State of New Jersey

NJLRC

New Jersey Law Revision Commission

FINAL REPORT

relating to

UNIFORM UNCLAIMED PROPERTY ACT

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Introduction

In 1989 New Jersey repealed its escheat statute, <u>N.J.S.</u> 2A:37-11 et seq. and adopted, with numerous variations, the Uniform Unclaimed Property Act (1981 Act), <u>N.J.S.</u> 46:30B-1 through 46:30B-109. Under the former escheat statute, after 14 successive years unclaimed personal property escheated to the State. <u>N.J.S.</u> 2A:37-13. Under the 1981 Uniform Act, the State takes custody, not title, to unclaimed property, and holds the property in perpetuity for the owner.

The 1995 Act retains the main features of the 1981 Uniform Act. The major refinements in the new Act pertain to rules of priorities between or among claimant states. The two basic rules of priority derive from Texas v. New Jersey, 379 U.S. 674 (1965). The primary rule is that unclaimed property goes to "the State of the last known address of the creditor, as shown by the debtor's books and records." Texas, supra, at 681-82. The secondary rule is that property owed to persons for whom there are no addresses will be subject to escheat by the State of the holder's domicile, provided that another State later, with proof, may claim that the last known address of the person entitled to the property was within its borders. These rules of priority were then adopted in the 1981 Act. The rules were re-examined and reaffirmed in Delaware v. New York, 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 the Act -- when payments by intermediaries are at stake. The 1995 Act enacts those clarifications. See Uniform Unclaimed Property Act (1995) Prefatory Note, p. 1.

The 1995 Act deletes the 1981 definition of "Last known address"; substituting jurisdictional rules to define individually the rules of the States' priorities of taking. For non-jurisdictional purposes such as the holder's duties to report and maintain records and the State's duties of publication, the determination of the "last known address" will depend on the holder's records. The holder will report the best address it has, whether a street address or even an "E mail" address. Section 4 of the 1995 Act allows the State in which the holder is domiciled to claim the property if the last known address of the apparent owner is in a foreign nation. The Texas v. New Jersey Court did not deal with this situation which is a rational extension of its ruling. Section 4 also subjects property presumed abandoned to the custody of this State in a situation in which neither of the Texas v. New Jersey priority claims applies, but in which this State has significant contact with the property.

The 1995 Act also makes a number of smaller changes to the 1981 Act. It places in one section all of the various periods of abandonment which are stated in separate sections in the 1981 Act. It changes the rules for abandonment on certain bank deposits; changes the period for presumption of abandonment in some cases and specifically provides coverage of some consumer credits. The 1995 Act limits the deduction of charges based solely on dormancy for all intangible property presumed abandoned. It clarifies the burden of proof when the holder disputes the obligation evidenced by a negotiable instrument. The 1995 Act raises from \$25. to \$50. the minimum value of property which must be reported, and reduces required efforts on the holder's part to locate the owner. It provides leeway to the holder and to the administrator when the

holder's timely compliance is not possible. It increases civil penalties but drops criminal penalties. New Jersey did not enact the criminal penalty provision in the 1981 Act.

The Commission distributed a Tentative Report in June, 1997. The Administrator of Unclaimed Property, Stephen M. Sylvester, and his Staff, assisted the Commission with numerous comments. Many of their recommendations have been implemented in this report, and their input has been gratefully noted in the commentary to individual sections.

When New Jersey adopted the 1981 Act in 1989 it supplemented it with a substantial number of provisions that dealt with problems not addressed by the Uniform Law or that dealt with specific New Jersey problems. While additions to the 1995 Act make a few of these provisions unnecessary, most are of continuing importance. As a result, the Law Revision Commission recommends adoption of the 1995 Act with some deviations from the uniform text. The provisions that include differences from the uniform text are printed in bold-face type and explained in comments after each section. Since commentary on the uniform text was published by the National Conference of Commissioners on Uniform State Laws, none is provided here.

The Law Revision Commission has also added a new Section 32 to the Act to cover real property. At present, real property in an intestate estate is subject to total escheat to the State under 2A:37-1 through -10. Presumably, other real property is subject to escheat under common law. The Commission concluded that there was no policy basis for the distinction between real and personal property, and that the Uniform Law's approach of holding property in perpetuity for the owner was preferable to escheat in all cases.

Section 1. Definitions.

In this Chapter:

- (1) "Administrator" means the Treasurer of the State of New Jersey, the Acting Treasurer in the absence of the Treasurer, and any State employee to whom the Treasurer has delegated authority to administer the provisions of this chapter and to execute pertinent documents.
- (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, safe deposit company, bank, trust company, savings bank, savings and loan association, private banker, any organization defined by other law as a bank or banking organization, financial organization, insurance company, mutual fund, credit union, 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, savings 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 Chapter.
- (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 Chapter or the person's legal representative. The term includes a depositor in the case of a deposit, a beneficiary in the case of a trust other than a deposit in trust, and a creditor, claimant, or payee in the case of other property.
- (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, unused prepaid account balance on value added card or

similar instrument, 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.

Source: Uniform Unclaimed Property Act (1995) Section 1.

COMMENT

This section is substantially identical to that of the Uniform Act. In Subsection (1), the material used to fill the blank left in the Uniform Act is substantially identical to 46:30B-6(a). Subsection (3) is an amalgam of the uniform provision and 46:30B-6(c) and (d). In Subsection (13)(2), "gift certificate" which is not included in the current New Jersey law has been added as recommended by the uniform law and by the Unclaimed Property Administrator. Large retailers already report unclaimed gift certificates to the state. At the recommendation of the Administrator the subsection also adds a new category of unclaimed property, unused prepaid account balances on value added cards.

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 earliest 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 certificates, 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;
- (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 deposited with Superior Court or the surrogate which remains unclaimed for ten years; or if the property is deposited for the benefit of a minor, for ten years or for two years after the minor reaches majority, whichever is longer;
- (12) debt obligations of government entities three years after the obligation to pay arises;
 - (13) other property held by a court, government, governmental subdivision, agency, or instrumentality, one year after the property becomes distributable;
- (14) wages or other compensation for personal services, one year after the compensation becomes payable;
- (15) deposit or refund owed to a subscriber by a utility, one year after the deposit or refund becomes payable;
- (16) 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

- (17) property held by a fiduciary as defined in N.J.S. 3B:1-1 or an assignee under N.J.S. 2A:19-1 et seq. which remains unclaimed for 90 days after the account of that fiduciary or assignee is judicially allowed or settled informally; property held by a fiduciary of an intestate estate payable to an unknown heir of an intestate decedent 90 days after publication by the fiduciary of the notice required in N.J.S. 3B:5-5;
- (18) 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, during the applicable period set forth in subsection (a):
- (1) the apparent owner has not communicated in writing with the holder; and
- (2) no contemporaneous record prepared by or on behalf of the holder reflects other communication from the apparent owner; and
- (3) the apparent owner has not otherwise indicated an interest in the property; and
- (4) no person using information supplied by the holder has notified the holder that the apparent owner has been located and that the owner's address will be supplied to the holder within 12 months from the date notification was made.
 - 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 provision 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 Chapter notwithstanding the owner's failure to make demand or present an instrument or document otherwise required to obtain payment.

Source: Uniform Unclaimed Property Act (1995) Section 2; 46:30B-37.1; 46:30B-41; 46:30B-41.1.

COMMENT

Subsection (a)(11) is derived from 46:30B-41.1, Presumption of abandonment; minor's funds and 46:30B-41, Presumption of abandonment: Superior Court and surrogate. Subsection (a)(12) is new; it was suggested by the Unclaimed Property Administrator to specifically provide for debts of government entities. The word "other" has been inserted in subsection (a)(13) to clarify its relation to subsections (a)(10) and (11). Subsection (a)(17) is derived from 46:30B-37.1, Presumption of abandonment; unclaimed estate assets. Each of these provisions concerns an issue not dealt with specifically by either the 1981 or 1995 Uniform Laws. The new subsections are substantially identical to their sources.

As a result of the deletion and additions, subsections (a)(11) through (a)(14) of the Uniform Act have been redesignated (a)(13) through (a)(16) and subsection (a)(15) has been redesignated (a)(18).

The form of subsection (c) of the Uniform Act has been changed, and subsection (c)(4) has been added. The addition provides that property is not unclaimed if the holder has provided information about the owner to a third party, the third party has located the owner, and the holder has been promised that the location of the owner will be provided within 12 months. Such a situation occurs when a holder uses a tracing company to find missing owners. The provision was added to assure that transfer of property to the state would not delay its return to the owner.

Otherwise, the section is identical to the Uniform Act.

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.

Source: Uniform Unclaimed Property Act (1995) Section 3.

COMMENT

This section is identical to that of the Uniform Act.

Section 4. Rules for taking custody.

Except as otherwise provided in this Chapter or by other statute of this State, property that is presumed abandoned, whether located in this or another State, 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 and it is established that:
- (i) the last known address of the person entitled to the property is in this State; or
- (ii) the state included in the last known address of the person entitled to the property is unknown, the property is the proceeds of an insurance policy or an annuity, and the last known address of the insured or the person who purchased the annuity is in this State; or
- (iii) 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.

Source: Uniform Unclaimed Property Act (1995) Section 4.

COMMENT

This section is identical to that of the Uniform Act with the exception of (3)(ii) which appeared in the former Uniform Acts (1954, 1966 and 1981) and was inadvertently omitted in the 1995 Act.

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.

Source: Uniform Unclaimed Property Act (1995) Section 5.

COMMENT

This section is identical to that of the Uniform Act.

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.

Source: Uniform Unclaimed Property Act (1995) Section 6.

COMMENT

This section is identical to that of the Uniform Act.

Section 7. Report of abandoned property

- 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, 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 or of property that is dividends or mineral proceeds
- (3) an aggregated amount of items valued under \$50 each other than dividends or mineral proceeds
- (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 Chapter.
- c. If a holder of property presumed abandoned is a successor to another person who previously held the property for the apparent owner or the holder has changed its name while holding the property, the holder shall file with the report its former names, if any, and the known names and addresses of all previous holders of the property.
- d. The report of the Clerk of the Superior Court or of a surrogate shall contain the following information instead of that required in subsections (b) and (c):
 - (1) The name of the case in which the dposit was made;
 - (2) The court's docket or identifying number for the case;
 - (3) The date the deposit was made;
 - (4) The unpaid balance of the original sum deposited;
 - (5) The interest or income earned while on deposit;
 - (6) The total amount payable to the State Treasurer.
- e. 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.
- f. 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 Chapter, if:
- (1) the holder has in its records an address for the apparent owner which the holder's records do not disclose to be inaccurate:
 - (2) the claim of the apparent owner is not barred by a statute of limitations; and
 - (3) the value of the property is \$50 or more.
- g. The Clerk of the Superior Court, between 90 and 120 days before presenting the report, shall post in the office of the Clerk and in each county's clerk's office, a notice stating the case name and docket number of each case in which a deposit is presumed abandoned and indicating that if the apparent owner does not move to seek an order to withdraw the sum within 60 days of the date of the notice, the sum shall be delivered to the administrator, to whom further claim shall be made. A surrogate, within the same time period before presenting a report, shall post a similar notice in the offices of the surrogate and of the county's clerk.
- h. 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.

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

Source: Uniform Unclaimed Property Act (1995) Section 7; 46:30B-47.1; 46:30B-50.1.

COMMENT

At the suggestion of the Unclaimed Property Administrator, subsection (b)(2) and (3) have been changed from the uniform law to assure that names and addresses will be provided for dividends and mineral proceeds even when individual items are worth less than \$50.

Subsection (d) is derived from 46:30B-47.1, Contents of report: Superior Court Clerk and surrogate. Subsection (g) is derived from 46:30B-50.1, Posting of notice by Superior Court Clerk and surrogate. Each of the additional subsections is substantially identical to its source. These provisions vary the form of report and notice applicable to the Superior Court and surrogate.

As a result of the additions, subsections (d) and (e) of the Uniform Act have been redesignated (e) and (f) and subsections (f) and (g) have been redesignated (h) and (i). Otherwise, the section is identical to the Uniform Act.

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 Article 8 of the Uniform Commercial Code, but an indemnity bond is not required.
- d. When a certificate or other evidence of ownership, or a bond or other debt security, registered in the name of a person is delivered to the administrator and presented by the administrator to the issuer or its agent, the issuer shall transfer and register it in the State's nominee name as fixed by the administrator and a new registered certificate or security shall be delivered to the administrator.

- e. 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, except that a fiduciary holding property initially thought to be payable to unknown heirs of an intestate decedent and presumed abandoned under R.S. 46:30B-37.1 shall not be required to file such verified written explanation.
- f. 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.

Source: Uniform Unclaimed Property Act (1995) Section 8; 46:30B-58; 46:30B-60.1.

COMMENT

Subsection (d) is derived from 46:30B-60.1, Transfer of ownership after delivery with report, and subsection (e) from 46:30B-58, Establishment by owner of right to property before payment or delivery; erroneous presumption of abandonment. Each of the additional subsections is substantially identical to its source.

As a result of the addition, subsections (d) of the Uniform Act has been redesignated (f). Otherwise, the section is identical to the Uniform Act.

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 propert y, 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 item of property having a total value less than \$50, or information concerning a traveler's check, money order, or similar instrument.
- c. The administrator may publish other advertisements that, in the judgment of the administrator, may attract the attention of apparent owners of unclaimed property.

Source: Uniform Unclaimed Property Act (1995) Section 9.

COMMENT

Subsection (a) is identical to that of the Uniform Act. Subsection (b) has been changed so that the requirement that an advertisement be published does not apply where an item of property is worth less than \$50. The uniform law would require advertisement when a single owner's property totaled more than \$50. As noted by the Unclaimed Property Administrator, since the Treasury does not keep records of total property by owner, that requirement is unworkable. Subsection (c) is new. It was added at the suggestion of Administrator to allow more than one publication.

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 Chapter;
- (2) the holder was not then in breach of a fiduciary obligation with respect to the property and had a reasonable basis for believing, based on the facts then known, that the property was presumed abandoned; and
- (3) there is no showing that the records under which the payment or delivery was made did not meet reasonable commercial standards of practice.
- b. Upon payment or delivery of property to the administrator, the State 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 Chapter may subsequently make payment to a person reasonably appearing to the holder to be entitled to payment. Upon a filing by the holder of proof of payment and proof that the payee was entitled to the payment, the administrator shall promptly reimburse the holder for the payment without imposing a fee or other charge. If reimbursement is sought for a payment made on a negotiable instrument, including a traveler's check or money order, the holder 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 Chapter may reclaim the property if it is still in the possession of the administrator, without paying any fee or other charge, upon filing proof that the apparent owner has claimed the property from the holder. The Administrator may return property

to an owner who claims it before its sale without regard to any lien or charge due to 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 to the extent of the property delivered and any interest accrued on it.

Source: Uniform Unclaimed Property Act (1995) Section 10.

COMMENT

Subsections (a), (b), (c) and (e) are identical to that of the Uniform Act. A sentence has been added to subsection (d) and subsection (g) has been deleted to reflect the position of the Unclaimed Property Administrator that when a holder elects to forward the property to the state rather than to sell it to enforce a lien, the holder has waived its lien. The final phrase in subsection (f) was added at the request of the Administrator to limit the liability of the state to the value of the property delivered.

Section 11. Crediting of dividends, interest, and increments to owners account.

If property other than money is delivered to the administrator under this Chapter, 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 set by the administrator. 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. The ten-year period of interest payments by the administrator shall be reduced by any period that the property was held by the Superior Court in an interest-paying account before its delivery to the administrator. Interest on interest bearing property is not payable for any period before April 14, 1989.

Source: Uniform Unclaimed Property Act (1995) Section 11.

COMMENT

This section has been changed from that of the Uniform Act to allow the Unclaimed Property Administrator to set the interest rate paid to owners of property and to refer explicitly to April 14, 1989, the first date from which interest is payable. Both changes were made at the suggestion of the Administrator.

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 Chapter 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 Chapter 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. Regarding the sale of tangible property, such as jewelry and art, the administrator shall sell the property as follows:
- (1) Written notice shall be sent to the last known address of the owner by regular and registered or certified mail thirty days prior to the public sale.
- (2) Legal notice of abandoned property and intent to auction it shall be advertised in a newspaper of general circulation ten days prior to the public sale.
- (3) The administrator shall prepare in duplicate an itemized list of auctionable items, identifying each by owner, box and item number, and shall give the original to the auctioneer and file the copy in the administrator's office.
- (4) The office of the administrator shall receive compensation for the amount due for notices and other charges.
- (5) Any remaining balance shall be deposited in the State Unclaimed Personal Property Trust Fund.
- d. A purchaser of property at a sale conducted by the administrator pursuant to this Chapter 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.

Source: Uniform Unclaimed Property Act (1995) Section 12; 46:30B-72.1.

COMMENT

The additional subsection (c) is similar to its source, 46:30B-72.1, Sale of tangible property. However, language has been deleted from the introductory sentence and (c)(4) has been deleted to reflect the position of the Unclaimed Property Administrator that when a holder elects to forward the property to the state rather than to sell it to enforce a lien, the holder has waived its lien.

As a result of the addition, subsection (c) of the Uniform Act has been redesignated (d). Otherwise, the section is identical to the Uniform Act.

Section 13. Deposit of funds.

The administrator shall establish and manage three separate trust funds to be known as the Unclaimed County Deposits Trust Fund, the Unclaimed Child Support Trust Fund and the Unclaimed Personal Property Trust Fund.

a. All moneys received as unclaimed county deposits and the accretions thereon shall be deposited into the Unclaimed County Deposits Trust Fund. Each year, unless the administrator deems it prudent and advisable to do otherwise, the administrator shall pay to each county, within 45 days of the receipt of such funds, 75% of the unclaimed county deposits received from that county by the administrator. The remaining portion shall be retained in the trust fund, administered and invested by the State Treasurer, and used to pay claims duly presented and allowed and all expenses and costs incurred by the State of New Jersey. If the Unclaimed County Deposits Trust Fund is insufficient to pay specific claims against a county, the administrator shall report the fact to the county governing body and the unpaid claim shall become an affirmative obligation of that county.

Upon the effective date of this chapter, any county deposits paid to the administrator between April 18, 1989 and the effective date of this chapter shall be transferred from the Unclaimed Personal Property Trust Fund to the Unclaimed County Deposits Trust Fund.

b. All other moneys received as unclaimed property presumed abandoned, the accretions thereon, and the proceeds of sale of unclaimed property shall be deposited into the Unclaimed Personal Property Trust Fund. Unless the administrator deems it prudent and advisable to do otherwise, 75% of all funds received shall be transferred to the General State Fund. The remaining portion shall be retained in the trust fund, administered and invested by the State Treasurer, and used to pay claims duly presented and allowed and all expenses and costs incurred by the State of New Jersey.

Upon the effective date of this chapter, all funds and assets of the trust funds established pursuant to N.J.S. 2A:37-41, section 8 of P.L.1945, c.199 (C.17:9-25), and N.J.S. 17B:31-7, shall be transferred to and become part of the Unclaimed Personal Property Trust Fund established by this chapter, which shall be responsible for payment of any allowed claims for restitution of unclaimed property paid into those three funds.

c. All moneys received as abandoned child support and the accretions thereon shall be deposited in the Unclaimed Child Support Trust Fund. Each year, the administrator shall pay to the judiciary, within 45 days of the receipt of such funds, the federal government's Title IV-D share of the abandoned child support received from the Probation Division of the Superior Court. The remaining portions shall be retained in the trust fund, administered and invested by the State Treasurer, and used to pay claims duly presented and allowed and all expenses and costs incurred by the State of New Jersey. If the Unclaimed Child Support Trust Fund is insufficient to pay specific claims against a county,

the administrator shall report the fact to the judiciary and the unpaid claim shall become an affirmative obligation of the judiciary.

Upon the effective date of P.L.1995, c.115, any abandoned child support paid to the administrator between April 18, 1989 and that effective date shall be transferred from the Unclaimed Personal Property Trust Fund to the Unclaimed Child Support Trust Fund.

d. As used in this section:

- (1) "County deposits" means the proceeds of a judgment received in favor of a minor and placed under the control of a county surrogate or any devise or distribution from an estate paid into the county surrogate's court prior to April 14, 1989; any unclaimed bail and any interest thereon deposited prior to January 1, 1995 and 50% of any unclaimed bail and any interest thereon deposited after January 1, 1995;
- (2) "Abandoned child support" means any payments for the support of a child or a child and the custodial parent paid to the Probation Division of the Superior Court pursuant to a court order that could not be distributed to the payee or returned to the payor within one year of its receipt;
- (3) "Title IV-D" means Part D, "Child Support and Establishment of Paternity," of subchapter IV of the Social Security Act (42 U.S.C. 651 et seq.) under which states receive partial federal reimbursement of their administrative expenses for establishing paternity and collecting child support.
- e. The administrator shall invest all moneys deposited into the separate trust funds in the State of New Jersey Cash Management Fund or in bonds or interest-bearing notes or obligations:
 - (1) of the United States,
 - (2) guaranteed by the United States as to principal and interest,
- (3) for which the full faith and credit of the United States is pledged for payment of principal and interest,
 - (4) of the State of New Jersey, or
 - (5) of a governmental entity of the State of New Jersey.

Source: 46:30B-74; 46:30B-75.

COMMENT

Subsections (a) through (d) are identical to 46:30B-74, Deposits of funds by administrator. The source section always differed from the Uniform Act; it has been amended three times, most recently in 1995. Subsection (e) is substantially identical to 46:30B-75, Investment and reinvestment of money in fund. The proposed subsection has been updated to make it applicable to all three of New Jersey's Unclaimed Trust Funds.

Section 14. Claim of another state to recover property.

a. After property has been paid or delivered to the administrator under this Chapter, another State may recover the property if:

- (1) the property was paid or delivered to the custody of this State because the records of the holder did not reflect a last known location of the apparent owner within the borders of the other State and the other State establishes that the apparent owner or other person entitled to the property was last known to be located within the borders of that State and under the laws of that State the property has escheated or become subject to a claim of abandonment by that State;
- (2) the property was paid or delivered to the custody of this State because the laws of the other State did not provide for the escheat or custodial taking of the property, and under the laws of that State subsequently enacted the property has escheated or become subject to a claim of abandonment by that State;
- (3) the records of the holder were erroneous in that they did not accurately identify the owner of the property and the last known location of the owner within the borders of another State and under the laws of that State the property has escheated or become subject to a claim of abandonment by that State;
- (4) the property was subjected to custody by this State under Section 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.

Source: Uniform Unclaimed Property Act (1995) Section 14.

COMMENT

This section is identical to that of the Uniform Act.

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 or, in the case of a claim of a person asserting an entitlement as an heir to the property of an intestate decedent, within 90 days of the claimant's submission of the matters required in subsection (e), the administrator shall consider the claim and give written notice to the claimant that the claim is granted or the

claim is denied in whole or in part. If the claim is denied, the administrator shall inform the claimant of the reasons for the denial, and what additional evidence is required before the claim will be allowed. The claim may subsequently be refiled under subsection (a) or the claimant may appeal under Section 16.

- c. Within 60 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. If the property is securities, the claimant shall have the option of paying for re-registration of the securities and receiving the securities or receiving the proceeds of sale of the securities.
- 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.
- e. The administrator shall allow the claim of persons asserting entitlement as heirs to the property of an intestate decedent paid or delivered to the administrator pursuant to N.J.S. 3B:5-5 only upon receipt of (1) substantial credible evidence of heirship, (2) satisfactory evidence that a diligent investigation to locate all heirs of the decedent has been concluded, (3) the names, last known addresses, and a description of the relationships of all of the heirs of the decedent discovered as a result of that investigation, or otherwise, and (4) a release and refunding bond or other instrument satisfactory to the administrator, providing the administrator and the State with full indemnity for claims by other heirs of the decedent. The administrator shall make payment or delivery as otherwise provided in this article to the heirs in shares as prescribed in N.J.S. 3B:5-3 through N.J.S. 3B:5-14.
- f. If a holder has remitted funds based on an estimate or proration, the administrator shall not be liable to any claimant for amounts in excess of total funds remitted.

Source: Uniform Unclaimed Property Act (1995) Section 15; 46:30B-77; 46:30B-78.

COMMENT

The proposed subsection (b) adds material from 46:30B-78 to the Uniform text of the subsection. The source was amended in 1995. Subsection (c) has been changed in accordance with the Unclaimed Property Administrator's suggestion to provide for the cost of re-registering securities. Proposed new subsection (e), added to the Uniform Act, is identical to 46:30B-77(b). That provision was added in 1995. Both changes concern persons claiming as heirs of intestates. Subsection (f) is new and was added at the request of the Administrator. The present practice is for the Administrator to pay 100% of a claim notwithstanding that the holder has remitted less than the amount reported as unclaimed. The fund is therefore insufficient to pay all potential claims. The language seeks to avoid potential lawsuits on the theory that the Administrator should have paid out on a percentage basis thereby preserving part of the funds for all potential claimants.

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 it was filed or, in the case of a claim of a person asserting an entitlement as an heir to the property of an intestate decedent, within 90 days of the

claimant's submission of the matters required by section 15(e) may appeal to the Appellate Division of the Superior Court.

Source: Uniform Unclaimed Property Act (1995) Section 16; 46:30B-84.

COMMENT

This section is derived from the Uniform Act but differs in two ways. First, the 90-day period in the Uniform provision has been adjusted in cases involving persons claiming as heirs. Compare Section 15, subsections (b) and (e). Second, the section follows 46:30B-84 in requiring appeal to the Appellate Division rather than an action to establish a claim.

Section 17. Election to take payment or delivery.

- a. The administrator may decline to receive property reported under this Chapter 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 Chapter.

Source: Uniform Unclaimed Property Act (1995) Section 17.

COMMENT

This section is identical to that of the Uniform Act.

Section 18. Destruction or disposition of property having insubstantial commercial value.

If the administrator determines after investigation that property delivered under this Chapter has no substantial commercial value, the administrator may destroy or otherwise dispose of the property at any time. An action or proceeding 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.

Source: Uniform Unclaimed Property Act (1995) Section 18.

COMMENT

This section is identical to that of the Uniform Act.

Section 19. Periods of limitation.

- a. The expiration, before or after the effective date of this Chapter, of a period of limitation on the owner's right to receive or recover property, whether specified by contract, statute, or court order, 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 Chapter.
- b. An action or proceeding may not be maintained by the administrator to enforce this Chapter in regard to the reporting, delivery, or payment of property more than 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.

Source: Uniform Unclaimed Property Act (1995) Section 19.

COMMENT

This section is identical to that of the Uniform Act.

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 Chapter, describe property not previously reported or as to which the administrator has made inquiry, and specifically identify and state the amounts of property that may be in issue.
- b. The administrator, at reasonable times and upon reasonable notice, may examine the records of any person to determine whether the person has complied with this Chapter. The administrator may conduct the examination even if the person believes it is not in possession of any property that must be reported, paid, or delivered under this Chapter. The administrator may contract with any other person to conduct the examination on behalf of the administrator.
- c. The administrator at reasonable times may examine the records of an agent, including a dividend disbursing agent or transfer agent, of a business association or financial association that is the holder of property presumed abandoned if the administrator has given the notice required by subsection (b) to both the association or organization and the agent at least 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 Chapter;
- (2) used in joint examinations conducted with or pursuant to an agreement with another State, the federal government, or any other governmental subdivision, agency, or instrumentality;
 - (3) produced pursuant to subpoena or court order; or
- (4) disclosed to the abandoned property office of another State for that State's use in circumstances equivalent to those described in this 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 Chapter, the administrator may assess the cost of the examination against the holder at the rate of \$200 a day for each examiner, or a greater amount that is reasonable and was incurred, but the assessment may not exceed the value of the property found to be reportable.

The cost of an examination made pursuant to subsection (c) may be assessed only against the business association or financial organization.

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

Source: Uniform Unclaimed Property Act (1995) Section 20.

COMMENT

This section is identical to that of the Uniform Act.

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.

Source: Uniform Unclaimed Property Act (1995) Section 21.

COMMENT

This section is identical to that of the Uniform Act.

Section 22. Enforcement

- a. The administrator may maintain an action in this State, another State, or in federal court to enforce this Chapter.
- b. The administrator may intervene in judicial or administrative proceedings in the best interests of the State of New Jersey, the apparent owner or the unclaimed property.
- c. The administrator is an indispensable party to judicial or administrative proceedings concerning disposition of unclaimed property in, or eligible for, the administrator's protective custody.

Source: 46:30B-97; 46:30B-97.1; 46:30B-97.2; 46:30B-97.3

COMMENT

While the proposed section has been simplified, it is substantially identical to its sources. It is more specific and inclusive than the Uniform provision. The second sentence of the Uniform text regarding award of attorney fees has been deleted.

Section 23. Interstate agreements and cooperation; Joint and reciprocal actions with other states; Confidentiality.

- a. The administrator may enter into an agreement with another State to exchange information relating to abandoned property or its possible existence. The agreement may permit the other State, or another person acting on behalf of a State, to examine records as authorized in Section 20. The administrator by rule may require the reporting of information needed to enable compliance with an agreement made under this section and prescribe the form.
- b. The administrator may join with another State to seek enforcement of this Chapter against any person who is or may be holding property reportable under this Chapter.
- c. At the request of another State, the attorney general of this State may maintain an action on behalf of the other State to enforce, in this State, the unclaimed property laws of the other State against a holder of property subject to escheat or a claim of abandonment by the other State, if the other State has agreed to pay expenses incurred by the attorney general in maintaining the action.
- d. The administrator may request that the attorney general of another State or another attorney commence an action in the other State on behalf of the administrator. With the approval of the attorney general of this State, the administrator may retain any other attorney to commence an action in this State on behalf of the administrator. This State shall pay all expenses, including attorney's fees, in maintaining an action under this subsection. With the administrator's approval, the expenses and attorney's fees may be paid from money received under this Chapter. The administrator may agree to pay expenses and attorney's fees based in whole or in part on a percentage of the value of any property recovered in the action. Any expenses or attorney's fees paid under this subsection may not be deducted from the amount that is subject to the claim by the owner under this Chapter.

Source: Uniform Unclaimed Property Act (1995) Section 23.

COMMENT

This section is identical to that of the Uniform Act.

Section 24. Interest and penalties

- a. A holder who fails to report, pay, or deliver property within the time prescribed by this Chapter shall pay to the administrator interest at the annual rate of 12 percent or 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 whichever rate is higher.
- b. Except as otherwise provided in subsection (c), a holder who fails to file a report that complies with regulations, pay, or deliver property within the time prescribed by this Chapter, or fails to perform other duties imposed by this Chapter, shall pay to the administrator, in addition to interest as provided in subsection (a), a civil penalty of \$200 for each day the report, payment, or delivery is withheld, or the duty is not performed, up to a maximum of \$5,000.

- c. A holder who willfully fails to report, pay, or deliver property within the time prescribed by this Chapter, willfully fails to correct an inaccurate or out-of-balance report within six months, or willfully fails to perform other duties imposed by this Chapter, shall pay to the administrator, in addition to interest as provided in subsection (a), a civil penalty of \$1,000 for each day the report, payment, or delivery is withheld, or the duty is not performed, up to a maximum of \$25,000, plus 25 percent of the value of any property that should have been but was not reported, paid or delivered.
- d. A holder who makes a fraudulent report shall pay to the administrator, in addition to interest as provided in subsection (a), a civil penalty of \$1,000 for each day from the date a report under this Chapter was due, up to a maximum of \$25,000, plus 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.
- f. The date on which unclaimed property was originally payable or distributable shall be the date from which penalties and interest are assessed and calculated for unclaimed property discovered during an examination or audit and not paid to the administrator.

Source: Uniform Unclaimed Property Act (1995) Section 24; 46:30B-105.2.

COMMENT

The additional subsection is substantially identical to its source, 46:30B-105.2, Calculation of penalty and interest after examination. The Uniform act has no comparable provision.

The Uniform Act subsection (a) makes two suggestions for an interest rate to be charged. The rate adopted is a combination of the two. Current 46:30B-103 is ambiguous as to interest rate. At the suggestion of the Unclaimed Property Administrator, a phrase has been added to subsection (b) to make it clear that a report that fails to meet standards is a violation of the reporting requirement. A change has been made at the end of Section 24(c) to clarify that the 25% penalty for willful failure to remit unclaimed property to the administrator. In all other respects, the new uniform law continues the sanctions of current law.

Section 25. Agreement to locate property.

All agreements to pay compensation to locate, deliver, recover, or assist in the recovery of property reported under this chapter, made within 24 months after the date that the property is paid or delivered to the administrator, are void and unenforceable. Agreements entered into any time after such 24-month period are valid only if the fee or compensation agreed upon is not more than 20% of the value of the property recovered, the agreement is in writing, signed by the apparent owner, and clearly sets forth the nature and value of the property and the value of the apparent owner's share after the fee or compensation has been deducted. Agreements entered into before the property was presumed abandoned are valid only if the fee or compensation agreed upon is not more than 35% of the value, the agreement is in writing, signed by the apparent owner, and clearly sets forth the nature and value of the property and the value of the apparent owner's share after the fee or compensation has been deducted. However, nothing in this

section shall be construed to prevent an owner from asserting at any time that an agreement to locate property is based upon an excessive or unjust consideration.

Source: 46:30B-106.

COMMENT

The section is identical to its source. The New Jersey provision was amended almost totally in 1995 and is more specific in its requirements than is the Uniform version.

Section 26. Foreign transactions.

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

Source: Uniform Unclaimed Property Act (1995) Section 26.

COMMENT

This section is identical to that of the Uniform Act.

Section 27. Transitional provisions.

- a. An initial report filed under this Chapter for property that was not required to be reported before the effective date of this Chapter but which is subject to this Chapter must include all items of property that would have been presumed abandoned during the 10 -year period next preceding the effective date of this Chapter as if this Chapter had been in effect during that period.
- b. This Chapter does not relieve a holder of a duty that arose before the effective date of this Chapter to report, pay, or deliver property. Except as otherwise provided in Section 19(b), a holder who did not comply with the law in effect before the effective date of this Chapter is subject to the applicable provisions for enforcement and penalties which then existed, which are continued in effect for the purpose of this section.

Section 28. Rules.

The administrator may adopt rules pursuant to the Administrative Procedures Act necessary to carry out this Chapter.

Source: Uniform Unclaimed Property Act (1995) Section 27.

COMMENT

This section is identical to that of the Uniform Act.

Section 29. Uniformity of application and construction.

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

Source: Uniform Unclaimed Property Act (1995) Section 28.

COMMENT

This section is identical to that of the Uniform Act.

Section 30. Short title.

This Chapter may be cited as the Uniform Unclaimed Property Act (1995).

Source: Uniform Unclaimed Property Act (1995) Section 29.

COMMENT

This section is identical to that of the Uniform Act.

Section 31. Confidentiality.

- a. Any information concerning unclaimed property which is confidential under New Jersey or federal law when in possession of a person shall continue to be confidential when revealed to the administrator and shall not be considered a public record under 47:1A-2. Any information concerning unclaimed property which is confidential under any law of another state shall continue to be confidential when revealed to the administrator and shall not be considered a public record under 47:1A-2.
- b. Confidential information concerning unclaimed property shall be disclosed only to an apparent owner or an administrator of another state, if that other state accords reciprocal privileges to the New Jersey administrator.
- c. All persons and governmental entities in the State, upon request, shall provide to the administrator any information useful in locating the apparent owner of unclaimed

property, even if the information is confidential under other State law. The administrator shall not use the information except as necessary in locating the apparent owner.

Source: 46:30B-76.1; 46:30B-76.2; 46:30B-76.3.

COMMENT

The new section is based on three current New Jersey Sections: 46:30B-76.1, Confidentiality of certain records; 46:30B-76.2, Disclosure of confidential information; 46:30B-76.3, Access to confidential information. It is substantially identical to its sources.

The Uniform act has no comparable provision. Section 31 of the Uniform Act is a severability provision. Individual severability clauses are unnecessary. N.J.S. 1:1-10 adopts a rule of severability for all statutes.

Section 32. Unclaimed real property

- a. An action seeking a Judgment of Abandonment of an interest in real property may be brought by the Attorney General, the representative of a decedent's estate that includes the property, or another person who owns an interest in the real property which is the subject of the action. The party who brings the action shall give notice to any person known to claim an interest in the real property which is the subject of the action.
- b. The Court may declare that an interest in the real property which is the subject of the action is abandoned if, after reasonable efforts, the owner of the interest cannot be ascertained or cannot be located.
- c. The Judgment of Abandonment shall include a legal description of the parcel of property and the interest in it that is abandoned, and shall transfer the property to the Administrator. A Judgment declaring that certain interests in a property are abandoned shall not affect any other interest in the real property which is the subject of the action
- d. Within one year after the Judgment of Abandonment, unless the court for good cause orders otherwise, the Administrator shall sell the property as provided in Section 12 of this act.
- e. The Administrator shall give notice of the sale of the owner's interest in the property and of the owner's right to reclaim it, upon receiving the Judgment of Abandonment and again thirty days prior to the sale:
- (1) to the last known address of the owner of the interest, and to any other person known to have an interest in the parcel of property, by registered or certified mail, return receipt requested, and simultaneously by ordinary mail; and
- (2) by an advertisement in a newspaper circulated in the county in which the property is located.
- f. The interest shall be sold by public auction in the county where the property is located. The sale shall be final, and upon receipt of the sale price, the Administrator shall deliver a deed to the property.
- g. A purchaser shall take the property free of all claims of the owner or previous holder and of all persons claiming through or under them. The purchaser shall take subject to any interest in the property not included in the Judgment of Abandonment.

h. The Administrator shall be compensated for expenditures for advertising, sale and transfer of the property. The remaining balance shall be deposited in the Unclaimed Personal Property Trust Fund and held in perpetuity for the owner.

Source: New

COMMENT

New Section 32 fills gaps in New Jersey statutory law. Current escheat law, <u>N.J.S.</u> 2A:37-1 through -10, pertains to real estate of intestate decedents only. While the Uniform Unclaimed Property Act provides for the proceeds of real property sold, as in an eminent domain proceeding or a partition action, it does not apply to unclaimed real property. As a result most escheat of real property is governed by the common law alone. The section is intended to replace all escheat of real property, and to formalize the process for declaring real property abandoned, enhancing the quality of title transferred.

Subsections (a) and (b) explicitly require the bringing of a court action in order to have an interest in real property declared abandoned. Subsection (a) includes real property of both testate and intestate estates. It also allows a person who owns an interest in a piece of real property to bring an action to adjudge another interest in the same property as abandoned. In addition, it gives general authority to the Attorney General to bring an action whenever it appears that real property is unclaimed. Generally, the section follows the approach of the Uniform Unclaimed Property Act: The State takes custody, not title, to unclaimed property, and holds the property in perpetuity for the owner. Subsection (c) protects the holder of an interest in the property, such as an easement holder, tenant or mortgagee. Any title transferred will be the abandoned interest only and will be subject to other interests. See also, subsection (g).

Subsection (d) provides for sale of the property by the Administrator, and subsection (e) specifies how and to whom the Administrator shall give notice of the sale of the owner's interest in the property and the right to reclaim it. Subsection (f) provides for sale by public auction, and delivery of a deed transferring ownership. Subsection (g) clarifies the purchaser's title. The purchaser takes the interest that was abandoned; if others hold interests in the property, he does not take those interests. See also, subsection (c). Subsection (h) provides compensation to the Administrator for expenditures directly related to advertising, sale and transfer of the property. The subsection also reflects the custodial nature of the Act as opposed to the escheat nature of the pre-Uniform New Jersey statute.