandum of ownership.

A draft issued by a property or casualty insurance company as an offer of settlement of a claim for property damage or personal injury is not subject to the presumption of abandonment if the offer was not accepted by the payee. In this situation, the draft never became payable or distributable. The issue of whether a draft is accepted by a payee is a question of fact that is not addressed by the Act.

AS 34.45.120 describes the general circumstances under which a state may claim abandoned intangible property. (There is a special provision for travelers checks and money orders in Section .130.) This section closely follows the language of Texas vs. New Jersey, in which the court reasoned that unclaimed property is an asset of the creditor and should generally be paid to the creditor state, i.e., the state of residence of the apparent owner. Consistent with that reasoning it held that unclaimed intangible property is subject to escheat or custody as unclaimed property first by the state of the owner's last known address. If that state cannot claim the property, the state of the holder's domicile is entitled to it.

(Uniform unclaimed property con't.)

Consistent with the court's concern for a simple rule which would avoid the complexities of proving domicile and residence the court established the priority on the basis of information contained in the holder's records. Recognizing that the holder's records might be incomplete, the court's ruling permits a claimant state to prove by other means that the last known address of the owner is within its boundaries. Where the holder's records do not show the owner's last address, the second priority claimant, the state of domicile of the holder, is entitled to claim the property. The state of the owner's last known address can later assume custody from the state of the holder's domicile by showing that the last known address of the owner is within its borders. Likewise, if the state of last known address does not have an unclaimed property law which applies to the property, the state of the holder's domicile can take the property, again subject to the right of the state of last known address to recover the property if and when it enacts an unclaimed property or escheat law.

Paragraph (1) restates the factual situation in Texas vs. New Jersey. As the court there said ". . . the address on the records of a debtor, which in most cases will be the only one available, should be the only relevant last known address." If the holder's records are erroneous and the owner is in another state, that other state can reclaim the property pursuant to Section 25.

Paragraph (2) covers the situation in which the identity of the person entitled to the property is unknown, but it is established, either through the holder's records or by some other means, that the property was owned by or payable to a person whose last known address was within the claiming state. Reunification of the owner with his property in this circumstance is impossible, and insofar as that issue is concerned, it makes no difference whether the property is delivered to the state of the holder's domicile or the state of the owner's last known address. However, following the equitable concept of distributing unclaimed property among creditor states the subsection directs that, where there is no record of a name but there is a record of last known address, the state of last known address can claim the property.

Paragraph (3) is the secondary rule of Texas vs. New Jersey. The Supreme Court ruled that, when property is owed to persons for whom there are no addresses, the property will be subject to escheat by the state of the holder's domicile, provided that another state may later claim upon proof that the last known address of the person entitled to the property was within its borders.

Paragraph (4) provides that, if the law of the state of the owner's last known address does not provide for escheat or taking custody of the unclaimed property or if that state's escheat or unclaimed property law is not applicable to the property in question, the property is subject to claim by the state in which the holder is domiciled. In that instance, the state of the owner's last known address may thereafter claim the property if it enacts an applicable unclaimed property law.

Paragraph (5) provides that, when the last known address of the apparent owner is in a foreign nation the state in which the holder is domiciled may claim the property.

(Uniform unclaimed property con't.)

Paragraph (6) provides for a situation in which neither of the priority claims discussed in Texas vs. New Jersey can be made, but the state has a genuine and important contact with the property.

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

Wholly foreign transactions are excluded from the coverage of the Act.

AS 34.45.130 concerns with travelers checks and money orders which are unclaimed. Subsections (a) and (b) deal with the requirements for presuming this property abandoned. Although the general dormancy period has been reduced for many kinds of property, the 15 year period for travelers checks and the 7-year period for money orders is retained. Statistical and economic evidence has shown that these periods continue to be appropriate.

Subsection (c) prohibits holders from reducing outstanding Travelers check and money order balances through service charges unless a written contract had been entered into.

Subsection (d) and (e) adopt the rules, including the dates, provided by congressional legislation which determine the state entitled to claim sums payable on travelers checks, money orders, and similar instruments, see Pub.L.93-495, §§ 603, 604 (Oct. 28, 1974), 88 Stat. 1525-26, 12 U.S.C. §§ 2501 et seq. The congressional action was in response to the Supreme Court decision in Pennsylvania vs. New York, 407 U.S. 206 (1972), which held that the state of corporate domicile was entitled to escheat money orders when there was no last known address of the purchaser although the property had been purchased in other states. Subsection (d) substitutes as the test for asserting a claim to travelers checks and money orders the place of purchase rather than the state of incorporation of the issuer.

AS 34.45.150 covers checks and similar instruments issued or certified by banking and financial organizations. Checks and other instruments issued by persons other than banking and financial organizations are covered generally by Section .110.

AS 34.45.160 covers bank accounts. Bank deposit accounts are generally presumed abandoned unless the depositor has within the past five years, increased or decreased the account balance or had other written communication with the bank or financial organization. Activity by an owner with another account in the bank or another active relationship between the owner and the holder such as a loan will prevent abandonment.

Subsection (c) is consistent with those cases which have construed the 1966 Act to require the reporting of savings accounts (together with interest thereon) and checking accounts where the holder for purposes of reporting seeks to impose service charges and cease the payment of interest but regularly reverses or cancels such charges and cessation of interest for customers that reactivate their accounts. If the holder does not have a contract with the owner providing for charges he must, in any event, report and deliver the property.

(Uniform unclaimed property con't.)

Paragraph (2) of subsection (c) imposes the additional requirement that notice of the imposition of such charges must be provided to the owner at his last known address. Since the cost of mailing such a notice might approximate the amount of \$10.00 balance, notices are required only when the balance exceeds \$10.00.

Subsection (d) prevents a certificate of deposit with automatic renewal provisions from being treated as perpetually exempt from a presumption of abandonment. The subsection also insures that no interest penalty will result from the delivery of such property during the interest term then in effect.

AS 34.45.170, Subsections (a) and (b) require that money held owing under life insurance or endowment insurance policies is presumed abandoned if unclaimed for more than five years after the money became due. The last known address is the address of the insured unless the records of the company show the address of the beneficiary.

Paragraph (1) of subsection (c) provides that proceeds of a life insurance policy are presumed abandoned if the insurer is aware that the insured has died even though actual proof of death has not been furnished to the insurer. Paragraph (2) provides that the policy proceeds are payable if the limiting age under the mortality table on which the reserve is based is reached and there has been no activity with respect to the policy for 2 years.

Subsection (d) provides that the application of an automatic premium loan provision will not be used to consume the proceeds of a policy and prevent the policy from being matured under subsection (a) if the insured has died or if the beneficiaries have otherwise become entitled to the proceeds of the policy.

Subsection (e) imposes an affirmative duty upon the insurer to ascertain a correct address of an insured who fails to receive notice of the exercise of the nonforfeiture option. In these cases it is expected that as a result of the search the insurer will become aware that the insured is deceased. Subsection (f) then requires the insurer to attempt to locate the beneficiaries and pay the policy proceeds.

Subsection (g) provides for the insurer to request the addresses of beneficiaries if the insured changes a beneficiary designation. Most insurance companies do not request address information for beneficiaries. Since in many instances the initial beneficiary resides in the same household as the insured and the administrative burden of accumulating address information is thought to be considerable, the obligation to obtain the address is deferred until such time as a change of beneficiary occurs. By making the commencement date of this subsection 2 years after enactment, insurers will be provided sufficient time within which to undertake the necessary administrative steps to implement this provision.

AS 34.45.180 requires utility companies to presume abandonment of deposits that remain unclaimed for more than one year after termination of service.

AS 34.45.190 provides that court or administrative agency ordered refunds which

(Uniform unclaimed property con't.)

remain unclaimed for more than one year are presumed abandoned. The short dormancy period of one year is justified since no possible advantage can occur to the owner by leaving his property with the holder, and failure to claim a refund is strong evidence that the property has been abandoned.

AS 34.45.200 covers underlying shares of stock and principal amounts of debt securities, i.e., stock certificates in the possession of the record owner. Dividends and other distributions are to be reported pursuant to AS 34.45.110.

Several states have enacted specific provisions for the presumption of abandonment of underlying share certificates. Typical is the provision of California (Cal. Civ. Pro. Code § 1516) which provides that the underlying intangible interest is presumed abandoned if the owner has not contacted the company within the abandonment period and he cannot be found whether or not dividends on that interest are paid. Connecticut, Florida, Indiana, Massachusetts, Montana, New York, Rhode Island, Wisconsin and Virginia also have specific provisions for the presumption of abandonment of underlying shares. States with escheat laws similar to New Jersey's would be entitled to claim underlying shares based on the Standard Oil precedent.

This section establishes a longer dormancy period, (7 years) for this property than for other property covered by this Act. Further this section requires that there must be at least 7 consecutive dividend checks issued during this period of dormancy which remain uncashed. Additionally, the presumption of abandonment will not arise in the event the missing owner has communicated with the association. In this regard, the communication would normally be with an agent of the association such as a transfer agent or a dividend disbursing agent. Of course, such communication would satisfy the provision of this section. This section combines both a period of inactivity, 7 years, with the requirement that distributions paid on the underlying intangible interest remain unclaimed, thus avoiding concerns that abandonment should not be presumed where a shareholder has not contacted a non-dividend paying company.

If the conditions leading to a presumption of abandonment have occurred, the holder (issuer of the security) must report to the state and if the holder has in its records an address of the owner, it must send written notice to the owner in an effort to reunite the owner with his property. Thereafter the Department may give notice by advertising the existence of the property and send mailed notice to owners of property valued at \$50 or more.

Many owners will be located through the publication and mail notice requirements of the Act. In the event abandonment is presumed and the owner subsequently appears, there are at least 3 formal opportunities to reunite that owner with the issuer before a duplicate certificate is turned over to the Department.

If the owner is not located, however, a duplicate certificate is issued to the Department pursuant to Section 320 (d) and the original certificate will be cancelled. Thereafter, if the owner appears, the duplicate certificate may be claimed from the Department.

(Uniform unclaimed property con't.)

The issuer who delivers a duplicate certificate under the Act is protected, because upon delivery it is relieved of all liability to the extent of the value of the property delivered under Section 20. If any person thereafter makes a claim against the holder, the Department is required to indemnify the holder against any liability on the claim. The required indemnity is complete, and it is not restricted to the value of the property turned over.

Subsection (e) would not require the reporting of interests enrolled in dividend reinvestment plans unless the owner has other stock which is not in dividend reinvestment and which would be presumed abandoned under Section .200.

AS 34.45.210 provides a dormancy period of 1 year for intangible property distributable during the course of dissolution of a business association.

AS 34.45.220 provides that intangible property held by agents and fiduciaries is presumed abandoned after a 5 year period after the property became payable or distributable. Intangible property is not "payable or distributable" under subsection (a) if the fiduciary possesses merely the discretion to pay or distribute property and has not exercised the discretion.

Subsection (d) is designed to clarify the status of transfer agents. That is, they are agents for the business association and the Department must look to the principal, the business association, as the holder, unless they have contractually undertaken the obligation to report the property. A later section provides that the Department is authorized to examine the records of the holder or records relating to the holder which are in the possession of the transfer agent. See Section .290.

AS 34.45.240 provides that both gift certificates and credit memos are covered under abandoned property law.

AS 34.45.250 covers wages unclaimed or unpaid. The abandonment period is only 1 year since the chance of locating a missing owner of a wage check material decreases with the passage of time.

AS 34.45.260 provides that all property held in safe deposit boxes and remaining unclaimed for 5 years after the lease or rental period expires are presumed abandoned. This Section is not intended to cover property left in places other than safekeeping repositories, for example, airport lockers or field warehouses. Its coverage is limited to safe deposit boxes in banks and other financial institutions. Alaska has provisions apart from the unclaimed property law for the disposition of property abandoned in such places as airport lockers.

AS 34.45.280 requires holders of abandoned property to report to the Department of Revenue only property with a value of \$25 or more.

Before filing its report its report, the holder must send written notice to the apparent owner, if the owner's claim is not barred by the statute of limitations, the property has a value of \$50 or more, and the holder's records do not disclose the address to be inaccurate.

(Uniform unclaimed property con't.)

The subsection requires that the notice be sent not more than 120 days before the filing of the report.

AS 34.45.290 is designed to facilitate compliance with the Act. Subsection (a) provides for the filing of a negative report if the Department requires such a report and will minimize disruption which would otherwise be caused to the holder if an examination of records instead were conducted by the Department.

Subsection (c) is intended to provide a useful method whereby the Department can conduct a single examination of a dividend disbursing agent or transfer agent serving in such capacity for numerous business associations. This section, together with Section .460, will enable several states to conduct joint examinations of numerous holders at one time, saving substantial expense and thus permitting examinations which might otherwise be economically unfeasible.

Subsection (d) permits the use of estimates in instances where the holder has failed to report and deliver property that is abandoned and no longer has records with which to prepare such a report. Additionally, if the holder fails to maintain records of the last known address, states can assert claims based on any other records which might exist. This subsection does not resolve the issue of whether the domiciliary state of the holder can also claim the property from the holder.

It is the experience of other states that many holders are not retaining records of addresses of owners. This section makes it mandatory that holders maintain addresses if they initially had an address. The experience of several states has confirmed that substantial amounts of unclaimed property, for which at one time the holder had records of address, are now subject to claim only by the domiciliary state of the holder since the recorded address has not been retained.

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

Initially, the period for which records of address must be obtained is established at 10 years from the date the property was first reportable as abandoned property. For example, in the case of property that would be reportable in the aggregate without the name and address of the apparent owner, a state might adopt a rule providing for a relatively short record retention period on condition that the holder maintain a record sufficient to satisfy the requirements of Texas vs. New Jersey that there be a last known address or that the state can prove that the last known address of the creditor was within its borders.

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

Subsections (a) and (b)(3) of AS 34.45.310 set forth the dates by which the Department must publish the names of missing owners and mail notification to the last known address of each owner.

(Uniform unclaimed property con't.)

Subsection (c) and (d) have set \$50 as the minimum value required for advertising and notification.

AS 34.45.320 requires the holder to pay over the property within 6 months after reporting its existence. However, if the holder does not know the owner's name or the value of the property is less than \$25, then the property must be turned over to the Department at the time of filing the report. The notification provisions of Sections .290 and .310 often stimulate owners to claim their property and the retention period of 6 months permits the holder to honor these claims.

Subsection (d) provides that the holder of an underlying stock interest presumed abandoned shall deliver a duplicate certificate to the Department. Upon delivery the holder is relieved of all liability to any person occasioned by the reappearance of the original certificate or the issuance of the duplicate certificate.

AS 34.45.330 states that when property is turned over to the state, the holder is relieved of all liability for any turnover made in good faith. Subsection (e) sets forth a definition of good faith which allows the holder to rely on its record if they meet reasonable commercial standards of practice in the industry.

The section also permits the holder to obtain reimbursement for claims it elected to pay to owners who appeared after the property was turned over.

If after turnover, any person or another state makes a claim on the holder, the state, upon request, is required to defend the holder and indemnify him against any liability. This provision is particularly important in light of the underlying share provisions of Section.200.

AS 34.45.340 provides for some substantial retention periods by the Department. For instance, securities obtained pursuant to Section .200 will generally be held for a 3-year period prior to sale. The owner will be entitled to dividends, interest or other increment realized or accruing on the property during this 3-year period.

AS 34.45.360 provides that within 3 years of receipt the Department will sell abandoned property. Subsection (c) provides an exception, that securities will generally be held a minimum of 1 year.

If the security is one which has been presumed abandoned pursuant to Section .200 the Department is expected to hold the security for 3 years. It is permitted to sell the security within this 3-year period, but the missing owner is entitled to receive the proceeds of the sale or the market value of the securities at the time the claim is made. Thus there is a genuine incentive for the Department to hold this property for the requisite 3-year period.

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

(Uniform unclaimed property con't.)

AS 34.45.370 provides that the Department will retain in a separate trust fund an amount not less than \$100,00 from which prompt payment of claims allowed shall be made.

AS 34.45.380 provides that if a valid claim to property turned over to the Department is made, the Department is to return the property or, if it has been sold, to pay the net proceeds of sale. If the claim is for an underlying share interest presumed abandoned under Section .200 and the Department has sold the property within the 3 years, the claimant is entitled to the net proceeds of sale or the market value of the property at the time claim was made, whichever is higher, together with any additional amount payable under Section .340.

Subsections (c) and (d) set forth provisions which provide for the payment of interest.

Subsection (d) provides for the Department to pay interest on property which was interest bearing to the owner. The rate of interest will be fixed at the rate prescribed in AS 45.45.010.

AS 34.45.390 (a)(1) provides that, if property was paid to the state of the holder's domicile because the last known address of the owner was unknown and it is later established that the last known address of the person entitled to the property was in another state, the state of domicile should pay over to the state of last known address.

Paragraph (a)(2) provides that if the state of the last known address subsequently enacts an unclaimed property law which covers the property, the taking state must turn it over.

Paragraph (a)(3) provides that the state of the actual owner can reclaim this property from the taking state.

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

Subsection (c) provides that the state that initially receives the property and which is requested to remit it to another state should be indemnified by the claiming state.

AS 34.45.400 states that after property is presumed abandoned and reported to the Department, the Department must attempt to locate the missing owner. Thereafter, if the property has been delivered to the Department and the owner or his representatives appears, the Department must pay the claim. The owner's rights are never cut off.

AS 34.45.410(a) allows the Department to decline to take property of minimal value.

(Uniform unclaimed property con't.)

Subsection (b) authorizes the Department to assume custody of property prior to the time for presuming abandonment. This enables them to take possession of property, such as the contents of a safe deposit box repository, when the holder is terminating business but the property is not yet reportable. The property must be held by the Department until the abandonment period runs and then the property will be subject to the other provisions of the Act.

AS 34.45.420 provides for the disposition of property which has no commercial value. As an example, the contents of safety deposit boxes often include such items as rent receipts, personal correspondence and lapsed insurance policies.

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

This section provides that the Department in exercising its discretion in disposing of such property is not subject to a claim by the missing owner.

AS 34.45.430 is written to insure that although the owner's claim against the holder may be barred by the statute of limitations prior to the effective date of the Act, the holder is not relieved of his obligation to pay abandoned property to the Department. Even though the statute of limitations has run before the effective date of the Act, the holder must report and deliver the property to the state if the holder does not regularly enforce the statute.

Subsection (b) provides that the Department must commence an action against a holder within 10 years after the time the property was first reportable. The 10-year limitation period will provide a holder with a cut-off date on which it can rely.

This section has an added provision that the expiration of time periods set forth in contracts will not prevent the property from becoming reportable. Section 2 abrogates another contractual condition often asserted as a defense to reporting property otherwise presumed abandoned, the failure to present the evidence of indebtedness.

AS 34.45.450 allows Alaska to use the courts outside this state to enforce this Act.

AS 34.45.460 provides for cooperation among the many states that have unclaimed property laws.

In many instances holders apparently fail to report based on the correct assumption that individual and distant states will not go to the expense of auditing records. This section will permit spreading the very real expense of conducting audits among several collecting states and the pooling of information which should make enforcement of the Act less burdensome to the state and potentially less burdensome to the major corporate holders.

(Uniform unclaimed property con't.)

Action by one state for another as expressly permitted by this section. In some cases the administrator of a state may deem it wise to seek counsel in a foreign jurisdiction.

AS 34.45.700 provides the Department 24 months in which to locate owners of abandoned property before permitting heir finders access to the Department's records of unclaimed property.

AS 34.45.710 excludes from coverage all foreign transactions.

AS 34.45.710(a) provides that if a state had an unclaimed property law prior to the adoption of this Act, a holder is not relieved of his duty to report and pay over the property abandoned under the Act then existing.

Subsection (b) deals with the problem of how far back a holder must check his records to determine what property not subject to the prior Act must be paid to the state under this Act. The period chosen is 10 years. A holder is required to pay to the state any property which 10 years before the date of enactment would have been payable in the enacting state if this Act had been in effect. For example, if Alaska enacts the new Act effective January 1, 1985 for property not previously presumed abandoned, the holder must report it if, as of January 1, 1975, it had been unclaimed for the abandonment period.

However, some property subject to this Act but which was not covered by a prior Act may have been paid to another state. If a holder has already paid this property to another state under its then existing unclaimed or abandoned property laws, it is not required to pay again to this State. Nothing in this section, however prohibits this State from making a claim on the state to which the property was originally paid.

AS 34.45.770 provides definitions for important terms used in the Act.

Prepared by: Steven E. Kettel
Audit Division
October 2, 1985

Explanation of Escheat and Unclaimed Property Legislation

The bill applies to a wider range of abandoned intangible personal property than does the present AS 09.50.070, and provides for simple transfer of the custody of the property from the holder to the state, rather than transfer of the title. Savings accounts, deposits, drafts, money orders, traveler's checks, and safe deposit box contents are among the various property interests held by banking or financial organizations or by business associations which are covered by the bill. Also included is money owed by any insurance company, including money owed under a life insurance or annuity agreement; deposits and refunds held by utilities; undistributed dividends, stock and intangible personal property held by private fiduciaries, public officers, and state courts; and any unclaimed property of a dissolved corporation.

In general, any of these property interests which have been abandoned might be claimed by the state if the records of the holder indicate that the amount held and owed belongs to a person whose last known address was in this state. Abandonment would generally be presumed to have occurred if the owner has not claimed the property or contacted the holder in any way concerning it for a period of seven years except that a fifteen year period is established for traveler's checks. Stocks may be presumed abandoned only if at least seven dividends have been paid and unclaimed in a seven year period; otherwise the period would continue to run until seven dividends have been paid and unclaimed.

Holders of property would be required to file an annual report with the Department of Revenue after first sending a notice to the last known address of each owner whose property is presumed abandoned. The department would then be required to publish a list of the names of owners believed to have abandoned property interests, and to otherwise exercise due diligence to ascertain the whereabouts of the owners. Thereafter, the holders would be relieved of all liability related to the disposition of the abandoned property. As the bill now stands, an owner may forever claim personal property from the department. Also, a person might make a claim in court against the department, but not against the holder.

(Escheat and Unclaimed Property Legislation Explanation Cont.)

Under the bill, insurance companies would be required to report proceeds owed to an insured or to beneficiaries. This would include reporting proceeds if a life insurance company had exercised a right of nonforfeiture at the time the insured would have attained the limiting age under the mortality table on which the reserve is based and the proceeds of the policy remain unclaimed for more than seven years after that. This provision is necessary because most insurance policies provide for the cash surrender value of a policy to be automatically used to pay any premium payments which the insured has failed to make. If an insured has ceased making premium payments because he or she has died, and if the beneficiaries are unaware of the existence of the policy, the cash surrender value of the policy will almost invariably be exhausted before the insured's age reaches the limiting age according to the mortality table on which the reserve is based.

The bill allows the department to offer to sell all abandoned personal property, without specifying a time period that the property must be held before sale. The bill requires the department to hold most securities for one year unless it specifically finds that it would be against the state's interest to do so.

The proceeds from sale of abandoned personal property, along with all other funds received by the department under the bill, with the exception of \$100,000 retained in a separate trust fund, would be deposited in the general fund. The department would be required to make prompt payment from the trust fund of any claim which it determines to be valid brought by owners of property which had been turned over to the department. The department would be authorized to hold a hearing to determine the merits of any claim to abandoned property; an owner aggrieved by a decision of the department may appeal the department's final decision. Another state would also be able to make claims to abandoned property.

The Department of Revenue would be required to adopt regulations to carry out the provisions of the bill, would be authorized to examine the books and records to determine failure to report property subject to the bill, and could bring an action to compel delivery of property wrongfully

(Escheat and Unclaimed Property Legislation Explanation Cont.)

withheld by a holder. The bill provides civil penalties for those who fail to comply with the provisions of the law. Criminal sanctions would be incurred by those who knowingly make false reports or refuse to deliver property.

The procedures set out in the Uniform Act are designed to safeguard the interests of both the state and the rightful owner of the property. Under existing law, the department has no express enforcement power either to locate or to claim abandoned property. The Department of Law instead must bring an action in superior court to claim any amount of unclaimed property, including amounts under \$1. There is no specific provision in the current law authorizing any department to locate abandoned property, and only financial institutions are expressly required to report unclaimed property.

The expansion of the categories of personal property affected by the Act would help to obtain greater revenue for the state. At the same time, the bill would serve the public purpose of re-uniting owners, or heirs of owners, with their property. Correspondence with Minnesota, a leader in implementation of an earlier version of the Uniform Act, and our own experience shows that approximately 25 percent of abandoned property is ultimately claimed by rightful owners.

The Alaska Department of Law, acting under the reporting requirements currently contained in AS 09.50.140, received abandoned account reports from several Alaska banks totaling approximately \$500,000 in 1979 and about \$1 million in 1980. These amounts include only one category of unclaimed property and appear to be understated because of suspension of interest payments and levying of service charges. Current law contains no prohibition against suspending interest or "charging away" dormant accounts through levying of service charges. The bill has provisions covering both practices. It would prohibit suspension of interest payments or levying service charges except under the same terms that the bank's contract with the customer allows charges or suspension of interest. The state would therefore stand in the shoes of the customer when the seven year period has run and may claim any interest due, and demand that there be no service charges except those agreed upon between the bank and the customer.

(Escheat and Unclaimed Property Legislation Analysis Cont.)

Revenues we expect to accrue to the general fund and costs to operate an unclaimed property program may be estimated based on other states' experiences in their initial years under the new Act.

Nevada began administering an unclaimed property program in 1983. In the year prior to enactment \$32,500 was voluntarily paid into the state. For FY 84, \$5 million was reported, with \$1.5 million being remitted to owners. Of the amount remitted, \$250,000 was from unclaimed wages (high transient state), small amounts from unclaimed dividends and insurance policies, and the remaining amount was from banks. They project total revenues in FY 85 to net \$2.2 million. They believe the greatest potential to be in the area of insurance companies. Nevada's costs to administer the program, not including personnel service costs and the original startup costs (data processing, forms design and printing), totaled about \$20,000. This included advertising \$15,000, postage \$3,000, and telephone \$2,000.

Idaho's revenues jumped from an average of \$75,000 per year to \$730,000 in the first year after adoption of the Uniform Act. They returned 10% to the original owners. Their expenses to operate the program are paid directly from program revenues. They were unable to give us a breakdown of costs.

Maine's revenues went from an average of \$350,000 per year to \$1,500,000 after passage of the Uniform Act.

Closer to home, Washington merely changed their holding period from 12 years to 5 years in FY 83 and collected \$10.4 million.

It is our opinion that the amount of receipts an expanded unclaimed property program would bring to Alaska is contingent upon proper funding by the legislature. At a minimum, we should request \$25,000 to be allocated to advertising, forms printing, long distance telephone and postage. Those states we talked to indicated that it is essential to "get the word out" through correspondence, public notice and public training seminars in order to effect any kind of compliance. We would also like to contract with a Los Angeles CPA firm to provide computer programming and staff training, at an estimated cost of \$48,000. They come well recommended by other states that have utilized their services.

American Express Company
Office of Secretary
American Express Plaza
New York, New York 10004



April 15, 1985

Representative M. N. Miller
Chairman of the Judiciary Committee
Pouch V
Juneau, Alaska 99811

Re: House Bill No. 182

Dear Representative Miller:

We have reviewed House Bill No. 182, which, if enacted, would give Alaska its first comprehensive abandoned property law. Of particular concern to us are the sections dealing with property held by corporations and financial organizations.

We are pleased to see that Alaska House Bill 182 would enact a 15 year abandonment period for travelers checks and a seven year abandonment period for money orders and similar instruments.

These provisions are substantially in line with the 1981 Uniform Unclaimed Property Act. As a company that reports unclaimed funds to all states, we heartily endorse the concept of uniformity, and accordingly support passage of House Bill No. 182.

Very truly yours,

A handwritten signature in dark ink, appearing to read "SPN", written over a horizontal line.

Stephen P. Norman
Secretary

SPN:ldk

BILL SHEFFIELD
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the disposition of unclaimed real and personal property. A detailed analysis of the bill and its relationship to current statutes follows. In addition, the official commentary on the Uniform Unclaimed Property Act (1981), by the National Conference of Commissioners on Uniform State Laws (NCCUSL), should be consulted with regard to the portion of the bill that deals with unclaimed personal property.

The personal property portion of the bill is derived in large part from the Uniform Unclaimed Property Act (1981) which the NCCUSL has approved and recommended for enactment by all states. The 1981 Act is a revision of the NCCUSL's 1966 Uniform Disposition of Unclaimed Property Act.

This bill applies to a wider range of abandoned intangible personal property than does the present AS 09.50.070, and provides for simple transfer of the custody of the personal property from the holder to the state, rather than transfer of the title. Savings accounts, deposits, drafts, money orders, traveler's checks, and safe deposit box contents are among the various property interests held by banking or financial organizations or by business associations which are covered by the bill (proposed AS 34.45.110, 34.45.140, 34.45.150, 34.45.160, 34.45.260). Also included is money owed by an insurance company, specifically including money owed under a life insurance policy or annuity agreement (proposed AS 34.45.170); deposits and refunds held by utilities (proposed AS 34.45.180); undistributed dividends, stock, and payments relating to a debt, held by a corporation (proposed AS 34.45.200); intangible personal property held by private fiduciaries (proposed AS 34.45.220), public officers, and state courts (proposed AS 34.45.230); and any

unclaimed property of a dissolved corporation (proposed AS 34.45.210).

In general, any of these property interests that have been abandoned might be claimed by the state if it is established that the amount held and owed belongs to a person whose last known address was in this state, or if the holder of the property is domiciled in this state (proposed AS 34.45.120 and 34.45.140). Holders of these property interests would be subject to the reporting requirements of the bill, which are set out in proposed AS 34.45.280. Abandonment would generally be presumed to have occurred if the owner has not claimed the property or contacted the holder in any way concerning it for a period of five years (proposed AS 34.45.110), except that a 15-year period is established for travelers checks and a seven-year period is established for money orders (proposed AS 34.45.140). Also, special provisions are made for abandonment of stock certificates or similar ownership interests in a business association. Stocks may be presumed abandoned (proposed AS 34.45.200) only if at least seven dividends have been paid and unclaimed in a seven-year period; otherwise the period would continue to run until seven dividends have been paid and not claimed. Proposed AS 34.45.200 distinguishes between dividends themselves (or any other money) that may simply be transferred to the department after five years, and the underlying interest in a business association (usually shares) which represents an interest greater than money.

The period currently prescribed in AS 09.50.070 for presumption of abandonment is seven years for all property. The NCCUSL drafting committee recommends a five-year period for most property, with exceptions as discussed. Most other states now either employ a five-year period or are considering it.

Holders of property would be required to file an annual report with the Department of Revenue (proposed AS 34.45.280) after first sending a notice to the last known address of each owner whose property is presumed abandoned (proposed AS 34.45.280(e)). The department would then be required to publish a list of the names of owners believed to have abandoned property interests under the bill, and to otherwise exercise due diligence to ascertain the whereabouts of the owners (proposed AS 34.45.310). Except in certain narrowly defined circumstances, the holders would then be required to pay or deliver the reported property to the department (proposed AS 34.45.320). After that, the holders would be relieved of all liability related to the disposition of the abandoned property (proposed AS 34.45.330). An

owner may forever claim personal property from the department (proposed AS 34.45.380). Also, a person might make a claim in court against the department, but not against the holder (proposed AS 34.45.330).

Under the bill, insurance companies would be required to report proceeds owed to an insured or to a beneficiary under the general provisions of proposed AS 34.45.110. Life insurance companies are specifically covered in proposed AS 34.45.170, which applies a five-year abandonment period to money due and payable under a life or endowment insurance policy or an annuity contract. Most life insurance policies provide for the cash surrender value of a policy to be automatically used to pay any premium payments which the insured has failed to make (or contain other nonforfeiture provisions such as extended term insurance or reduced paid-up life insurance). If an insured has stopped making premium payments because he or she has died, and if the beneficiaries are unaware of the existence of the policy, the cash surrender value of the policy will almost invariably be exhausted before the insured's age reaches the limiting age according to the mortality table on which the reserve is based. Proposed AS 34.45.170(d) provides that a nonforfeiture provision cannot prevent a policy from being matured or terminated under the provisions of proposed AS 34.45.170(a) if the insured has died or the insured or beneficiary has otherwise become entitled to the proceeds of the policy before depletion of the cash surrender value of the policy.

Within three years after receipt of abandoned personal property, the department must sell it to the highest bidder at public sale (proposed AS 34.45.360(a)), except that some types of securities held by the department must be held at least one year (proposed AS 34.45.360(c)); other types must be held at least three years before sale (proposed AS 34.45.360(d)).

The proceeds from sale of abandoned personal property, along with all other funds received by the department under the bill, would be deposited in the general fund of the state, but \$100,000 would be retained in a separate trust fund. The department would be required to make prompt payment from the trust fund of a claim, that it determined to be valid, brought by owners of property that had been turned over to the department (proposed AS 34.45.370 -- 34.45.380). The department would be authorized to determine the merits of a claim to abandoned personal property (proposed AS 34.45.380), and an owner aggrieved by a decision of the department would be required to follow established grievance

procedures of the department and then, if not satisfied, could appeal the department's final decision (proposed AS 34.45.400).

Another state would also be able to make claims to abandoned personal property if it appeared that the property should escheat to that state rather than to the State of Alaska (proposed AS 34.45.390). This section (as well as proposed AS 34.45.110 -- 34.45.140) codifies court decisions determining rights among states to claim abandoned property. Under the bill, the Department of Revenue would be required to adopt regulations to carry out the provisions of the bill (proposed AS 34.45.730), would be authorized to examine the books and records of a person whom the department had reason to believe had failed to report property subject to the bill (proposed AS 34.45.290), and could bring an action to compel delivery of property wrongfully withheld by a holder (proposed AS 34.45.450). The bill provides for the possibility of civil penalties for those who fail to comply with the provisions of the bill; criminal sanctions would be incurred by those who wilfully refuse to pay or deliver property or perform other duties as required under the bill (proposed AS 34.45.470).

The procedures set out in the Uniform Act are designed to safeguard the interests of both the state and the rightful owner of the property, if any. In the first place, the reporting requirements that would be imposed upon a holder, combined with the broader investigation and enforcement powers of the Department of Revenue and the addition of criminal penalties for wilful failure to pay or deliver, would make it possible for the state to ascertain the whereabouts of abandoned property held in this state and claim it. Under existing law, the department has no express enforcement power either to locate or to claim abandoned property. The Department of Law instead must bring an action in superior court to claim any amount of unclaimed property, including amounts under \$1. There is no specific provision in the current law authorizing any department to locate abandoned property, and only financial institutions are expressly required to report unclaimed property (AS 09.50.140).

The expansion of the categories of personal property affected by the Act would help to obtain greater revenue for the state. At the same time, the Act would serve the public purpose of re-uniting owners, or heirs of owners, with their property. Correspondence with Minnesota, a leader in implementation of an earlier version of the Uniform Act, and our own experience shows that approximately 25 percent of aban-

done property is ultimately claimed by rightful owners. The bill satisfies the requirements of due process by requiring both a holder and the department to comply with mailing and notification procedures that are reasonably aimed at locating the real owner of unclaimed personal property. Furthermore, the bill is custodial in nature in that an owner retains the right to establish and claim an interest in personal property or the proceeds from the sale of personal property from the department at any time in the future (proposed AS 34.45.380). It would be necessary for the legislature to appropriate an amount equivalent to a portion of the program receipts to cover the mailing and publication costs of notice to owners and the costs relating to sale of property and to hearings.

Minnesota reported in 1971 that the annual volume of unclaimed property in that state exceeds \$6,000,000. The Alaska Department of Law, acting under the reporting requirements currently contained in AS 09.50.140, received abandoned account reports from several Alaska banks totaling approximately \$345,000 in 1980, \$580,000 in 1981, \$440,000 in 1982, \$654,541 in 1983, and \$852,197 in 1984. These figures deal with only one category of unclaimed property and appear to be understated because of the suspension of interest payments and levying of service charges. Current law contains no prohibition against suspending interest or "charging away" dormant accounts through levying of service charges. The bill has provisions covering both practices. It would prohibit the suspension of interest payments or levying of service charges except under the same terms that the bank's contract with the customer allows charges or suspension of interest (proposed AS 34.45.160(c)). The state would then stand in the shoes of the customer when the five-year period has run, claiming any interest due, without deductions for service charges except those agreed upon between the bank and the customer.

The bill would allow for reciprocal action by states in that the attorney general may bring an action in our courts on behalf of another state to claim property belonging to the other state, and the department may request that the attorney general of another state bring a similar action on our behalf in the other state (proposed AS 34.45.460). The state on whose behalf an action is brought would be required to pay the expenses of an action in another state. Important modifications in this bill also allow for states to claim property from each other (proposed AS 34.45.390) and clarify which state has a superior claim to some types of intangible property that were the subject of conflicting state claims under older versions of the Uniform Act

(proposed AS 34.45.120 -- 34.45.140, 34.45.170, 34.45.220, and 34.45.390). These sections reflect codification of several recent court opinions, including opinions of the United States Supreme Court, resolving conflicting claims among states. The official comments of the NCCUSL offer additional explanation of the purposes of and the need for the parts of the bill that deal with personal property.

Section 8 of the bill differs from the Uniform Act, upon which it is largely based, in the following respects (other differences are wording changes only and not substantive):

1. Proposed AS 34.45.160(c)(1) adds a requirement to that proposed by the Uniform Act covering service charging of bank accounts. The Uniform Act provides only that any charges deducted on abandoned accounts must be the same as those agreed upon by the bank and its customer in a valid written contract; the attached bill adds a requirement that the agreed-upon charges also be reasonable.

2. Under the Uniform Act a bank or financial organization that begins to impose charges or stops paying interest has to notify the owner of the account at the owner's last known address if the account contains more than \$2. The attached bill increases the minimum amount to \$10 (proposed AS 34.45.160(c)(2)).

3. The Uniform Act provides that the department will both "defend and indemnify" a holder who pays or delivers abandoned property in good faith to the department. The attached bill relieves a reporting holder of liability and requires the department to indemnify a holder. But the wording of the bill also avoids the possibility of the state getting involved in defending lawsuits on behalf of a holder. At the same time that it protects a holder from unwarranted lawsuits, it also protects the rights of claimants (because a claimant may file a claim against the department; proposed AS 34.45.330 and 34.45.380). Similar wording in proposed AS 34.45.360(d) protects a holder, or transfer agent of a holder, from liability for the value of appreciation in securities.

4. The provisions of the Uniform Act regarding claimant remedies have been changed to conform to established hearing and grievance procedures of the department (proposed AS 34.45.400).

5. The provisions of the Uniform Act regarding both civil and criminal penalties (for failure to file reports, filing false reports, or failure to deliver abandoned

property) have been changed to be consistent with other statutes governing penalties for violations of department regulations and laws governing the department, and to be consistent with Alaska's new Criminal Code (proposed AS 34.45.470).

Sections 1 -- 6 of the bill amend existing law in AS 13.11, AS 13.16, and AS 34.45. AS 13.11.025 and AS 13.16.600 cover property of a deceased person which is not claimed in a probate proceeding. AS 13.16.381 creates a duty of the personal representative of a deceased's estate to report unclaimed property to the state. The current language in AS 34.45 deals with tangible personal property left in the care of certain bailees or consignees. The bill amends these provisions to make certain personal property unclaimed in these situations subject to the same provisions for intangible property described earlier in this letter. Specifically, the amendments incorporate the reporting and claims procedures and administrative powers provided for by the Uniform Act. Like the Uniform Act, they make the state the custodian only of personal property or the proceeds from sale of personal property; the rightful owner's property interest would never be lost.

Section 9 of the bill deals with escheat of real property. Administration of the real property escheat program is transferred from the Department of Revenue to the Department of Natural Resources. The basic requirements for escheat of real property remain unchanged. Real property escheats to the state under the intestacy laws if a person dies leaving no will and no known heirs, or if a corporation or other organization becomes defunct and real property remains undistributed four years after the organization has become defunct.

The real property escheat program differs in concept from the unclaimed personal property program in that there is an actual transfer of title to the state rather than a custodial holding of property by the state. This requires a judicial determination of escheat. An heir or other person entitled to escheated real property can appear up to seven years after the determination of escheat and claim the property or the value of the property. After that period the state has no further obligation to potential makers of the property. The reason for this difference in approach is to clear title to real property.

The major difference between the existing real property escheat statutes and the proposed statutes is in the management of the property by the state. The bill provides

that the Department of Natural Resources "may sell, lease, exchange, assign, or otherwise manage real property that has escheated to the state consistent with applicable provisions of [AS 38]." AS 38.05.630. The existing statute provides only that escheated real property may be sold.

Under this bill, the department is required to make a written finding that it is in the best interests of the state either to

1. obtain an appraisal of the property and sell, lease, exchange, assign, or otherwise manage the property, including retention in state management; or
2. retain the property without obtaining an appraisal.

Property that has been retained but not appraised must be returned to a qualified heir or other taker who appears within seven years after the determination of escheat. When property has been disposed of or retained with an appraisal, the heir or other taker is entitled to the established value of the property. The established value is the appraised value less expenses of sale, unless the property sold for less than the appraised value at a public sale to the highest bidder.

Proceeds from the sale of escheated real property are placed in an escheated real property trust account. After the redemption period has passed, unclaimed money in the trust account may be transferred to the land disposal income account, AS 38.04.022, in the general fund.


The department may, in its discretion, offer state land of value comparable to the established value to the heir or other taker in place of the established value. If the heir or other taker rejects the land of comparable value or the department does not offer it, the department must pay the established value from the escheated real property trust account.

Section 10 of the bill repeals the current escheat law contained in AS 09.50.070 -- 09.50.160; repeals AS 06.05.460, which contains reporting provisions for banks which conflict with the reporting provisions in the Uniform Act; and repeals AS 10.05.591, which contains reporting provisions for corporations which conflict with the Uniform Act.

Section 11 of the bill provides that property already delivered to the state or already the subject of escheat proceedings would not be subject to the new provisions.

This bill, then, provides a wholesale revamping of Alaska's laws on this subject. It updates and fills in gaps in our current law, and provides for desirable uniformity among the states in an area of law that cannot realistically be handled by each state in isolation.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill Sheffield". The signature is written in dark ink and is positioned above the typed name and title.

Bill Sheffield
Governor

document is presumed and the owner subsequently appears, there are at least 3 formal opportunities to reunite that owner with the issuer before a duplicate certificate is turned over to the administrator.

If the owner is not located, however, a duplicate certificate is issued to the administrator pursuant to Section 19(d) and the original certificate will be cancelled. Thereafter, if the owner appears, the duplicate certificate may be claimed from the administrator. The Act is designed to encourage the administrator to hold the certificate for at least 3 years. (See Section 22(d).) If the administrator does sell the stock before the expiration of this 3-year period, the original owner may recover the net proceeds of sale or the market value of the property at the time he makes a claim, whichever is higher. If the owner appears after the 3-year holding period and after his interest has been sold, he recovers the net proceeds of sale.

The issuer who delivers a duplicate certificate under the Act is protected, because upon delivery it is relieved of all liability to the extent of the value of the property delivered under Section 20. If any person thereafter makes a claim against the holder, the adminis-

trator is required to indemnify the holder against any liability on the claim. The required indemnity is complete, and it is not restricted to the value of the property turned over.

If a purchaser from the owner turns up and presents the original share for registration after the property has been presumed abandoned, his claim is initially under the UCC. However, because of the indemnity provision in Section 20, the state will be required to assume all liability. UCC § 8-405 provides that the issuer must register the transfer unless to do so would result in overissue. In this event, the purchaser's rights are determined by UCC § 8-104 and, if a similar security is not reasonably available for purchase, he recovers the price he paid the original owner. Presumably the issuer would call on the administrator to fulfill his requirement of indemnity. If the administrator still has the duplicate certificate, he would turn it over to the purchaser.

Subsection (e) would not require the reporting of interests enrolled in dividend reinvestment plans unless the owner has other stock which is not in dividend reinvestment and which would be presumed abandoned under Section 10.

§ 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.

Commissioners' Comment

This section closely follows Section 6 of the 1963 Act except that the dor-

mancy period has been reduced to one year from 2 years. This section covers both voluntary and involuntary dissolutions.

§ 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 5 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 him and the business association provides otherwise.

(d) For the purposes of this Act, 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.

Commissioners' Comment

Intangible property is not "payable or distributable" under subsection (a) if the fiduciary possesses merely the discretion to pay or distribute property and has not exercised the discretion.

Subsection (d) is designed to clarify the status of transfer agents. That is, they are agents for the business asso-

ciation and the administrator must look to the principal, the business association, as the holder, unless they have contractually undertaken the obligation to report the property. A later section provides that the administrator is authorized to examine the records of the holder or records relating to the holder which are in the possession of the transfer agent. See Section 30.

§ 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 5 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.

Commissioners' Comment

Section 14 should be read in conjunction with Section 2. The comment to Section 2 is particularly pertinent to this section. Holders did not routinely report gift certificates and credit memos under the 1966 Act, but it has been held that both kinds of property are within the coverage of Section 9 of that Act. See, for instance, *People v.*

Marshall Field & Co., 83 Ill.App.3d 811, 404 N.E.2d 368 (1980).

Subsection (b) is intended to clarify the amount reportable which is represented by gift certificates and credit memos. In the case of a gift certificate, it is the price paid by the purchaser. In the case of a credit memo, it is the amount credited to the recipient's account.

§ 15. [Wages]

Unpaid wages, including wages represented by unrepresented 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.

Commissioners' Comment

Since the chance of locating the missing owner of a wage check materi-

ally decreases with the passage of time, this property is presumed abandoned at an earlier period than that for most other property.

§ 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 5 years after the lease or rental period on the box or other repository has expired, are presumed abandoned.

Commissioners' Comment

Section 16 parallels Section 2(d) of the 1966 Act. This Section is not intended to cover property left in places other than safekeeping repositories, for example, airport lockers or field

warehouses. Its coverage is limited to safe deposit boxes in banks and other financial institutions. Most states have statutory provisions apart from the unclaimed property law for the disposition of property abandoned in such places as airport lockers.

§ 17. [Report of Abandoned Property]

(a) A person holding property tangible or intangible, presumed abandoned and subject to custody as unclaimed property under this Act shall report to the administrator concerning the property as provided in this section.

Commissioners' Comment

Section 10 covers underlying shares of stock and principal amounts of debt securities, i.e., stock certificates in the possession of the record owner.¹ Dividends and other distributions which were included in Section 5 of the 1966 Act are to be reported pursuant to Section 2 of this Act.

Several states have enacted specific provisions for the presumption of abandonment of underlying share certificates. Typical is the provision of California (Cal.Civ.Pro.Code § 1516) which provides that the underlying intangible interest is presumed abandoned if the owner has not contacted the company within the abandonment period and he cannot be found whether or not dividends on that interest are paid. Connecticut, Florida, Indiana, Massachusetts, Montana, New York, Rhode Island, Wisconsin and Virginia also have specific provisions for the presumption of abandonment of underlying shares. States with escheat laws similar to New Jersey's would be entitled to claim underlying shares based on the *Standard Oil* precedent.

Two major concerns have been expressed with the concept of presuming abandonment of underlying stock interests. The first deals with the evidential showing necessary to raise a presumption of abandonment, and the second concerns the rights of the various parties when underlying stock interests are presumed abandoned.

Under what set of circumstances is it appropriate to presume that stock has been abandoned when the shares have been delivered to an owner and are no longer in the possession of the issuer? Section 10 establishes a longer dormancy period, (7 years) for this

property than for other property covered by this Act. Further, Section 10 requires that there must be at least 7 consecutive dividend checks issued during this period of dormancy which remain uncashed. Additionally, the presumption of abandonment will not arise in the event the missing owner has communicated with the association. In this regard, the communication would normally be with an agent of the association such as a transfer agent or a dividend disbursing agent. Of course, such communication would satisfy the provision of this section. The existing underlying shares statutes make no formal distinction between dividend and nondividend paying stock and provide that the mere passage of time with no contact is sufficient to raise the presumption of abandonment. Section 10 combines both a period of inactivity, 7 years, with the requirement that distributions paid on the underlying intangible interest remain unclaimed, thus avoiding concerns that abandonment should not be presumed where a shareholder has not contacted a non-dividend paying company.

If the conditions leading to a presumption of abandonment have occurred, the holder (issuer of the security) must report to the state pursuant to Section 17, and if the holder has in its records an address of the owner, it must send written notice to the owner in an effort to reunite the owner with his property. Thereafter the administrator must give notice by advertising the existence of the property and send mailed notice to owners of property valued at \$50 or more. See Section 18.

Many owners will be located through the publication and mail notice requirements of the Act. In the event aban-

¹ It has generally been assumed that Section 5 of the 1966 Act did not cover underlying shares unless those shares were in the actual possession of the issuer (i.e., as undeliverable stock). However, the Supreme Court's analysis of the New Jersey escheat statute in *Standard Oil Co. v. New Jersey*, 341 U.S. 428 (1951), suggests that Sections 5 and 9 of the 1966 Act apply to underlying shares even though they are not in the possession of the issuer but have been delivered to an owner who is lost and has made no claim on the stock. It has generally been assumed that actual certificates for the abandoned shares in *Standard Oil* were in the possession of the company or its transfer agent. However, the record clearly reflects that neither the company nor its transfer agent had custody of the shares. (See *Stipulation Of Facts Entered Between the state of New Jersey and the Standard Oil Company*, Exhibit 3, Clerks Transcript, pp. 198a and 199a, see also, p. 77a, p. 233a.) The Supreme Court affirmed New Jersey's claim to escheat the shares notwithstanding that its laws did not expressly refer to underlying shares.

Even if underlying shares not in the possession of the issuer were not within the coverage of Section 5 of the 1966 Act, the comment to Section 9 of that Act, the omnibus provision, indicate that this type of property was within the coverage of Section 9. However, the fact remains that states with the Uniform Act have sought to recover this property in a systematic way.

Commissioners' Comment

Section 9 provides that court or administrative agency ordered refunds which remain unclaimed for more than one year are presumed abandoned.

The short dormancy period of one year is justified since no possible advantage can occur to the owner by leaving his property with the holder, and failure to claim a refund is strong evidence that the property has been 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 7 years and the owner within 7 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 7-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 7 dividends, distributions, or other sums paid during the period, none of which has been claimed by the owner. If 7 dividends, distributions, or other sums are paid during the 7-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 7 dividends, distributions, or other sums are not paid during the presumptive period, the period continues to run until there have been 7 dividends, distributions, or other sums that have not been claimed by the owner.

(c) The running of the 7-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 Act 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 7 years communicated in any manner described in subsection (a).

(b) The report must be verified and must 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 Act;

(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 administrator 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 administrator prescribes by rule as necessary for the administration of this Act.

(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 his name while holding the property, he shall file with his report all known names and addresses of each previous holder of the property.

(d) The report must be filed before November 1 of each year as of June 30, next preceding, but the report of any life insurance company must 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 administrator may postpone the reporting date.

(e) Not more than 120 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 Act shall send written notice to the apparent owner at his last known address informing him that the holder is in possession of property subject to this Act if:

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

(ii) the claim of the apparent owner is not barred by the statute of limitations, and

(iii) the property has a value of \$50 or more.

Commissioners' Comment

The \$25 minimum provided in subsection (b)(1)(2) and (4) represents an increase from \$3.00 in the 1966 Act in order to minimize reporting expenses. Almost every state which enacted the prior Uniform Act now provides for a \$25 minimum.

Before filing its report, the holder must send written notice to the apparent owner, if the owner's claim is not barred by the statute of limitations, the property has a value of \$50 or more, and the holder's records do not disclose the address to be inaccurate. Other efforts to locate the owner are

no longer required. Since most notifications under the 1966 Act were returned as undeliverable, and the administrator must also mail a notice under Section 18 to owners of property having a value of \$50 or more, the holder should not be compelled to incur the expense of preparing and mailing notices under all circumstances.

The subsection now requires that the notice be sent not more than 120 days before the filing of the report. The previous subsection did not specify when the notice was to be given, and some holders felt that notices given years earlier were sufficient.

§ 18. [Notice and Publication of Lists of Abandoned Property]

(a) The administrator 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 2 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 must 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 must 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 administrator; 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 administrator and all further claims must thereafter be directed to the administrator.

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

(d) Not later than March 1, or in the case of property reported by life insurance companies, not later than September 1, of the year immediately following the report required by Section 17, the administrator shall mail a notice to each person whose last known address is listed in the report and who appears to be entitled to property of the value of \$[50] or more presumed abandoned under this Act and any beneficiary of a life or endowment insurance policy or annuity contract for whom the administrator has a last known address.

(e) The mailed notice must contain:

(1) a statement that, according to a report filed with the administrator, property is being held to which the addressee appears entitled;

(2) the name and last known address of the person holding the property and any necessary information regarding the changes of name and last known address of the holder; and

(3) a statement that, if satisfactory proof of claim is not presented by the owner to the holder by the date specified in the published notice, the property will be placed in the custody of the administrator and all further claims must be directed to the administrator.

(f) This section is not applicable to sums payable on travelers checks, money orders, and other written instruments presumed abandoned under Section 4.

is a restatement of a similar provision in subsection (b) of Section 3 of the 1968 Act; however, the abandonment period has been reduced from 7 to 2 years.

Subsection (d) provides that the application of an automatic premium loan provision will not be used to consume the proceeds of a policy and prevent the policy from being matured under subsection (a) if the insured has died or if the beneficiaries have otherwise become entitled to the proceeds of the policy.

Subsection (e) in certain instances imposes an affirmative duty upon the insurer to ascertain a correct address of an insured who fails to receive notice of the exercise of the nonforfeiture option. In these cases it is expected that as a result of the search the insurer will become aware that the insured is deceased. Subsection (f) then requires the insurer to attempt to locate the beneficiaries and pay the policy proceeds, a duty apparently not heretofore imposed on insurance companies. See *Insurer's Duty to Dis-*

close the Existence of a Policy, 76 Colum.L.Rev. 825 (1976).

Subsection (f) provides for the insurer to request the addresses of beneficiaries if the insured changes a beneficiary designation. Most insurance companies do not request address information for beneficiaries. Since in many instances the initial beneficiary resides in the same household as the insured and the administrative burden of accumulating address information is thought to be considerable, the obligation to obtain the address is deferred until such time as a change of beneficiary occurs. This subsection will assist in locating this limited class of beneficiaries. By making the commencement date of this subsection 2 years after enactment, insurers will be provided sufficient time within which to undertake the necessary administrative steps to implement this provision.

Civil penalties are provided by Section 34(b) for failure to perform the duties imposed by subsections (f) and (g).

§ 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.

Commissioners' Comment

The requirement that the services be furnished in the state before a presumption of abandonment arises is eliminated. This is consistent with *Texas v. New Jersey*, 379 U.S. 670 (1965). The dormancy period for the property is one year. The fact that a

deposit in the hands of the utility can be of no benefit to the former subscriber raises a strong inference that it has been forgotten by the owner.

See Section 1(10) for the definition of "utility."

Intangible property held by utilities other than deposits are subject to the 5-year period set forth in Section 2(a).

§ 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.

nite 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 Act, 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)(i) the insured has attained, or would have attained if he were living, the limiting age under the mortality table on which the reserve is based;

(ii) the policy was in force at the time the insured attained, or would have attained, the limiting age specified in subparagraph (i); and

(iii) neither the insured nor any other person appearing to have an interest in the policy within the preceding 2 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 Act, 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 4 months after the death, the company shall take reasonable steps to pay the proceeds to the beneficiary.

(g) Commencing 2 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 must 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.

Commissioners' Comment

Subsections (a) and (b) restate the substance of Section 3(a) of the 1968 Act. Paragraph (1) of subsection (c) provides that proceeds of a life insurance policy are presumed abandoned if the insurer is aware that the insured has died even though actual proof of death has not been furnished to the in-

surer. Under the 1968 Act these proceeds generally would not have been reportable until the 103rd anniversary of the decedent's birth. Paragraph (2) of subsection (c) provides that the policy proceeds are payable if the limiting age under the mortality table on which the reserve is based is reached and there has been no activity with respect to the policy for 2 years. This

Commissioners' Comment

Subsections (c) and (d) have increased from \$25 to \$50 the minimum value required for advertising and notification. The amounts were increased because the costs of publishing newspaper advertisements now range from \$12 to \$22 per name. Because most mailed notifications are returned to administrators as undeliverable, the mailing minimum was also increased.

Subsections (a) and (b) (3) set forth the dates by which the administrator must publish the names of missing owners and mail notification to the last known address of each owner. This section eliminates the requirement of the 1968 Act that a separate notification be given by the administrator to the holder to establish when the final report and remittance is required.

§ 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 6 months after the final date for filing the report as required by Section 17, shall pay or deliver to the administrator 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 administrator, and the property will no longer be presumed abandoned. In that case, the holder shall file with the administrator 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 must be delivered to the administrator 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 administrator. Upon delivery of a duplicate certificate to the administrator, 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 the provision of Section 20 to every person, including any person acquiring the original certificate or the duplicate of the certificate issued to the administrator, for any losses or damages resulting to any person by the issuance and delivery to the administrator of the duplicate certificate.

Commissioners' Comment

tion period of 6 months permits the holder to honor these claims.

Subsections (a) through (c) restate the substance of Section 13 of the 1968 Act. The holder is required to pay over the property within 6 months after reporting its existence. However, if the holder does not know the owner's name or the value of the property is less than \$25, then the property must be turned over to the administrator at the time of filing the report. The notification provisions of Sections 17 and 18 often stimulate owners to reclaim their property and the reten-

Subsection (d) provides that the holder of an underlying stock interest presumed abandoned under Section 10 shall deliver a duplicate certificate to the administrator. Upon delivery the holder, in accordance with the provisions of Section 20, is relieved of all liability to any person occasioned by the reappearance of the original certificate or the issuance of the duplicate certificate. In this connection, see the comment to Section 10.

§ 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 administrator, the state assumes custody and responsibility for the safekeeping of the property. A person who pays or delivers property to the administrator 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 administrator pursuant to this Act 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 administrator 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 must 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 must 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 administrator pursuant to this Act may reclaim the property if still in the possession of the administrator, without paying any fee or other charge, upon filing proof that the owner has claimed the property from the holder.

(d) The administrator 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 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.

(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 Act;

(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 him, that the property was abandoned for the purposes of this Act; 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 administrator 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 administrator shall reimburse or pay the holder out of the proceeds remaining after deducting the administrator's selling cost.

Commissioners' Comment

When property is turned over to the state, the holder is relieved of all lia-

bility for any turnover made in good faith. Subsection (f) sets forth a definition of good faith which *inter alia* allows the holder to rely on its records

need not be given with respect to charges imposed or interest ceased before the effective date of this Act; 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.

Commissioners' Comment

Section 6 covers bank accounts and follows closely Section 2(a) of the 1968 Act. In addition to the depositor or owner contacts contained in the 1968 Act which will prevent a presumption of abandonment, paragraphs (4) and (5) of subsection (a) add two additional tests rebutting the presumption of abandonment. Activity by an owner with another account in the bank or another active relationship between the owner and the holder such as a loan will prevent abandonment provided the holder gives notice to the owner of the inactive account. These changes will conform the Act to the practices of financial organizations which issue unified bank statements or which are otherwise able to cross reference owners of inactive accounts with owners of active accounts.

Subsection (c) is consistent with those cases which have construed the 1968 Act to require the reporting of savings accounts (together with interest thereon) and checking accounts where the holder for purposes of reporting seeks to impose service

charges and cease the payment of interest but regularly reverses or cancels such charges and cessation of interest for customers that reactivate their accounts. If the holder does not have a contract with the owner providing for charges he must, in any event, report and deliver the property.

Subsection (e) may change banking statutes or regulations in certain states.

Paragraph (2) of subsection (c) imposes the additional requirement that notice of the imposition of such charges must be provided to the owner at his last known address. Since the cost of mailing such a notice might approximate the amount of a \$2.00 balance, notices are required only when the balance exceeds \$2.00.

Subsection (d) prevents a certificate of deposit with automatic renewal provisions from being treated as perpetually exempt from a presumption of abandonment. The subsection also insures that no interest penalty will result from the delivery of such property during the interest term then in effect. Although delivery of such property is deferred, reporting is not.

§ 7. [Funds Owng 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 5 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 2 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 defi-

strument 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.

Commissioners' Comment

Section 5 covers checks and similar instruments issued or certified by banking and financial organizations. Checks and other instruments issued

by persons other than banking and financial organizations are covered generally by Section 2. Travelers checks and money orders are covered by Section 4.

§ 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 5 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

(i) communicated in writing with the banking or financial organization; or

(ii) 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 may 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 \$2.00, the holder, no more than 3 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

if they meet reasonable commercial standards of practice in the industry.

The section also permits the holder to obtain reimbursement for claims it elected to pay to owners who appeared after the property was turned over. If a state in enacting Section 24(c) provides for the payment of interest on property delivered to the administrator, then the holder will add such interest when paying the claim. See Section 24(d).

If after turnover, any person or another state makes a claim on the holder, the state, upon request, is required to defend the holder and indemnify him against any liability. This provision is particularly important in light of the underlying share provisions of Section 10. The comment to that section is pertinent here as well.

§ 21. [Crediting of Dividends, Interest, or Increments to Owner's Account]

Whenever property other than money is paid or delivered to the administrator under this Act, the owner is entitled to receive from the administrator any dividends, interest, or other increments realized or accruing on the property at or before liquidation or conversion thereof into money.

Commissioners' Comment

This section changes Section 15 of the 1960 Act which provided that the owner was not entitled to receive any income or other increment accruing after the delivery of unclaimed property to the administrator. This Act provides for some substantial retention

periods by the administrator. For instance, securities obtained pursuant to Section 10 will generally be held for a 3-year period prior to sale. The owner will be entitled to dividends, interest or other increment realized or accruing on the property during this 3-year period.

§ 22. [Public Sale of Abandoned Property]

(a) Except as provided in subsections (b) and (c), the administrator, within 3 years after the receipt of abandoned property, shall sell it to the highest bidder at public sale in whatever city in the state affords in the judgment of the administrator the most favorable market for the property involved. The administrator may decline the highest bid and reoffer the property for sale if in the judgment of the administrator the bid is insufficient. If in the judgment of the administrator the probable cost of sale exceeds the value of the property, it need not be offered for sale. Any sale held under this section must be preceded by a single publication of notice, at least [3] 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 must 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 administrator considers advisable.

(c) Unless the administrator 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 administrator must be held for at least one year before he may sell them.

(d) Unless the administrator 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 administrator must be held for at least 3 years before he may sell them. If the administrator sells any securities delivered pursuant to

Section 10 before the expiration of the 3-year period, any person making a claim pursuant to this Act before the end of the 3-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 Act after the expiration of this period is entitled to receive either the securities delivered to the administrator by the holder, if they still remain in the hands of the administrator, or the proceeds received from sale, less any amounts deducted pursuant to Section 23(b), but no person has any claim under this Act 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 administrator.

(e) The purchaser of property at any sale conducted by the administrator pursuant to this Act takes the property free of all claims of the owner or previous holder thereof and of all persons claiming through or under them. The administrator shall execute all documents necessary to complete the transfer of ownership.

Commissioners' Comment

In order to give additional protection to the missing owner of a security which has been presumed abandoned and is not subject to Section 10, this section directs the administrator to hold that security for at least one year.

If the security is one which has been presumed abandoned pursuant to Section 10 the administrator is expected to hold the security for 3 years. He is permitted to sell the security within this 3-year period, but if the missing

owner appears and makes claim for the security within this 3-year period after the administrator has sold it, the missing owner is entitled to receive the proceeds of the sale or the market value of the securities at the time the claim is made. Thus there is a genuine incentive for an administrator to hold this property for the requisite 3-year period.

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

§ 23. [Deposit of Funds]

(a) Except as otherwise provided by this section, the administrator shall promptly deposit in the [general fund] of this State all funds received under this Act, including the proceeds from the sale of abandoned property under Section 22. The administrator shall retain in a separate trust fund an amount not less than \$[100,000] from which prompt payment of claims duly allowed must be made by him. Before making the deposit, the administrator shall record the name and last known address of each person appearing from the holders' reports to be entitled to the property and the name and last known address of each insured person or annuitant and beneficiary and with respect to each policy or contract listed in the report of an insurance company its number, the name of the company, and the amount due. The record must be available for public inspection at all reasonable business hours.

(b) Before making any deposit to the credit of the [general fund], the administrator 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.

(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 Act, subsection (d) applies to sums payable on travelers checks, money orders, and similar written instruments presumed abandoned on or after February 1, 1985, except to the extent that those sums have been paid over to a state prior to January 1, 1974.

Commissioners' Comment

Section 4 is concerned with travelers checks and money orders which are unclaimed. Subsections (a) and (b) deal with the substantive requirements for presuming this property abandoned and follow closely the provisions of Section 2 of the 1968 Act. Although the general dormancy period has been reduced for many kinds of property, the 15-year period for travelers checks and the 7-year period for money orders is retained. Statistical and economic evidence has shown that these periods continue to be appropriate.

Subsection (c) is consistent with those cases which have ruled on the issue of service charges by money order issuers under the 1968 Act.

Subsections (d) and (e) are new and adopt the rules, including the dates,

provided by congressional legislation which determine the state entitled to claim sums payable on travelers checks, money orders, and similar instruments, see Pub.L. 93-495, §§ 603, 604 (Oct. 28, 1974), 88 Stat. 1625-26, 12 U.S.C. §§ 2501 et seq. The congressional action was in response to the Supreme Court decision in Pennsylvania v. New York, 407 U.S. 206 (1972), which held that the state of corporate domicile was entitled to escheat money orders when there was no last known address of the purchaser although the property had been purchased in other states. Subsection (d) substitutes as the test for asserting a claim to travelers checks and money orders the place of purchase rather than the state of incorporation of the issuer.

§ 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 5 years after it was payable or after its issuance if payable on demand, is presumed abandoned, unless the owner, within 5 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 may not deduct from the amount of any instrument subject to this section any charge imposed by reason of the failure to present the in-

Paragraph (4) provides that, if the law of the state of the owner's last known address does not provide for escheat or taking custody of the unclaimed property or if that state's escheat or unclaimed property law is not applicable to the property in question, the property is subject to claim by the state in which the holder is domiciled. In that instance, the state of the owner's last known address may thereafter claim the property if it enacts an applicable unclaimed property law. The holder state will act as custodian and pay or deliver the property to the owner or the state which has priority under *Texas v. New Jersey* upon request; see also *State v. Liquidating Trustees of Republic Petroleum Co.*, 510 S.W.2d 311 (Texas 1974). See Section 25.

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

Paragraph (6) provides for a situation in which neither of the priority claims discussed in *Texas v. New Jersey* can be made, but the state has a genuine and important contact with the property. An example of the type of claim which might be made under paragraph (6) arose in *O'Connor v. Sperry & Hutchinson Co.*, 412 A.2d

539 (Pa.1980). There Pennsylvania sought to escheat unredeemed trading stamps sold by a corporation domiciled in New Jersey to retailers located in Pennsylvania. Pennsylvania took the position that *Texas v. New Jersey* did not create a jurisdictional bar to escheat by other states when the states granted priority were unable to take. There was no first priority claim since there were no addresses of the trading stamp purchasers. The second priority claimant, the state of corporate domicile (New Jersey), was not permitted under its law to escheat trading stamps (see *New Jersey v. Sperry & Hutchinson Co.*, 56 N.J. Super, 589, 153 A.2d 691 (1959), affirmed *per curiam*, 31 N.J. 385, 157 A.2d 505 (1960)) and hence Pennsylvania urged that in order to prohibit a corporate windfall it should be allowed to claim this property. The Pennsylvania Supreme Court affirmed a lower court decision which overruled *Sperry & Hutchinson's* motion to dismiss but did not reach the *Texas v. New Jersey* issue.

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

Wholly foreign transactions are excluded from the coverage of the Act. See Section 36.

§ 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 15 years after its issuance is presumed abandoned unless the owner, within 15 years, has communicated in writing with the issuer concerning it or otherwise indicated an interest as evidenced by a memorandum or other record or 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 7 years after its issuance is presumed abandoned unless the owner, within 7 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 may 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.

Commissioners' Comment

This section increases from \$25,000 to \$100,000 the sum which is recommended to be retained in a trust account for payment of claims. Each state based on its own experience will establish a minimum amount to be kept on hand in order that claims will be quickly paid. If a state receives sub-

stantial amounts represented by underlying stock certificates pursuant to Section 10, it is contemplated that the amount of the trust fund which it selects will reflect its experience in paying owners' claims. The practice in most states is for the legislature in its appropriation bill to provide for a continuing appropriation of general funds to pay abandoned property claims.

§ 24. [Filing of Claim with Administrator]

(a) A person, excluding another state, claiming an interest in any property paid or delivered to the administrator may file with him a claim on a form prescribed by him and verified by the claimant.

(b) The administrator shall consider each claim within 90 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 falls 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 administrator shall pay over or deliver to the claimant the property or the amount the administrator actually received or the net proceeds if it has been sold by the administrator, 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 administrator within 3 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. If the property claimed was interest-bearing to the owner on the date of surrender by the holder, the administrator also shall pay interest at a rate of [] percent a year or any lesser rate the property earned while in the possession of the holder. Interest begins to accrue when the property is delivered to the administrator and ceases on the earlier of the expiration of 10 years after delivery or the date on which payment is made to the owner. No interest on interest-bearing property is payable for any period before the effective date of this Act.

(d) Any holder who pays the owner for property that has been delivered to the state and which, if claimed from the administrator, would be subject to subsection (c) shall add interest as provided in subsection (c). The added interest must be repaid to the holder by the administrator in the same manner as the principal.

Commissioners' Comment

If a valid claim to property turned over to the administrator is made, the administrator is to return the property or, if it has been sold, to pay the net proceeds of sale. If the claim is for an underlying share interest presumed abandoned under Section 10 and the administrator has sold the property

within 3 years, the claimant is entitled to the net proceeds of sale or the market value of the property at the time claim was made for it, whichever is higher, together with any additional amount payable under Section 21.

Several states have added to the 1966 Act a provision for paying interest on property which was interest-bearing to the owner. Subsections (c)

and (d) set forth provisions which a state may wish to enact providing for the payment of interest.

Subsection (c) provides for the administrator to pay interest on property

which was interest bearing to the owner. The rate of interest will be fixed by each state enacting the Act and should fairly reflect prevailing rates.

§ 25. [Claim of Another State to Recover Property; Procedure]

(a) At any time after property has been paid or delivered to the administrator under this Act another state may recover the property if:

(1) the property was subjected 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 Act, 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 must be presented in a form prescribed by the administrator, who shall decide the claim within 90 days after it is presented. The administrator shall allow the claim if he determines that the other state is entitled to the abandoned property under subsection (a).

(c) The administrator 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.

Commissioners' Comment

Section 25 should be read together with Sections 3 and 4. Sections 3 and 25 are designed to carry out the priority scheme enunciated in *Texas v. New Jersey*, 379 U.S. 670 (1965). In general the state of last known address is entitled to claim abandoned property. Where there is insufficient information to permit this assertion of custody, the state of the holder's domicile takes the

property subject to a later claim by the state of the last known address.

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

Paragraph 2 parallels subsection (3)(d), which permits the state of cor-

Jersey,¹ in which the court reasoned that unclaimed property is an asset of the creditor and should generally be paid to the creditor state, i.e., the state of residence of the apparent owner. Consistent with that reasoning it held that unclaimed intangible property is subject to escheat or custody as unclaimed property first by the state of the owner's last known address. If that state cannot claim the property, the state of the holder's domicile is entitled to it. Consistent with the court's concern for a simple rule which would avoid the complexities of proving domicile and residence the court established its priority on the basis of information contained in the holder's records. Recognizing that the holder's records might be incomplete, the court's ruling permits a claimant state to prove by other means that the last known address of the owner is within its boundaries. Where the holder's records do not show the owner's last address, the second priority claimant, the state of domicile of the holder, is entitled to claim the property. The state of the owner's last known address can later assume custody from the state of the holder's domicile by showing that the last known address of the owner is within its borders. Likewise, if the state of last known address does not have an unclaimed property law which applies to the property, the state of the holder's domicile can take the property, again subject to the right of the state of last known address to recover the property if and when it enacts an unclaimed property or escheat law.

Paragraph (1) restates the factual situation in *Texas v. New Jersey*. As the court there said "... the address on the records of a debtor, which in most cases will be the only one available, should be the only relevant last known address." If the holder's records are erroneous and the actual last known address of the owner is in another state, that other state can re-

claim the property pursuant to Section 25.

Paragraph (2) covers the situation in which the identity of the person entitled to the property is unknown, but it is established, either through the holder's records or by some other means, that the property was owned by or payable to a person whose last known address was within the claiming state. This is a rational extension of *Texas v. New Jersey*. Reunification of the owner with his property in this circumstance is impossible, and insofar as that issue is concerned, it makes no difference whether the property is delivered to the state of the holder's domicile or the state of the owner's last known address. However, following the equitable concept of distributing unclaimed property among creditor states articulated by the Supreme Court in *Texas v. New Jersey*, the subsection directs that, where there is no record of a name but there is a record of last known address, the state of last known address can claim the property.

Paragraph (3) is the secondary rule of *Texas v. New Jersey*. The Supreme Court ruled that, when property is owed to persons for whom there are no addresses, the property will be subject to escheat by the state of the holder's domicile, provided that another state may later claim upon proof that the last known address of the person entitled to the property was within its borders. If the property is initially paid or turned over to the state of corporate domicile, the state of last known address is authorized to assert its claim pursuant to Section 25. However, unless the right to claim the property is initially conferred in this section, there would be no basis for a reclamation action under Section 25. Where a holder originally had the address of the owner and it has been subsequently destroyed, a computer code may be one way of establishing an address within the state.

¹ Section 3 is akin to a jurisdictional section, in that it empowers the state to assert custody. At the same time it limits that jurisdictional assertion and establishes a partial system of priorities. It would be possible, of course, to separate the two concepts of jurisdiction and priority. However, the court did not do so in *Texas v. New Jersey*, and to do so in this Act might have some unfortunate and unforeseen consequences. The decision directs the state of corporate domicile to take only if the state of the owner cannot. If Section 3 established as an independent basis of jurisdiction that the state of the holder's domicile could take without regard to the prior claim of the creditor state, there might well be a race between holder and creditor states, with attendant confusion for both states and holders. A priority section ranking the order of asserting claims would diminish the race if it were uniformly enacted. However, there is a strong likelihood that the domiciliary states of major holders would not enact a priority section and thereby would frustrate the system established by *Texas v. New Jersey*. Section 3 combined with Section 25 establish a system of priorities consistent with *Texas v. New Jersey*.

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

A draft issued by a property or casualty insurance company as an offer of settlement of a claim for property damage or personal injury is not subject to the presumption of abandonment if the offer was not accepted by the payee. In this situation, the draft never became payable or distributable. The issue of whether a draft is accepted by a payee is a question of fact that is not addressed by the Act.

§ 3. [General Rules for Taking Custody of Intangible Unclaimed Property]

Unless otherwise provided in this Act 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 through 16 are satisfied and:

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

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

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

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

(ii) the holder is 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, as shown on the records of the holder, of the apparent owner 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, as shown on the records of the holder, of the apparent owner 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

(i)(A) the last known address of the apparent owner or other person entitled to the property is unknown, or

(B) 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

(ii) 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.

Commissioners' Comment

Section 3 describes the general circumstances under which a state may claim abandoned intangible property.

(There is a special provision for travelers checks and money orders in Section 4 *infra*). This section closely follows the language of *Texas v. New*

porate domicile to take if the state of the last known address does not provide for the escheat or custodial taking of the property. If the state of the last known address subsequently enacts an unclaimed property law which covers the property, the taking state must turn it over.

Paragraph 3 addresses the problem of *Nellius v. Tampax, Inc.*, 304 A.2d 333 (Del.Ch.Ct.1978) in which the holder's records did not reflect the fact that the record owner had sold the property to another. The court concluded, under *Texas v. New Jersey*, that the holder's records were controlling and that the apparent and not actual owner state could initially claim

the property. Paragraph 3 provides that the state of the actual owner can reclaim this property from the taking state.

Paragraph 4, paralleling subsection (3)(f), provides that property initially claimed under a "contacts" test because there was no last known address and the state of domicile had no applicable unclaimed property law may be reclaimed by the state of corporate domicile if it enacts an applicable unclaimed property law.

Subsection (c) provides that the state that initially receives the property and which is requested to remit it to another state should be indemnified by the claiming state.

§ 26. [Action to Establish Claim]

A person aggrieved by a decision of the administrator or whose claim has not been acted upon within 90 days after its filing may bring an action to establish the claim in the [] court, naming the administrator as a defendant. The action must be brought within [90] days after the decision of the administrator or within [180] days after the filing of the claim if he has failed to act on it. [If the aggrieved person establishes the claim in an action against the administrator, the court shall award him costs and reasonable attorney's fees.]

Commissioners' Comment

administrator must pay the claim (Section 24). The owner's rights are never cut off. If one claiming to be the owner cannot satisfy the administrator of his right to claim the property in an administrative proceeding pursuant to Section 24, he retains a right to assert his claim in a court of appropriate jurisdiction under this section.

After property is presumed abandoned and reported to the administrator (Section 17) the administrator must attempt to locate the missing owner (Section 18). Thereafter, if the property has been delivered to the administrator (Section 19) and the owner or his representative appears, the

§ 27. [Election to Take Payment or Delivery]

(a) The administrator may decline to receive any property reported under this Act which he considers to have a value less than the expense of giving notice and of sale. If the administrator elects not to receive custody of the property, the holder shall be notified within [120] days after filing the report required under Section 17.

(b) A holder, with the written consent of the administrator and upon conditions and terms prescribed by him, may report and deliver property before the property is presumed abandoned. Property delivered under this subsection must be held by the administrator and is not presumed abandoned until such time as it otherwise would be presumed abandoned under this Act.

Commissioners' Comment

Subsection (b) is new. It authorizes the administrator to assume custody of property prior to the time for presuming abandonment. Administrators have expressed a need for this authority to enable them to take possession of property, such as the contents of a safe deposit box repository, when the

holder is terminating business but the property is not yet reportable. Additionally, other holders which have conducted business in the state and are ceasing operations might use the provisions of this section. The property must be held by the administrator until the abandonment period runs and then the property will be subject to the other provisions of the Act.

§ 28. [Destruction or Disposition of Property Having Insubstantial Commercial Value; Immunity from Liability]

If the administrator determines after investigation that any property delivered under this Act has insubstantial commercial value, the administrator may destroy or otherwise dispose of the property at any time. No action or proceeding may be maintained against the state or any officer or against the holder for or on account of any action taken by the administrator pursuant to this section.

Commissioners' Comment

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

the usual situation there will be no interest to be preserved by maintaining this property under state custody.

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

This section provides that the administrator in exercising his discretion in disposing of such property is not subject to a claim by the missing owner.

§ 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 administrator as required by this Act.

(b) No action or proceeding may be commenced by the administrator with respect to any duty of a holder under this Act more than 10 years after the duty arose.

Commissioners' Comment

Arbitration in contracts will not prevent the property from becoming reportable. See *People v. Marshall Field & Co.*, 83 Ill.App.3d 811, 404 N.E.2d 368 (1980);

Section 29 has an added provision that the expiration of time periods set

Subsection (10) is not intended as a substantive addition to the coverage of Section 9 of the prior Acts. Included as intangible property are a variety of items which are often overlooked by holders, all of which were included within the 1966 Act and are within the coverage of this Act.

Subsection (11) defines "last known address" as the location of the apparent owner for the purpose of mail delivery, consistent with most state laws which have defined an address.

§ 2. [Property Presumed Abandoned; General Rule]

(a) Except as otherwise provided by this Act, 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 5 years after it became payable or distributable is presumed abandoned.

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

Commissioners' Comment

Section 2 establishes as a general proposition that all intangible property held or owing in the ordinary course of the holder's business is within the coverage of this Act. See the comment to Section 1(10).

This section provides that unless a different time period is specified all intangible property which has remained unclaimed for more than 5 years is presumed abandoned. Sections 4-16 deal with specific types of property and prescribe the events which raise a presumption of abandonment.

The general dormancy period of the 1966 Uniform Act was 7 years. Some legislatures have recently shortened that time period. Likewise, a few recently enacted abandoned property laws have provided for a longer dormancy period. Given the greater mobility of the population in 1981 as compared with that of a quarter century ago when the 7-year dormancy period was first established, a reduction of the general dormancy period to 5 years is warranted. Additionally, the experiences of those states with shorter abandonment periods reveal that they are able to return to owners a substantially higher percentage of property reported as abandoned. There are exceptions in this Act to the 5-year dormancy period, however. For instance, statistical evidence indicates that a period of 15 years continues to be appropriate in the case of travelers checks. A majority of travelers checks

will ultimately be presented for payment within the 15-year period. Also, in certain instances a shorter period is appropriate. For instance, the likelihood of finding the owner of a payroll check is materially decreased after one year. Hence, Section 15 has a one year dormancy period for unpaid wages.

Subsection (b) is intended to make clear that property is reportable notwithstanding that the owner, who has lost or otherwise forgotten his entitlement to property, fails to present to the holder evidence of his ownership or to make a demand for payment. See *Connecticut Mutual Life Insurance Co. v. Moore* 333 U.S. 541 (1948), in which the Court stated: "When the state undertakes the protection of abandoned claims, it would be beyond a reasonable requirement to compel the state to comply with conditions that may be quite proper as between the contracting parties." See also *Provident Institution for Savings v. Malone*, 221 U.S. 660 (1911), involving savings accounts; *Insurance Co. of North America v. Knight*, 8 Ill.App.3d 871, 291 N.E.2d 40 (1972), involving negotiable instruments, and *People v. Marshall Field & Co.*, 83 Ill.App.3d 811, 404 N.E.2d 368 (1980), involving gift certificates.

Section 2(b) obviates the result reached in *Oregon Racing Comm. v. Multonamah Kennel Club*, 242 Or. 572, 411 P.2d 63 (1963), involving unrepresented winning parimutual tickets.

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:

- (i) monies, checks, drafts, deposits, interest, dividends, and income;
- (ii) credit balances, customer overpayments, gift certificates, security deposits, refunds, credit memos, unpaid wages, unused airline tickets, and unidentified remittances;
- (iii) stocks and other intangible ownership interests in business associations;
- (iv) monies deposited to redeem stocks, bonds, coupons, and other securities, or to make distributions;
- (v) amounts due and payable under the terms of insurance policies; and
- (vi) 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 Act or his legal representative.

(13) "Person" means an individual, business association, state or other government, governmental subdivision or agency, public corporation, public authority, estate, trust, or more persons having a joint or common interest, or any other legal or commercial entity.

(14) "State" means any state, district, commonwealth, territory, insular possession, or any other area subject to the legislative authority of the United States.

(15) "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.

Commissioners' Comment

The definitions have been revised to reflect, pursuant to *Texas v. New Jersey*, 379 U.S. 670 (1965), the fact that the Act applies to persons in other states who are holding property, eliminating any requirement that those persons be engaged in business in the enacting state.

Subsection (2) has been added to facilitate reference to the person who appears on the holder's records to be the person entitled to the property. The right of a state to claim abandoned property depends on the information in the holder's records concerning the apparent owner's identification. It is of no consequence that without notice to the holder, he may have transferred his interest to another person. In *Nellins v. Tampax, Inc.*, 384 A.2d 333 (Del.Ch.Ct.1978), the court

held that the address of the apparent, not the actual, owner controlled. The holder is not required to ascertain the name of the current owner or resolve a dispute between the owner of record and a successor contesting ownership. However, nothing in this Act prohibits the actual owner from recovering the property, pursuant to Sections 20 and 24, from the holder or the administrator. Similarly, the state's last known address of the actual owner can recover the property, pursuant to Section 25, from the state which initially receives custody.

The definition of "business association" in subsection (5) expressly includes non-profit corporations.

The Act provides exclusively for the disposition of unclaimed intangible property with one exception in Section 16 for tangible property contained in safe deposit boxes.

Screen Actors Guild, Inc. v. Cory, 91 Cal.App.3d 111, 154 Cal.Rptr. 77 (1979); *State v. Jefferson Lake Sulphur Co.*, 36 N.J. 577, 178 A.2d 329 (1962). Section 2 abrogates another contractual condition often asserted as a defense to reporting property otherwise presumed abandoned, the failure to present the evidence of indebtedness.

Subsection (a) is written to insure that although the owner's claim against the holder may be barred by the statute of limitations prior to the effective date of the Act, the holder is not relieved of his obligation to pay abandoned property to the administrator. The comment to Section 16 of the 1966 Act noted that local law must be consulted in order to ascertain whether legislation constitutionally may be enacted reviving a cause of action barred by the statute of limitations. This issue has been litigated in several states, e.g., *Country Mutual Insurance Co. v. Knight*, 40 Ill.2d 523, 240 N.E.2d 612 (1968); *Douglas Aircraft Co. v. Cranston*, 24 Cal.Rptr. 851, 374 P.

2d 819 (1962); cf. *Standard Oil v. New Jersey*, 5 N.J. 281, 74 A.2d 565 (1950). Even though the statute of limitations has run before the effective date of the Act, the holder must report and deliver the property to the state if the holder does not regularly enforce the statute. See *South Carolina Tax Commission v. Metropolitan Life Insurance Co.*, 266 S.C. 34, 221 S.E.2d 522 (1975).

Subsection (b) provides that an administrator must commence an action against a holder within 10 years after the time the property was first reportable. Under existing law it is not clear that statutes of limitations apply to the state in compelling a holder to report or deliver unclaimed property. A holder may under the 1966 Act be subject to suit for an indeterminate period. Certain states have argued that Section 16 of the 1966 Act applies to states and thus there is no statute of limitations. The 10-year limitation period will provide a holder with a cut-off date on which it can rely.

§ 30. [Requests for Reports and Examination of Records]

(a) The administrator 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 Act.

(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 the provisions of this Act. The administrator may conduct the examination even if the person believes it is not in possession of any property reportable or deliverable under this Act.

(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 administrator, pursuant to subsection (b), may examine the records of the person if the administrator has given the notice required by subsection (b) to both the person and the business association at least 90 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 Act, the administrator may assess the cost of the examination against the holder at the rate of \$[] a day for each examiner, but in no case may the charges exceed the value of the property found to be reportable and deliverable. The cost of examination made pursuant to subsection (c) may be imposed only against the business association.

(e) If a holder falls 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 Act are insufficient to permit the preparation of a report, the administrator may require the holder to report and pay such amounts as may reasonably be estimated from any available records.

Commissioners' Comment

This section is designed to facilitate compliance with the Act. Subsection (a) provides for the filing of a negative report if the administrator requires such a report and will minimize disruption which would otherwise be caused to the holder if an examination of records instead were conducted by the administrator. Subsection (b) is based on Section 23 of the 1966 Act. The 1966 Act authorizes examination if the administrator has reason to believe the holder has failed to report property. To require as prerequisite for an examination that a state has reason to believe information has been withheld encourages litigation and imposes an unnecessary burden on the state.

Subsection (c) is intended to provide a useful method whereby the administrator can conduct a single examination of a dividend disbursing agent or transfer agent serving in such capacity for numerous business associations. Under the 1966 Act, dividend disbursing agents and transfer agents have refused to permit any examination of records unless the affirmative consent of the business association was first obtained. This procedure has proved unwieldy and very expensive to the enforcing states. By requiring prior notice to the dividend disbursing agent and the business association, the agent

will have an opportunity to make the necessary arrangements with its principal, the business association, to provide the necessary information in the event that the business association elects not to report the property in question voluntarily. This section, together with Section 33, will enable several states to conduct joint examinations of numerous holders at one time, saving substantial expense and thus permitting examinations which might otherwise be economically unfeasible.

Subsection (e) permits the use of estimates in instances where the holder has failed to report and deliver property that is abandoned and no longer has records with which to prepare such a report. Additionally, if the holder fails to maintain records of the last known address, states can assert claims based on any other records which might exist. Resort may be had to computer codes. This subsection does not resolve the issue of whether the domiciliary state of the holder can also claim the property from the holder. See comment to Section 1(11). While the holding in *Texas v. New Jersey* is intended to prevent multiple liability of holders, this subsection, viewed as a penalty for failure to maintain records of names and last known address, is not inconsistent with that decision. Subsection (e) is prospective only.

§ 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 10 years after the property becomes reportable, except to the extent that a shorter time is provided in subsection (b) or by rule of the administrator.

(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 3 years after the date the property is reportable.

Commissioners' Comment

Many holders are not retaining records of addresses of owners. While Section 11(e) of the 1966 Act may be interpreted to require that those records be kept, this section makes express such a requirement if the holder

initially had an address. The experience of several states has confirmed that substantial amounts of unclaimed property, for which at one time the holder had records of address, are now subject to claim only by the domiciliary state of the holder since the recorded address has not been retained.

Sec.		Sec.	
1.	[Definitions and Use of Terms.]	21.	[Crediting of Dividends, Interest, or Increments to Owner's Account.]
2.	[Property Presumed Abandoned; General Rule.]	22.	[Public Sale of Abandoned Property.]
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13.	[Property Held by Courts and Public Agencies.]	33.	[Interstate Agreements and Cooperation; Joint and Reciprocal Actions with Other States.]
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§ 1. [Definitions and Use of Terms]

As used in this Act, unless the context otherwise requires:

- (1) "Administrator" means [].
- (2) "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.
- (3) "Attorney general" means the chief legal officer of this State.
- (4) "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.
- (5) "Business association" means a non-public corporation, joint stock company, investment company, business trust, partnership, or association for business purposes of 2 or more individuals, whether or not for profit, including a banking organization, financial organization, insurance company, or utility.
- (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:
 - (i) in possession of property belonging to another,
 - (ii) a trustee, or
 - (iii) 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

investigations of holders. States also have agreed that they will collect property for each other from holders, and they regularly exchange property. This Act seeks to encourage further cooperation among the states by authorizing such joint agreements and by authorizing the adoption of uniform reporting forms. See Section 33. Neither the existing agreements among states nor the agreements envisioned under Section 33 require the consent of Congress under the Compact Clause of the Constitution, Art. I, § 10, cl. 3. The Supreme Court has held that the Compact Clause is limited to combinations or agreements that tend to increase the political power of the states to such an extent that it interferes with the supremacy of the United States. *United States Steel v. Multi-State Comm.*, 434 U.S. 452 (1978).

The 1968 Act provided a presumption of abandonment of unclaimed dividend or interest checks but arguably did not cover the underlying ownership interest represented by issued and outstanding securities certificates. In recent years several states have amended their statutes to authorize taking of this property and indications are that the trend is likely to continue. California, Florida, Indiana, Maine, Massachusetts, Montana, Rhode Island and Virginia have statutes with such provisions and other states are known to be considering similar proposals. The new Act specifically covers securities even though they are not in the possession of the issuer. See Section 10.

Two major concerns have been expressed with the concept of presuming abandonment of underlying shares of stock or principal amounts of debt securities where the dividends or interest payments have been unclaimed. First, under what circumstances is it proper to presume abandonment and, second, what are the rights of the various parties when the conditions precedent to abandonment have occurred? As to the first question, Section 10 of the Act requires that there must be the passage of at least 7 years after the failure of an entitled person to claim or inquire about a dividend, interest payment, or other distribution and also the payment of at least 7 dividends, interest sums, or other distributions during such period which remain unclaimed.

As to the rights of the parties under the Act, the Administrator is entitled to have duplicate certificates issued in the state's name. The issuer of the duplicate certificate is relieved of all liability respecting the property delivered (Section 19) and is protected against claims by virtue of the administrator's duty to defend on behalf of the issuer and to indemnify that party against any liability on account of such claims (Section 20).

Under the Act, the administrator may require any person who has not filed a report to file a verified statement that he has or has not any unclaimed and reportable property (Section 30). The administrator has a right to audit records not limited to cases where there is reason to believe a person is not complying with the Act (Section 30).

In keeping with the Act's focus on the last known address of an owner as vesting a state with a priority claim to property, the revision requires a holder who has a record of the last known address to retain it for 10 years after the property becomes reportable (Section 31).

The Act reflects a tendency among state legislatures in recent years to reduce dormancy periods. The current high inflation rate exacts a severe penalty from one who holds money or its equivalent for extended periods; an inference of loss or abandonment may be drawn more quickly than in 1968 when the value of money was more stable. The general rule of presumed abandonment is 5 years (Section 2) as compared with 7 years in the 1968 Act. A one year dormancy period is provided for unclaimed wages (Section 15), utility deposits (Section 8), refunds due from utilities (Section 9), and property held by courts and government agencies (Section 13).

Another set of problems addressed in the revision has to do with service charges imposed on abandoned property. Experience has shown that service charges levied against outstanding items such as money orders and cashier's checks as well as inactive and dormant checking and saving accounts have completely wiped out otherwise reportable property. Sections 5(b) and 6(c) of this revision codify the case law which has limited these charges.

The 1968 Act did not address the small but active heir finder's industry; that is, those businesses which pursuant to contract attempt to locate owners of abandoned property. Some state statutes have placed limits on the role of heir finders from the time property becomes reportable until a specified time after it has been turned over to the state. Section 35 of the new Act prohibits heir finder activity during a two-year period after payment or delivery to the state.

This section does not require that the holder in the first instance obtain the address of the owner, a matter which each state may wish to consider as to specific types of property. For example, a record of the address of the purchaser or recipient of a gift certificate customarily is not obtained.

Initially, the period for which records of address must be obtained is established at 10 years from the date the property was first reportable as abandoned property. However, this section permits a state to shorten this period by rule. Because the reporting practices of holders vary, an administrator will want to consider such factors as the burden imposed on the holder in maintaining such records, the opportunity of returning the property, and the

type of business of the holder. For example, in the case of property that would be reportable in the aggregate without the name and address of the apparent owner under Section 17, a state might adopt a rule providing for a relatively short record retention period on condition that the holder maintain a record sufficient to satisfy the requirements of *Texas v. New Jersey* that there be a last known address or that the state can prove that the last known address of the creditor was within its borders.

Subsection (b) is designed to insure that the information required for asserting a claim to travelers checks and money orders specified in subsection 4(c) is retained by the issuers of travelers checks and money orders.

§ 32. [Enforcement]

The administrator may bring an action in a court of competent jurisdiction to enforce this Act

Commissioners' Comment

Section 32 authorizes suit by the administrator in any court of competent jurisdiction. Although generally an administrator would be expected to sue

in his own state, he can use the courts of another forum to enforce the Act. See Section 33. See also, *Commonwealth of Pennsylvania v. Kervick*, 60 N.J. 289, 288 A.2d 289 (1972).

§ 33. [Interstate Agreements and Cooperation; Joint and Reciprocal Actions With Other States]

(a) The administrator 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 administrator 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 administrator's procedures and the procedures of administrators in other jurisdictions that enact the Uniform Unclaimed Property Act, the administrator, so far as is consistent with the purposes, policies, and provisions of this Act, 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 administrator may join with other states to seek enforcement of this Act against any person who is or may be holding property reportable under this Act.

(d) At the request of another state, the attorney general of this State may bring an action in the name of the administrator 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 administrator may request that the attorney general of another state or any other person bring an action in the name of the administrator in the other state. This State shall pay all expenses including attorney's fees in any action under this subsection. [The administrator may agree to pay the person bringing the action attorney's fees based in whole or in part on a percentage of the value of any property recovered in the action.] Any expenses paid pursuant to this subsection may not be deducted from the amount that is subject to the claim by the owner under this Act.

Commissioners' Comment

Cooperation among states is essential if abandoned property programs are to be efficiently administered. In recent years several states have joined together to audit major holders. Additionally, several states have entered into agreements to act as collection agents for each other. Interstate cooperation and the development of uniform reporting forms and uniform regulations will be of assistance to holders as well as program administrators. Section 33 encourages joint agreements and cooperation among the states.

In many instances holders apparently fail to report based on the correct assumption that individual and distant states will not go to the expense of auditing records. This section will permit spreading the very real expense of conducting audits among several collecting states and the pooling of information which should make enforcement of the Act less burdensome to the state and potentially less burdensome to major corporate holders. An agreement among the states might expressly relieve holders from reporting piecemeal to separate states. Instead, they might be able to file a single report of all abandoned property, wherever located, and regardless of the address of the owner.

Reciprocal agreements envisioned under subsection (c) do not require the consent of Congress under the Compact Clause of the Constitution, Art. I, § 10, cl. 3. The Supreme Court has held that the restriction of the Com-

act Clause is limited to combinations or agreements that tend to increase the political power of the states to such an extent that it interferes with the supremacy of the United States. *United States Steel v. Multi-State Tax Commission*, 434 U.S. 452 (1978). In *Multi-State Tax Commission* the Court upheld a tax compact, that had not been approved by Congress creating a permanent administrative body to perform audits of multi-state taxpayer operations, and at the request of a member state, to sue to enforce the audits in the courts of the member states.

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

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

§ 34. [Interest and Penalties]

(a) A person who fails to pay or deliver property within the time prescribed by this Act [shall] [may be required to] pay to the administrator interest at the annual rate of [18 percent] [10 percent above the annual rate of

the owner's last known address does not assert a claim to the property, it is payable to the state of the holder's domicile.

There are other sections which shore up this scheme of priority, some of which are necessitated by the *Texas v. New Jersey* decision and some of which merely represent a statutory enactment of existing practices among states. One issue which has been raised by academic commentators concerns the reporting requirements of abandoned property legislation in light of the priority rules among claimant states enunciated by *Texas v. New Jersey*. Because the *Texas v. New Jersey* decision authorizes a state to claim abandoned property even though it cannot assert personal jurisdiction over the holder, the question has arisen as to whether a claimant state in that instance has the power to compel reporting from a holder to ascertain the existence of its claim. That is an important consideration, for the right given to the state of last known address by *Texas v. New Jersey* is a hollow one if the state is without sufficient information to assert its claim to abandoned property.²

The state acts as a conservator of the lost owner's property and the Act is akin to a succession statute.³ The *Texas v. New Jersey* rule, as the Supreme Court noted, is a variation of the common law concept of *mobilia sequuntur personam*, according to which the law of the state of domicile of the intestate owner determines the right of succession to personal property. The state in which the owner last resided is a rough indicator of domicile, and that state is entitled to provide by legislation for succession. The state of last known address, succeeding to the right of the owner, is entitled to compel a holder to disclose the existence of property which belongs to the owner in the same manner that a conservator of an estate of an incompetent or the administrator of the estate of a missing person or decedent can compel the holder of that person's property to account for it.⁴ That the state may not be able to assert its claim in its own courts, but would be required to use the courts of another jurisdiction, is not determinative of its power to act as a custodian.⁵ Hence the suggestion that corporate holders not "doing business" in a state might escape their obligation to pay unclaimed property owing to persons with last known addresses in that state is incorrect.⁶

The Supreme Court's failure to expressly mandate a reporting requirement in *Texas v. New Jersey* does not appear significant. Holders rarely raise a defense of failure to "do business" in response to a request for reporting. In any event many major holders are subject to the regulatory jurisdiction of most states. Even in those instances in which a holder is not subject to the regulatory jurisdiction of a state, the claimant state can nevertheless require reporting under this succession analysis.

Other Changes in the Act

In recent years the National Association of Unclaimed Property Administrators has become an active group. There is growing cooperation among member states to exchange information. Several states have joined together to conduct joint

² *Texas v. New Jersey* did not decide whether the state which is entitled to the first priority claim can compel reporting by a foreign corporation. The issue was neither briefed nor argued in the case; however, footnote 8 of the decision implies that such a legislative power exists. The right given to creditor states would be meaningless without the remedy of compelling reports.

³ The Court's decision in *Connecticut Mutual Li. Insurance Co. v. Moore*, 333 U.S. 541, 546-47 (1947), described the state as a "conservator" when claiming property under a custodial unclaimed property law. The Court in *Standard Oil Co. v. New Jersey*, 347 U.S. 428, 437 (1951), characterized the Moore case as involving a "conservation statute".

⁴ As the United States Supreme Court noted in upholding the constitutionality of the Massachusetts custodial unclaimed property laws: "[I]f the facts warrant it, a legal representative can be appointed at any time with all the rights incident to such appointment, including that of withdrawing the funds and holding them for the true owner when he shall establish his claim." *Provident Institution for Savings v. Malone*, 221 U.S. 660, 666 (1911).

⁵ In this connection, see *Commonwealth of Pennsylvania v. Kervick*, 60 N.J. 289, 288 A.2d 259 (1972) (Pennsylvania held entitled to sue in New Jersey state courts for property owing to Pennsylvania residents.)

⁶ "Doing business", for purposes of service of process is limited only by the Fourteenth Amendment of the United States Constitution. On the other hand, jurisdiction to regulate a foreign corporation in a substantive fashion must run the gauntlet of the Commerce Clause, the Equal Protection Clause, and the Impairment of Contracts Clause as well as the Due Process Clause. (See *Miller Bros. Co. v. Maryland*, 347 U.S. 340 (1954) (a Delaware business is not required to collect a sales tax from Maryland purchasers even though it makes some deliveries in Maryland).)

assure Western Union that no other state would claim the property. In *Western Union*, Pennsylvania sought to escheat uncashed money orders and drafts which were held by Western Union and unclaimed by either the senders or the payees. The court held that Western Union should not be embroiled in a race of diligence among New York, Pennsylvania and other states. The Supreme Court's opinion in effect admonished the states mutually to resolve which state was entitled to claim abandoned property or, absent agreement, to present their conflicting claims to the only judicial forum in which they could be resolved, the Supreme Court. Thus any state facing an actual or potential dispute by a sister state was forced to bring an original action in the Supreme Court for a declaration of its rights before it could take the property. This was the condition of the law when the Supreme Court decided *Texas v. New Jersey*.¹

The problem in *Texas v. New Jersey* was which of several states was entitled to escheat intangible property consisting of debts owed by Sun Oil Company and left unclaimed by creditors. Four rules were proposed:

1. that the funds should go to the state having the most significant "contacts" with the debt;
2. that the funds should go to the state of the debtor company's incorporation;
3. that the funds should be paid to the state in which the company has its principal place of business; and
4. that the funds should be paid to the state of the creditor's last known address as shown by the debtor's books and records.

Rule 4 was adopted by the Supreme Court as a "simple and easy" standard to follow. The court pointed out that this rule tended to "distribute escheats among the states in proportion of the commercial activities of their residents". In addition to the holding that the state of the creditor's last known address is entitled to escheat or custodially claim the property owed to the creditor, the court held that, if the creditor's address does not appear on the debtor's books or is in a state that does not provide for the escheat of intangibles, then the state of the debtor's incorporation may take custody of the property until some other state comes forward with proof that it has a superior right to escheat or take custody.

The *Texas v. New Jersey* rule makes the Uniform Act inadequate because the Uniform Act is based on the claimant state's ability to assert jurisdiction over the holder. Under *Texas v. New Jersey* a Uniform Act state may not claim certain property held by persons subject to its jurisdiction (which the Uniform Act covers) but can assert custody to property held by persons not subject to its jurisdiction (which the Uniform Act does not cover).

A simple hypothetical illustrates the problem of meshing the rule of *Texas v. New Jersey* with the Uniform Act. Assume a corporate holder, incorporated in State A, holding unclaimed property (an uncashed dividend check) belonging to a claimant whose last known address was in State B. The holder does not do business in State B. Under the *Texas v. New Jersey* rule, State B is the first priority claimant. However, since the holder does not do business there the Uniform Act would not authorize State B to assert a claim to the property. State A, if it had enacted the Uniform Act, could claim the property under its abandoned property law in accordance with the second priority rule of *Texas v. New Jersey*; however, that frustrates the goal of equitable distribution of unclaimed property among creditor states.

Why Uniformity Is Necessary

The 1954 and 1960 Uniform Acts responded to the need for symmetry in the law for the benefit of persons doing business in more than one state. Widespread enactment of the Uniform Act by the States indicates their recognition of the need for uniformity.

Since the 1954 and 1960 Acts are inconsistent with *Texas v. New Jersey* and other cases, the Conference, after receiving the report of a Study Committee, decided to revise the Uniform Act once again.

What the Act Does to Conform With *Texas v. New Jersey*

Section 3 of the Act provides a statutory response which is consistent with the Court's pronouncement in *Texas v. New Jersey*. Basically, the Act provides that unclaimed intangible property is payable to the state of last known address of the owner. In those instances in which that information is unknown or the state of

¹ While the court in *Texas v. New Jersey* set down rules applying to both escheat statutes and custodial type unclaimed property statutes (such as the Uniform Act), all but a few of the states have laws which are custodial and allow the lawful owner to claim the property at any time.

discount, in effect on the date the property should have been paid or delivered, for the most recent issue of 52-week United States Treasury bills] on the property or value thereof from the date the property should have been paid or delivered.

(b) A person who willfully fails to render any report or perform other duties required under this Act shall pay a civil penalty of \$[100] for each day the report is withheld or the duty is not performed, but not more than \$[5000].

(c) A person who willfully fails to pay or deliver property to the administrator as required under this Act shall pay a civil penalty equal to 25 percent of the value of the property that should have been paid or delivered.

(d) A person who willfully refuses after written demand by the administrator to pay or deliver property to the administrator as required under this Act is guilty of a [] and upon conviction may be punished by a fine of not less than \$[] nor more than \$[], or imprisonment for not more than [] months, or both.

Commissioners' Comment

A major weakness of the 1960 Act was its ineffective penalty provision. Primary reliance on the criminal law as a compliance mechanism is misplaced. Often the reason for withholding property is economic, and economic sanctions in those cases are generally more effective in assuring compliance.

The experience of several states is that many holders find the economic incentive for noncompliance so great that violations of the law are frequent and extensive. The holder who neglects to report or pay has the use of property which is extremely valuable

to it. The provision for civil penalties in subsection (a) is designed to give a holder sufficient incentive to report and pay over abandoned property. It is also designed to ensure that the true owners or their representatives, the states, receive the income from the property while it is wrongfully withheld. Similar provisions have been enacted by several states, for example, California (Cal.Civ.Pro.Code § 1577 (Supp.1981)) and Minnesota (Minn. Stat. § 345.55 subd. 3).

Criminal penalties are provided in subsection (d) for willful refusal, after written demand by an administrator, to pay or deliver property.

§ 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 24 months after the date payment or delivery is made under Section 19, are unenforceable.

Commissioners' Comment

This section is in part based on Cal. Civ.Pro.Code § 1582 (Supp.1981).

§ 36. [Foreign Transactions]

This Act does not apply to any property held, due and owing in a foreign country and arising out of a foreign transaction.

Commissioners' Comment

This provision is designed to exclude from the coverage of the Act wholly foreign transactions.

§ 37. [Effect of New Provisions; Clarification of Application]

(a) This Act does not relieve a holder of a duty that arose before the effective date of this Act to report, pay, or deliver property. A holder who did not comply with the law in effect before the effective date of this Act 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 Act for property that was not required to be reported before the effective date of this Act but which is subject to this Act must include all items of property that would have been presumed abandoned during the 10-year period preceding the effective date of this Act as if this Act had been in effect during that period.

Commissioners' Comment

This Act adds, amends, clarifies and repeals sections of the 1968 Act. The new Act may provide for the presumption of abandonment of one type of property that arguably was not subject to a presumption of abandonment under the 1968 Act. For example, the 1968 Act did not expressly cover underlying share certificates unless they were held or owing by business associations. Underlying share certificates are now expressly covered in this Act pursuant to Section 10. Additionally, the state of last known address under the 1968 Act perhaps could not reach property otherwise presumed abandoned where the holder was not doing business in the state of last known address.

Subsection (a) provides that if a state had an unclaimed property law prior to the adoption of this Act, a holder is not relieved of his duty to report and pay over the property abandoned under the Act then existing.

Subsection (b) deals with the problem of how far back a holder must

property not subject to the prior Act must be paid to the state under this Act. The period chosen is 10 years. A holder is required to pay to the state any property which 10 years before the date of enactment would have been payable in the enacting state if this Act had been in effect. For example, if a state enacts the new Act effective January 1, 1983 for property not previously presumed abandoned, the holder must report it if, as of January 1, 1973, it had been unclaimed for the abandonment period. A similar provision is found in Section 11(g) of the 1968 Act.

However, some property subject to this Act but which was not covered by the then existing Act may have been paid to another state. If a holder has already paid this property to another state under its then existing unclaimed or abandoned property laws, it is not required to pay again to this State. Nothing in this section, however, prohibits this State from making a claim on the state to which the property was originally paid.

check his records to determine what

§ 38. [Rules]

The administrator may adopt necessary rules to carry out the provisions of this Act.

§ 39. [Severability]

If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or

UNIFORM UNCLAIMED PROPERTY ACT (1981)

Commissioner's Prefatory Note

Why Change is Needed

Thirty-one states and the District of Columbia have enacted either the original 1954 version of the Uniform Disposition of Unclaimed Property Act, or the 1968 revision of that Act. Of the remaining 20 states, all but 2 have some form of escheat or abandoned property legislation. The 1954 Uniform Act was drafted as a response to conflicting legislation among the various states and in response to a series of Supreme Court decisions in the late 1940's and early 1950's. The 1954 and 1968 Acts served well as evidenced by their numerous adoptions. However, the era of stability was ended with the decision in *Texas v. New Jersey*, 379 U.S. 670 (1965). That decision established a set of priorities for claimant states which were, in some instances, inconsistent with those established by the Uniform Act. A few states which previously had enacted the Uniform Act have changed their legislation to reflect the holding in *Texas v. New Jersey*.

In the last decade states have become increasingly aware of the opportunities for collecting and returning to their residents unclaimed money and using the "windfall" unreturned funds as general fund receipts for the benefit of citizens of the state. Accordingly several states have sought to enforce their unclaimed property laws with enhanced vigor. They have found, however, that obtaining compliance with the law has been extremely difficult. In some instances the uncertain status of unclaimed property statutes in the wake of *Texas v. New Jersey* accounts for the high degree of noncompliance; many holders feel they do not know what is required of them. In addition the enforcement provisions of the Uniform Act are inadequate and have not served to encourage compliance with the Act.

The Uniform Act served its time. However, to conform the Uniform Act expressly to the Supreme Court ruling in *Texas v. New Jersey* a comprehensive revision is desirable.

The Impact of *Texas v. New Jersey*

The 1954 and 1968 Uniform Acts basically tied the enacting state's claim to abandoned property to the ability of that state's courts to assert personal jurisdiction over the holder. The basic jurisdictional test of Sections 2, 4, 5, 6, 7, 8 and 9 for a presumption of abandonment bears a direct relationship to events taking place within the state. The thrust of this "contacts" test generally is to allow any state with jurisdiction over the holder, i. e., the debtor, to take unclaimed property. In recognition of the potential for conflict among jurisdictions over the application of a contacts test, the Uniform Act contained a reciprocity clause in Section 10. Section 10 allowed another state to claim abandoned property if the last known address of the claimant was in that state and if other states with contacts would forego their claims. The success of this clause was dependent upon uniform enactment by competing states. However, this was never forthcoming, and the assertion of competing claims by states continued.

The Supreme Court decisions leading up to *Texas v. New Jersey* did little to clarify the law. The state of residence of the creditor could claim, *Connecticut Mutual Life Insurance v. Moore*, 333 U.S. 541 (1948), and the state of the holder's domicile could likewise escheat, *Standard Oil Co. v. New Jersey*, 347 U.S. 428 (1951).

Standard Oil also held that it was a denial of due process for more than one state to escheat the same property. This rule created a race of diligence among the states. In *Western Union Telegraph Co. v. Pennsylvania*, 368 U.S. 71 (1962), however, the court told the most diligent state (Pennsylvania) that it had to

applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

JIM LORD, National Association of Unclaimed Property Administrators
THOMAS E. MONTGOMERY, American Bar Association
STEPHEN P. NORMAN, Issuers of Money Orders and Travelers Checks
WILLIAM ROCHE, Edison Electric Institute
WILLIAM M. TARTIKOFF, Investment Company Institute
DONALD H. WEEKS, United States League of Savings Associations

§ 40. [Uniformity of Application and Construction]

This Act shall be applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this Act among states enacting it.

§ 41. [Short Title]

This Act may be cited as the Uniform Unclaimed Property Act (1981).

§ 42. [Repeal]

The following acts and parts of acts are hereby repealed:

- (a)
- (b)
- (c)

§ 43. [Time of Taking Effect]

This Act shall take effect

Copies of all Uniform and Model Acts and other printed matter issued by the Conference may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
645 North Michigan Avenue, Suite 510
Chicago, Illinois 60611

UNCLAIMED PROPERTY (1981 ACT)

TABLE OF COMPARATIVE SECTIONS

Showing Sections of the Uniform Unclaimed Property Act (1981) and the 1966 Uniform Disposition of Unclaimed Property Act.

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Section 3 [General Rules for Taking Custody of Intangible Unclaimed Property.]	No comparable section
Section 4 [Travelers Checks and Money Orders.]	Section 2
Section 5 [Checks, Drafts and Similar Instruments Issued or Certified by Banking and Financial Organizations.]	Section 2
Section 6 [Bank Deposits and Funds in Financial Organizations.]	Section 2
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Section 16 [Contents of Safe Deposit Box or Other Safekeeping Repository.]	Section 2(d)
Section 17 [Report of Abandoned Property.]	Section 11
Section 18 [Notice and Publication of Lists of Abandoned Property.]	Section 12
Section 19 [Payment or Delivery of Abandoned Property.]	Section 13
Section 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.]	Section 14
Section 21 [Crediting of Dividends, Interest or Increments to Owner's Account.]	No comparable section
Section 22 [Public Sale of Abandoned Property.]	Section 17
Section 23 [Deposit of Funds.]	Section 18
Section 24 [Filing of Claim With Administrator.]	Sections 19 and 20

UNIFORM UNCLAIMED PROPERTY ACT

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UNCLAIMED PROPERTY (1981 ACT)

Uniform Unclaimed Property Act—Cont'd	1966 Uniform Act
Section 25 [Claim of Another State to Recover Property; Procedure.]	No comparable section
Section 26 [Action to Establish Claim.]	Section 21
Section 27 [Election to Take Payment or Delivery.]	Section 22
Section 28 [Destruction or Disposition of Property Having Insubstantial Commercial Value; Immunity from Liability.]	No comparable section
Section 29 [Periods of Limitation.]	Section 16
Section 30 [Requests for Reports and Examination of Records.]	Section 23
Section 31 [Retention of Records.]	No comparable section
Section 32 [Enforcement.]	Section 24
Section 33 [Interstate Agreements and Cooperation; Joint and Reciprocal Actions with Other States.]	No comparable section
Section 34 [Interest and Penalties.]	Section 25
Section 35 [Agreement to Locate Reported Property.]	No comparable section
Section 36 [Foreign Transactions.]	No comparable section
Section 37 [Effect of New Provisions; Clarification of Application.]	No comparable section
Section 38 [Rules.]	Section 26
Section 39 [Severability.]	Section 28
Section 40 [Uniformity of Application and Construction.]	Section 29
Section 41 [Short Title.]	Section 30
Section 42 [Repeal.]	Section 31
Section 43 [Time of Taking Effect.]	Section 32

UNIFORM UNCLAIMED PROPERTY ACT (1981)

Drafted by the

**NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS**

and by it

**APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES**

at its

**ANNUAL CONFERENCE
MEETING IN ITS NINETIETH YEAR
IN NEW ORLEANS, LOUISIANA
JULY 31 - AUGUST 7, 1981**



WITH PREFATORY NOTE AND COMMENTS

**Approved by the American Bar Association
Chicago, Illinois, January 25, 1982**