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DELAWARE UNCLAIMED PROPERTY LAW COMPANION
2011 - 2012

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UNIFORM UNCLAIMED PROPERTY ACTS

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UNIFORM UNCLAIMED PROPERTY ACT

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

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WITH PREFATORY NOTE AND COMMENTS

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

UNIFORM UNCLAIMED PROPERTY ACT

1981 ACT

The Committee that acted for the National Conference of Commissioners on Uniform State Laws in preparing the Uniform Unclaimed Property Act was as follows:

Howard T. Rosen, Gateway I, Newark, NJ 07102, *Chairman*

Sandra Day, Suite 100, Legislative Services Wing, State Capitol, Phoenix, AZ 85007

Andrew W. McThenia, Jr., Washington and Lee University, School of Law, Lewis Hall,
Lexington, VA 24450, *Reporter*

Charles O. Ragan, Jr., Suite 610, First Tennessee Bank Building, Chattanooga, TN 37402

William A. Robinson, 2920 Military Road, N.W., Washington, DC 20015

Howard J. Swibel, Suite 5800, 200 East Randolph Drive, Chicago, IL 60601

Charles M. Welling, 900 Law Building, Charlotte, NC 28202

David J. Epstein, Suite 2060, Two Century Plaza, 2049 Century Park East, Los Angeles,
CA 90067, *Reporter*

John C. Deacon, P.O. Box 1245, Jonesboro, AR 72401, *President (Member Ex Officio)*

M. King Hill, Jr., Sixth Floor, 100 Light Street, Baltimore, MD 21202, *Chairman,*
Executive Committee (Member Ex Officio)

William J. Pierce, University of Michigan, School of Law, Ann Arbor, MI 48109,
Executive Director

Edward I. Cutler, P.O. Box 3239, Tampa, FL 33601, *Chairman, Division H (Member Ex*
Officio)

Review Committee

C. Ben Dutton, 710 Guaranty Building, Indianapolis, IN 46204, *Chairman*

Robert E. Sullivan, Legal Department, 40 East Broadway, Butte, MT 59701

Advisors to Special Committee on Uniform Unclaimed Property Act

Gary Bosco, American Bankers Association

Joy Cherian, American Council of Life Insurance

Earl J. Grimm, American Society of Corporate Secretaries

John T. Higginbotham, American Bar Association, Section of Taxation

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

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 1966 revision of that Act. Of the remaining 19 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 1966 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. 674 (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.

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The Impact of *Texas v. New Jersey*

The 1954 and 1966 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 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).

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

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 1966 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 1966 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*.² 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 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.

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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

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.

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.

³The Court's decision in *Connecticut Mutual Life 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".

⁴As 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).

⁵In this connection, see *Commonwealth of Pennsylvania v. Kervick*, 60 N.J. 289, 288 A.2d 289 (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)).

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 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 1966 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.

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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 1966 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 1966 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 savings 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 1966 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.

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UNCLAIMED PROPERTY (1981 ACT)

§ 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 a 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 providing insurance coverage, including accident, burial, casualty, credit life, contract performance, dental, fidelity, fire, health, hospitalization, illness, life (including endowments and annuities),

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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, 2 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.

Comment

Prior Uniform Act Provision:

Section 1.

The definitions have been revised to reflect, pursuant to *Texas v. New Jersey*, 379 U.S. 674 (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 *Nellius v. Tampax, Inc.*, 394 A.2d 333 (Del.Ch.Ct.1978), the court held that the address of the apparent, not the actual, owner controlled. The holder is not required to ascertain the name of the current owner or resolve a dispute between the owner of record and a successor contesting ownership. However, nothing in this Act prohibits the actual owner from recovering the property, pursuant to Sections 20 and 24, from the holder or the administrator. Similarly, the state of 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.

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

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payment.

Comment

Prior Uniform Act Provision:

Section 9.

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 unpresented winning parimutuel tickets.

Since the holder is indemnified against any loss resulting from the delivery of the property to the administrator, no possible harm can result in requiring that holders turn over 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.

Comment

Prior Uniform Act Provision:

None.

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 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 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.

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*.

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 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. 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.

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.

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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 on file prepared by an employee of the issuer.

(b) Subject to subsection (d), any sum payable on a money order or similar written instrument, other than a third-party bank check, that has been outstanding for more than 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.

(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, 1965, except to the extent that those sums have been paid over to a state prior to January 1, 1974.

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Comment

Prior Uniform Act Provision:

Section 2.

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 1966 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 1966 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. 1525-26, 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 instrument for payment unless there is a valid and enforceable written contract between the holder and the owner of the instrument pursuant to which the holder may impose a charge, and the holder regularly imposes such charges and does not regularly reverse or otherwise cancel them.

Comment

Prior Uniform Act Provision:

Section 2.

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

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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 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.

Comment

Prior Uniform Act Provision:

Section 2.

Section 6 covers bank accounts and follows closely Section 2(a) of the 1966 Act. In addition to the depositor or owner contacts contained in the 1966 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 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.

Subsection (c) 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 Owing Under Life Insurance Policies].

(a) Funds held or owing under any life or endowment insurance policy or annuity contract that has matured or terminated are presumed abandoned if unclaimed for more than 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 definite and certain from the records of the company who is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the company.

(c) For purposes of this 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,

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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.

Comment

Prior Uniform Act Provision:

Section 3.

Subsections (a) and (b) restate the substance of Section 3(a) of the 1966 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 insurer. Under the 1966 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 is a restatement of a similar provision in subsection (b) of Section 3 of the 1966 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 Disclose 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).

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§ 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.

Comment

Prior Uniform Act Provision:

Section 4.

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. 674 (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.

Comment

Prior Uniform Act Provision:

Section 4.

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,

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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).

Comment

Prior Uniform Act Provision:

Section 5.

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.

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,

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 or 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.

indicate that this type of property was within the coverage of Section 9. However, the fact remains that no states with the Uniform Act have sought to recover this property in a systematic way.

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 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 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 administrator is required to indemnify the holder against any liability on the claim. The required indemnity is complete, and it is

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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.

Comment

Prior Uniform Act Provision:

Section 6.

This section closely follows Section 6 of the 1966 Act except that the dormancy 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.

Comment

Prior Uniform Act Provision:

Section 7.

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 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.

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§ 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.

Comment

Prior Uniform Act Provision:

Section 8.

§ 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.

Comment

Prior Uniform Act Provision:

Section 9.

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.

Comment

Prior Uniform Act Provision:

Section 9.

Since the chance of locating the missing owner of a wage check materially 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.

Comment

Prior Uniform Act Provision:

Section 2(d).

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.

(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

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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.

Comment

Prior Uniform Act Provision:

Section 11.

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.

Comment

Prior Uniform Act Provision:

Section 12.

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 1966 Act that a separate notification be given by the administrator to the holder to establish when the final report and remittance is required.

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.

§ 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.

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Comment

Prior Uniform Act Provision:

Section 13.

Subsections (a) through (c) restate the substance of Section 13 of the 1966 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 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 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.

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Comment

Prior Uniform Act Provision:

Section 14.

When property is turned over to the state, the holder is relieved of all liability 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 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.

Comment

Prior Uniform Act Provision:

Section 15.

This section changes Section 15 of the 1966 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.

Comment

Prior Uniform Act Provision:

Section 17.

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

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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.]

Comment

Prior Uniform Act Provision:

Section 18.

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 substantial 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 fails to state either the last address to which notices are to be sent or the address of the claimant.

(c) If a claim is allowed, the 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

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provided in subsection (c). The added interest must be repaid to the holder by the administrator in the same manner as the principal.

Comment

Prior Uniform Act Provisions:

Sections 19 and 20.

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.

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Comment

Paragraph 2 parallels Section 3(4), which permits the state of corporate domicile to take if the state of the last known address does not provide for the escheat or custodial taking of the property. If the state of the last known address subsequently enacts an unclaimed property law which covers the property, the taking state must turn it over.

Paragraph 4, paralleling Section 3(6), provides that property initially claimed under a “contacts” test because there was no last known address and the state of domicile had no applicable unclaimed property law may be reclaimed by the state of corporate domicile if it enacts an applicable unclaimed property law.

Prior Uniform Act Provisions:

None, but compare Sections 10 and 19.

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. 674 (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 (d)(3), which permits the state of corporate domicile to take if the state of the last known address does not provide for the escheat or custodial taking of the property. If the state of the last known address subsequently enacts an unclaimed property law which covers the property, the taking state must turn it over.

Paragraph 3 addresses the problem of *Nellius v. Tampax, Inc.*, 394 A.2d 333 (Del.Ch.Ct.1978) in which the holder's records did not reflect the fact that the record owner had sold the property to another. The court concluded, under *Texas v. New Jersey*, that the holder's records were controlling and that 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.]

Comment

Prior Uniform Act Provision:

Section 21.

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 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.

§ 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.

Comment

Prior Uniform Act Provision:

Section 22.

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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.

Comment

Prior Uniform Act Provision:

None.

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.

Comment

Prior Uniform Act Provision:

Section 16.

Section 29 has an added provision that the expiration of time periods set forth 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); *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

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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 fails after the effective date of this Act to maintain the records required by Section 31 and the records of the holder available for the periods subject to this 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.

Comment

Prior Uniform Act Provision:

Section 23.

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.

Comment

Prior Uniform Act Provision:

None.

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.

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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.

Comment

Prior Uniform Act Provision:

Section 24.

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.

Comment

Prior Uniform Act Provision:

None-but compare, Section 10.

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

This section simply authorizes an economical approach to enforcing a state's claim under *Texas v. New Jersey*. Each state retains discretion to bring suit or to decide against such action,

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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 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.

Comment

Prior Uniform Act Provision:

Section 25.

A major weakness of the 1966 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.

Comment

Prior Uniform Act Provision:

None.

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

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§ 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.

Comment

Prior Uniform Act Provision:

None.

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.

Comment

Prior Uniform Act Provision:

None.

This Act adds, amends, clarifies and repeals sections of the 1966 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 1966 Act. For example, the 1966 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 1966 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 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 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 1966 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.

§ 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 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.

§ 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

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UNIFORM UNCLAIMED PROPERTY ACT (1995)

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 ONE-HUNDRED-AND-FOURTH YEAR
IN KANSAS CITY, MISSOURI JULY 28 – AUGUST 4, 1995
WITH PREFATORY NOTE AND COMMENTS

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The Committee that acted for the National Conference of Commissioners on Uniform State Laws in preparing the Uniform Unclaimed Property Act (1995) was as follows:

WILLIS E. SULLIVAN, III, P.O. Box 359, 1423 Tyrell Lane, Boise, ID 83701, Chair
OWEN L. ANDERSON, University of Oklahoma, College of Law, 300 Timberdell Road, Norman, OK 73019
DAVID D. BIKLEN, Law Revision Commission, Room 509A, State Capitol, Hartford, CT 06106
FRED C. CORNISH, Suite 917, 321 South Boston, Tulsa, OK 74103
EDWARD I. CUTLER, P.O. Box 3239, Tampa, FL 33601
STANLEY M. FISHER, 1100 Huntington Building, Cleveland, OH 44115
PATRICK C. GUILLOT, Suite 900, 8080 North Central Expressway, Dallas, TX 75206
JOHN F. HAYES, Suite 260, 335 North Washington, Hutchinson, KS 67504
RAYMOND P. PEPE, 13th Floor, 240 North Third Street, Harrisburg, PA 17101
ROBERT E. SULLIVAN, 112 Hillcrest Loop, Missoula, MT 59803
ROBERT WILLIAMS, Suite 800, 770 L Street, Sacramento, CA 95814
CURTIS D. FORSLUND, 5555 Via Entrada, Tucson, AZ 85718, Reporter

EX OFFICIO

RICHARD C. HITE, 200 West Douglas Avenue, Suite 600, Wichita, KS 67202, President
W. JACKSON WILLOUGHBY, Placer County Municipal Court, 300 Taylor Street,
Roseville, CA 95678, Chair, Division B

EXECUTIVE DIRECTOR

FRED H. MILLER, University of Oklahoma, College of Law, 300 Timberdell Road, Norman, OK 73019,
Executive Director
WILLIAM J. PIERCE, 1505 Roxbury Road, Ann Arbor, MI 48104, Executive Director Emeritus

ADVISORS

E. SUZANNE DARLING, National Association of Unclaimed Property Administrators
SONYA M. DAVIS, American Bar Association
DAVID J. EPSTEIN, Boston, MA

ADDITIONAL PARTICIPANTS

THOMAS E. HAIDER, Travelers Express Company, Inc.
TODD D. LEBSACK, National Retail Federation
STEPHEN P. NORMAN, American Society of Corporate Secretaries, Inc.
CAROL B. ROSEN, Keane Tracers Inc.
PAULA YOUNG SMITH, National Association of Division Order Analysts
TODD R. STIMMEL, The National Abandoned Property Processing Corporation
MATHEW H. STREET, American Bankers Association
ROBERT A. WITTIE, Investment Company Institute

Copies of this Act may be obtained from: NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS
676 North St. Clair Street, Suite 1700 Chicago, Illinois 60611 312/915-0195

UNIFORM UNCLAIMED PROPERTY ACT (1995)

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UNIFORM UNCLAIMED PROPERTY ACT (1995)

PREFATORY NOTE

Statement of the History of the Act

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

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

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

UNIFORM UNCLAIMED PROPERTY ACT (1995)**SECTION 1. DEFINITIONS.** In this [Act]:

- (1) “Administrator” means [insert name of appropriate officer].
- (2) “Apparent owner” means a person whose name appears on the records of a holder as the person entitled to property held, issued, or owing by the holder.
- (3) “Business association” means a corporation, joint stock company, investment company, partnership, unincorporated association, joint venture, limited liability company, business trust, trust company, [land bank], safe deposit company, [safekeeping depository], financial organization, insurance company, mutual fund, utility, or other business entity consisting of one or more persons, whether or not for profit.
- (4) “Domicile” means the State of incorporation of a corporation and the State of the principal place of business of a holder other than a corporation.
- (5) “Financial organization” means a savings and loan association, [building and loan association, savings bank, industrial bank,] bank, banking organization, or credit union.
- (6) “Holder” means a person obligated to hold for the account of, or deliver or pay to, the owner property that is subject to this [Act].
- (7) “Insurance company” means an association, corporation, or fraternal or mutual benefit organization, whether or not for profit, engaged in the business of providing life endowments, annuities, or insurance, including accident, burial, casualty, credit life, contract performance, dental, disability, fidelity, fire, health, hospitalization, illness, life, malpractice, marine, mortgage, surety, wage protection, and workers’ compensation insurance.
- (8) “Mineral” means gas; oil; coal; other gaseous, liquid, and solid hydrocarbons; oil shale; cement material; sand and gravel; road material; building stone; chemical raw material; gemstone; fissionable and nonfissionable ores; colloidal and other clay; steam and other geothermal resource; or any other substance defined as a mineral by the law of this State.
- (9) “Mineral proceeds” means amounts payable for the extraction, production, or sale of minerals, or, upon the abandonment of those payments, all payments that become payable thereafter. The term includes amounts payable:
 - (i) for the acquisition and retention of a mineral lease, including bonuses, royalties, compensatory royalties, shut-in royalties, minimum royalties, and delay rentals;
 - (ii) for the extraction, production, or sale of minerals, including net revenue interests, royalties, overriding royalties, extraction payments, and production payments; and
 - (iii) under an agreement or option, including a joint operating agreement, unit agreement, pooling agreement, and farm-out agreement.
- (10) “Money order” includes an express money order and a personal money order, on which the remitter is the purchaser. The term does not include a bank money order or any other

instrument sold by a financial organization if the seller has obtained the name and address of the payee.

(11) "Owner" means a person who has a legal or equitable interest in property subject to this [Act] or the person's legal representative. The term includes a depositor in the case of a deposit, a beneficiary in the case of a trust other than a deposit in trust, and a creditor, claimant, or payee in the case of other property.

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

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

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

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

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

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

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

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

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

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

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

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

Comment

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

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

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

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

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

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

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

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

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

In sum, *Delaware v. New York* requires that some “proper mechanism” show that the owner had an address within the State that asserts a primary claim. A computer code would appear to be such a means of proof. On the other hand, showing that the transaction took place in the State would not be sufficient proof of an owner’s address. *Pennsylvania v. New York*, 407 U.S. 206, 92 S.Ct. 2075, 32 L.Ed. 2d 693 (1972).

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

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

The Act provides exclusively for the disposition of unclaimed intangible property and does not apply to tangible property, with one exception: Section 3 applies to tangible property contained in safe deposit boxes. Paragraph (12), defining property, is not intended as a substantive addition to the coverage of the 1981 Act. It is, however, intended to be all-inclusive; the descriptions

of property interests that are set forth as examples are not limiting, but are stated to help holders identify kinds of property interests which otherwise may be overlooked. Thus, “property” is not the check, note, certificate or other document that evidences the property interest, but the underlying right or obligation. See *Blue Cross of Northern California v. Cory*, 120 Cal. App. 3d 723, 174 Cal. Rptr. 901 (1981) (“right to be paid” is the “„intangible personal property’ (or „choses in action’) . . . which is recognized in the UPL”). The requirement that the right be “fixed and certain” excludes unliquidated claims from the coverage of the Act, such as disputed tort claims.

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

SECTION 2. PRESUMPTIONS OF ABANDONMENT.

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

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

(2) money order, seven years after issuance;

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

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

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

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

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

(8) amount owed by an insurer on a life or endowment insurance policy or an annuity that has matured or terminated, three years after the obligation to pay arose or, in the case of a policy or annuity payable upon proof of death, three years after the insured has attained, or would have attained if living, the limiting age under the mortality table on which the reserve is based;

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

(10) property received by a court as proceeds of a class action, and not distributed pursuant to the judgment, one year after the distribution date;

(11) property held by a court, government, governmental subdivision, agency, or instrumentality, one year after the property becomes distributable;

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

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

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

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

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

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

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

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

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

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

(iv) the payment of a premium with respect to a property interest in an insurance policy; but the application of an automatic premium loan provision or other nonforfeiture provi-

sion contained in an insurance policy does not prevent a policy from maturing or terminating if the insured has died or the insured or the beneficiary of the policy has otherwise become entitled to the proceeds before the depletion of the cash surrender value of a policy by the application of those provisions.

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

Comment

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

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

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

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

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

Because the unclaimed property laws are matters of traditional state powers, are laws of general application, and have only a tenuous, remote and peripheral impact on ERISA plans, it has been held that they are not pre-empted by federal law. *AetnaLife Ins. Co. v. Borges*, 869 F.2d 142 (2nd Cir. 1989); *Attorney General v. Blue Cross and Blue Shield of Michigan*, 168 Mich. App. 372, 424 N.W.2d 54 (Ct. App. 1988), *appeal denied*, No. 83788 (March 31, 1989). These cases declined to follow two advisory opinions to the contrary, issued by the Department of Labor (Opinions 78-32A, December 22, 1978, and 79-30A, May 14, 1979). Thereafter, notwithstanding the Second Circuit and Michigan decisions, the Department continued to adhere to its position that unclaimed property laws “relate to” ERISA, and are thus pre-empted, in a letter opinion issued March 3, 1995. 22 BNA Pension & Benefits Reporter 743 (1995). That opinion relied on *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133 (1990), as holding that pre-emption extended to state laws that had only an indirect economic affect on ERISA plans. Subsequently, the Supreme Court in *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, _____ U.S. _____ (63 Law Week 4372, April 26, 1995), expounded a much narrower meaning of *Ingersoll-Rand*. The case held that ERISA does not pre-empt the imposition of statutorily-mandated surcharges on bills of hospital patients whose commercial insurance coverage is purchased by an ERISA plan, or on HMOs insofar as their membership fees are paid by an ERISA plan. The Court emphasized that even though such state statutes would affect choices made by plan administrators, the ERISA pre-emption was not so broad as to nullify those state laws. The Court emphasized the basic presumption that “Congress does not intend to supplant state law” (63 LW at 4374). The Court said that *Ingersoll-Rand* does not hold that “merely economic influence” on administrative decisions will trigger pre-emption. (63 LW at 4376.) *Ingersoll-Rand* was explained to hold only that pre-emption would be found where state law produced “such acute, albeit indirect, economic effects” as to force a certain substantive scheme of coverage or effectively restrict insurance choices. (*Id.* at 4375.) Thus, “the basic thrust of the [ERISA] pre-emption clause, then, was to avoid a multiplicity of regulation in order to permit the nationally uniform administration of employee benefit plans.” (*Id.* at 4375.) See also *Mackey v. Lanier Collection Agency & Service, Inc.*, 486 U.S. 825 (1988), holding that ERISA does not pre-empt a state garnishment statute under which a creditor may reach plan participants’ benefits. A state claim under its unclaimed property law would appear to be no more intrusive to the federal regulatory scheme than its garnishment laws. Accordingly, with one exception, the final distribution of assets of a terminated plan, which is governed by 29 U.S.C. sec. 1350, this Act presumes that it is not pre-empted by ERISA.

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

Subsection (e) is intended to make clear that property is reportable notwithstanding that the owner, who has lost or otherwise forgotten his or her entitlement to property, fails to present to

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

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

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

Comment

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

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

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

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

(3) the records of the holder do not reflect the last known address of the apparent owner

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and it is established that:

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

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

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

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

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

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

Comment

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

Paragraph (1) restates the factual situation in *Texas v. New Jersey*. As the court there said

“...the address on the records of a debtor, which in most cases will be the only one available, should be the only relevant last known address.”

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

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

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

New Jersey dealt only with conflicting claims of two or more States, and provides no basis for a holder to object to the claim of its State of domicile by asserting that another State has a superior claim, if the holder has not already reported the property to that other State. Therefore a State which claims custody on the ground that it is the holder's domicile is not required to prove that the laws of some or all of the other 49 States do not “provide” for the taking of the property; if the holder has not reported and paid the property to another State, as between the domiciliary State and the holder, it will be presumed that such other State's laws do not apply.

If another State does claim the property, it may of course proceed under Section 14.

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

Paragraph (6) provides for a situation in which neither of the priority claims discussed in *Texas v. New Jersey* can be made, but the State has a genuine and important contact with the property. An example of the type of claim which might be made under paragraph (6) arose in *O'Connor v. Sperry & Hutchinson Co.*, 412 A.2d 539 (Pa.1980). There Pennsylvania sought to escheat

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

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

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

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

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

Comment

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

SECTION 6. BURDEN OF PROOF AS TO PROPERTY EVIDENCED BY RECORD OF CHECK OR DRAFT. A record of the issuance of a check, draft, or similar instrument is prima facie evidence of an obligation. In claiming property from a holder who is also the issuer,

the administrator's burden of proof as to the existence and amount of the property and its abandonment is satisfied by showing issuance of the instrument and passage of the requisite period of abandonment. Defenses of payment, satisfaction, discharge, and want of consideration are affirmative defenses that must be established by the holder.

Comment

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

SECTION 7. REPORT OF ABANDONED PROPERTY.

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(a) A holder of property presumed abandoned shall make a report to the administrator concerning the property.

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

- (1) a description of the property;
- (2) except with respect to a traveler's check or money order, the name, if known, and last known address, if any, and the social security number or taxpayer identification number, if readily ascertainable, of the apparent owner of property of the value of \$50 or more;
- (3) an aggregated amount of items valued under \$50 each;
- (4) in the case of an amount of \$50 or more held or owing under an annuity or a life or endowment insurance policy, the full name and last known address of the annuitant or insured and of the beneficiary;
- (5) in the case of property held in a safe deposit box or other safekeeping depository, an indication of the place where it is held and where it may be inspected by the administrator, and any amounts owing to the holder;

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

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

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

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

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

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

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

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

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

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

Comment

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

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

Subsection (f) provides new flexibility to the holder and to the administrator in cases where the holder's timely compliance is not feasible. In the past, some administrators have felt themselves to be without authority to extend the filing deadlines, or to accept less than a final re-

port. It is now made clear that an extension can be had for good cause, and the holder can limit its exposure to interest by making a partial payment.

SECTION 8. PAYMENT OR DELIVERY OF ABANDONED PROPERTY.

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

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

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

(d) An issuer, the holder, and any transfer agent or other person acting pursuant to the instructions of and on behalf of the issuer or holder in accordance with this section is not liable to the apparent owner and must be indemnified against claims of any person in accordance with Section 10.

Comment

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

Subsection (d) indemnifies a person causing a replacement certificate to be issued to the administrator from any claims that the person acted wrongfully in so doing. This indemnifica-

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tion is desirable in that it eliminates any duty of the transferring authority to make an independent investigation into whether the listed owner of the security is in fact missing, or into other factors which might affect the administrator's right to obtain custody of the property.

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

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

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

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

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

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

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

Comment

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

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

Subsection (b) limits the duty to advertise in recognition of the fact in the specified circumstances the value of the property is so slight as to negate the benefits of the advertising, or

the names and addresses of the owners of the instruments are not maintained by the holder, or in the case of travelers checks, after 15 years the advertisement is unlikely to be productive.

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

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

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

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

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

(b) Upon payment or delivery of property to the administrator, the State assumes custody and responsibility for the safekeeping of the property. A holder who pays or delivers property to the administrator in good faith is relieved of all liability arising thereafter with respect to the property.

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

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

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

(f) If a holder pays or delivers property to the administrator in good faith and thereafter another person claims the property from the holder or another State claims the money or property under its laws relating to escheat or abandoned or unclaimed property, the administrator, upon written notice of the claim, shall defend the holder against the claim and indemnify the holder against any liability on the claim resulting from payment or delivery of the property to the administrator.

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

Comment

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

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

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

SECTION 11. CREDITING OF DIVIDENDS, INTEREST, AND INCREMENTS TO OWNER'S ACCOUNT. If property other than money is delivered to the administrator under this [Act], the owner is entitled to receive from the administrator any income or gain realized or accruing on the property at or before liquidation or conversion of the property into money. If the property was an interest bearing demand, savings, or time deposit, including a deposit that is automatically renewable, the administrator shall pay interest at a rate of [insert legal rate] percent a year or any lesser rate the property earned while in the possession of the holder.

Interest begins to accrue when the property is delivered to the administrator and ceases on the earlier of the expiration of 10 years after delivery or the date on which payment is made to the owner. Interest on interest bearing property is not payable for any period before the effective date of this [Act], unless authorized by law superseded by this [Act].

Comment

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

SECTION 12. PUBLIC SALE OF ABANDONED PROPERTY.

(a) Except as otherwise provided in this section, the administrator, within three years after the receipt of abandoned property, shall sell it to the highest bidder at public sale at a location in the State which in the judgment of the administrator affords the most favorable market for the property. The administrator may decline the highest bid and reoffer the property for sale if the administrator considers the bid to be insufficient. The administrator need not offer the property for

sale if the administrator considers that the probable cost of sale will exceed the proceeds of the sale. A sale held under this section must be preceded by a single publication of notice, at least three weeks before sale, in a newspaper of general circulation in the [county] in which the property is to be sold.

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

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

Comment

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

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

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

SECTION 13. DEPOSIT OF FUNDS.

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

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in the report of an insurance company, its number, the name of the company, and the amount due.

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

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

Comment

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

SECTION 14. CLAIM OF ANOTHER STATE TO RECOVER PROPERTY.

(a) After property has been paid or delivered to the administrator under this [Act], another State may recover the property if:

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

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

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

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

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

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

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

Comment

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

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

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

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

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

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

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

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

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

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

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

Comment

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

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

Comment

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

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

trator's decision.

SECTION 17. ELECTION TO TAKE PAYMENT OR DELIVERY.

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

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

Comment

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

SECTION 18. DESTRUCTION OR DISPOSITION OF PROPERTY HAVING NO SUBSTANTIAL COMMERCIAL VALUE; IMMUNITY FROM LIABILITY.

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

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Comment

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

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

SECTION 19. PERIODS OF LIMITATION.

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

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

Comment

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

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

Subsection (b) provides that an administrator must commence an action against a holder within 10 years after the time the property was first reported or specifically placed in issue. The 1995 amendment clarifies existing law and codifies the holdings of abandoned property cases that have ruled on issues of limitations. See *Blue Cross of Northern California v. Cory*, 174 Cal. Rptr. 901, 913, 120 Cal. App.3d 743 (App., 1981) (no statute of limitations will commence to run against the State until after the holder duly reports in compliance with the unclaimed property act); *Travelers Express Co., Inc. v. Cony*, 664 F.2d 763 (9th Cir. 1981) (statute of limitations commences to run only after filing of report which contains written explanation of why property is not subject to the act); *Employers Insurance of Wausau v. Smith*, 453 N.W.2d 856 (Wis. 1990) (filing of report essential to running of statute of limitations, since unclaimed property act depends on self-reporting); *Sennet v. Insurance Co. of North America*, 432 Pa. 5215, 247 A.2d 774, 777-78 (1968) (same; "INA simply has to take its stand: if it reports the holding [of funds in issue] (as a

precautionary measure), the statute will run; if it does not, the Commonwealth is not precluded....”); *State of New Jersey v. U.S. Steel Corporation*, 22 N.J. 341, 126 A.2d 168 (1956) (same); *Treasurer and Rec. Gen. v. John Hancock Mut. Life Ins. Co.*, 388 Mass. 410, 446 N.E.2d 1376 (1983) (same). The provision also parallels the Internal Revenue Code, 26 U.S.C. sec. 6501(c). Since the Unclaimed Property Act is based on a theory of truthful self-reporting, a holder which conceals property, wilfully or otherwise, cannot expect the protection of the stated limitations period.

SECTION 20. REQUESTS FOR REPORTS AND EXAMINATION OF RECORDS.

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

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

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

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

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

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

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

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

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

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

Comment

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

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

Subsection (f) permits the use of estimates in instances where the holder has failed to report and deliver property that is abandoned and no longer has reasonably accessible records sufficient to prepare a specific report. Additionally, if the holder fails to maintain records of the last known address, States can assert claims based on any other records which might exist.

Resort may be had to computer codes. While the holding in *Texas v. New Jersey* is intended to prevent multiple liability of holders, this subsection, viewed as a penalty for failure to maintain records of names and last known address, is not inconsistent with that decision. That part of subsection (f) which permits the State to make estimates was prospective only from the date of adoption of the 1981 Act. This Act expressly states the bases on which estimates may be made. Thus, the State may use estimating techniques – where a holder has not maintained records as required by statute – based on industry averages, and may rely on inferences that may be based on statistics drawn from a broader basis than that of the holder in question who has failed to keep records. This section, together with Section 23, also clarifies the administrator's authority to enter into agreements to enforce the State's custodial powers in all States.

SECTION 21. RETENTION OF RECORDS.

(a) Except as otherwise provided in subsection (b), a holder required to file a report under

Section 7 shall maintain the records containing the information required to be included in the report for 10 years after the holder files the report, unless a shorter period is provided by rule of the administrator.

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

Comment

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

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

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

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

Comment

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

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

(a) The administrator may enter into an agreement with another State to exchange information relating to abandoned property or its possible existence. The agreement may permit the other State, or another person acting on behalf of a State, to examine records as authorized in Section

20. The administrator by rule may require the reporting of information needed to enable compliance with an agreement made under this section and prescribe the form.

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

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

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

Comment

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

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

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

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

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

SECTION 24. INTEREST AND PENALTIES.

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

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

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

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

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

Comment

A major weakness of the 1966 Act was its ineffective penalty provision. Although the 1981 Act increased penalties for non-compliance, voluntary compliance with the Act continued to be a problem. In this Act, compliance failures not accompanied by willfulness are dealt with by moderate increases in the applicable penalties, and the administrator simultaneously is given au-

thority to waive both interest and penalties where the holder has attempted in good faith to comply, or where the failure has been due to excusable neglect. Where the holder's failure is willful or fraudulent, and not in good faith, penalties are increased more substantially.

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

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

SECTION 25. AGREEMENT TO LOCATE PROPERTY.

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

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

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

(d) An agreement covered by this section which provides for compensation that is unconscionable is unenforceable except by the owner. An owner who has agreed to pay compensation that is unconscionable, or the administrator on behalf of the owner, may maintain an action to reduce the compensation to a conscionable amount. The court may award reasonable attorney's fees to an owner who prevails in the action.

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

Comment

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

ing a legal interest in the property, but in many States that kind of provision may be in conflict with the State's public records laws.

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

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

SECTION 26. FOREIGN TRANSACTIONS.

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

SECTION 27. TRANSITIONAL PROVISIONS.

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

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

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Comment

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

Paragraph (b) provides that if a State had an unclaimed property law prior to the adoption of this Act, a holder is not relieved of his duty to report and pay over the property abandoned under the Act then existing. Except as otherwise provided in Section 19(b), a holder who did not

comply with the law in effect before the effective date of this Act is subject to the applicable provisions for enforcement and penalties which then existed and which are continued in effect for the purpose of this section.

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

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

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

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

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

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

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

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