



NEW JERSEY LAW REVISION COMMISSION

Draft Tentative Report Relating to the Revised Uniform Unclaimed Property Act

February 5, 2018

The New Jersey Law Revision Commission is required to “[c]onduct a continuous examination of the general and permanent statutory law of this State and the judicial decisions construing it” and to propose to the Legislature revisions to the statutes to “remedy defects, reconcile conflicting provisions, clarify confusing language and eliminate redundant provisions.” *N.J.S. 1:12A-8*.

This Report is distributed to advise interested persons of the Commission's tentative recommendations and to notify them of the opportunity to submit comments. Comments should be received by the Commission no later than **May 1, 2018**.

The Commission will consider these comments before making its final recommendations to the Legislature. The Commission often substantially revises tentative recommendations as a result of the comments it receives. If you approve of the Report, please inform the Commission so that your approval can be considered along with other comments. Please send comments concerning this Report or direct any related inquiries, to:

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Introduction

The Revised Uniform Unclaimed Property Act (RUUPA) was approved by the Uniform Law Commission in 2016. It has already been enacted in whole or part in four jurisdictions and is under consideration in several others.

New Jersey's current law on unclaimed property is based on the 1985 Uniform Unclaimed Property Act; it did not enact the 1995 updates. Every state has unclaimed property laws, which apply to all businesses, nonprofit organizations, government entities, and individuals who hold property owned by other persons or have fixed obligations to pay debts due to other persons. The key parties involved in the distribution and processing of unclaimed property are the apparent owner, holder, and administrator. The apparent owner is the person whose name appears on the records of a holder as the owner of property held, issued, or owing by the holder. The holder is the person obligated to hold for the account of, or to deliver or pay to, the owner property that is subject to the RUUPA. If the property is "abandoned" under the Act, then the holder must report the property to the administrator, the state official responsible for administering the RUUPA.

RUUPA represents a substantial improvement over earlier versions. RUUPA clarifies which types of intangible property are covered in the Act. The following types of intangible property are now specifically included: virtual currency, payroll cards, stored-value cards, municipal bonds, health savings accounts, commissions, employee reimbursements, and custodial accounts for minors. RUUPA provides specific dormancy periods. The Act establishes dormancy periods for many types of property for the first time. For example, a three-year dormancy period for health savings accounts, custodial accounts for minors, payroll card accounts, and stored value cards. There is a one-year dormancy period for a commission or reimbursement owed to an employee. RUUPA clarifies that property is not presumed abandoned if the apparent owner shows an interest in the property during the dormancy period designated in the Act. Some of the ways in which an apparent owner may show interest are by a record communicated by the apparent owner to the holder about the property, payment of a premium on an insurance policy, or deposit or withdrawal from an account at a financial institution. RUUPA prioritizes information security. It establishes clear rules for the protection and use of confidential information, including rules for when confidential information may be disclosed.

The New Jersey Law Revision Commission recommends enactment of RUUPA. However, the Commission recommends a few New Jersey specific changes from the uniform text. New Jersey adopted specific provisions regarding gift cards between 2010 and 2014. Those enactments also restricted inactivity or dormancy fees as to stored value cards, travelers' checks and money orders. The text of RUUPA has been amended to continue those provisions. See the changes in section 206(b) and 602(c) and (d) and the addition of 207(b).

RUUPA gives the Unclaimed Property Administrator substantial discretion as when property is sold, and in certain circumstances, RUUPA makes the Administrator responsible for changes in the value of property after it is sold. Instead, the Commission opted for a clear rule as to when the property may be sold and no liability for adherence to that rule. As a result, section 701(a) has been changed, and section 703 has been deleted.

New Jersey has a statute that allows banks to sell the contents of unclaimed safe deposit boxes. N.J.S. 17:14A-51. RUUPA allows a bank to forward either the contents of a box or the proceeds after sale of the contents to the Unclaimed Property Administrator. As a result of the New Jersey statute there is no need to provide for forwarding the contents of a safe deposit box to the Unclaimed Property Administrator. See changes to Sections 205 and 402(a)(6) and the deletion of 603(c), 606 and 705.

The Commission has also added a section to provide for sale of abandoned real property and transfer of the proceeds to the Administrator. Neither RUUPA nor its predecessors provides a remedy for abandoned real property. That lack leaves only the old remedy of escheat which makes the State the absolute owner of the property. The modern approach to abandoned property, the approach of RUUPA, is for the State to take custody of the property subject to the rights of a person who later demonstrates ownership. The added section applies that approach to real property. See new section 213.

In addition, In New Jersey, the Administrative Procedure Act provides an evidentiary hearing where a person disagrees with the initial agency response in a contested case. As a result, the RUUPA provisions for an evidentiary court proceeding are unnecessary, and the Commission has substituted references to the Administrative Procedure Act. See sections 605(h), 904(d), 1101(c) and 1102.

REVISED UNIFORM UNCLAIMED PROPERTY ACT

ARTICLE 1

GENERAL PROVISIONS

SECTION 101. SHORT TITLE.

This act may be cited as the Revised Uniform Unclaimed Property Act.

SECTION 102. DEFINITIONS.

In this act:

(1) “Administrator” means the Unclaimed Property Administrator.

(2) “Administrator’s agent” means a person with which the administrator contracts to conduct an examination under Article 10 on behalf of the administrator. The term includes an independent contractor of the person and each individual participating in the examination on behalf of the person or contractor.

(3) “Apparent owner” means a person whose name appears on the records of a holder as the owner of property held, issued, or owing by the holder.

(4) “Business association” means a corporation, joint stock company, investment company other than an investment company registered under the Investment Company Act of 1940, as amended, 15 U.S.C. Sections 80a-1 through 80a-64, partnership, unincorporated association, joint venture, limited liability company, business trust, trust company, land bank, safe deposit company, safekeeping depository, financial organization, insurance company, federally chartered entity, utility, sole proprietorship, or other business entity, whether or not for profit.

(5) “Confidential information” means records, reports, and information that are confidential under Section 1402.

(6) “Domicile” means:

(A) for a corporation, the state of its incorporation;

(B) for a business association whose formation requires a filing with a state, other than a corporation, the state of its filing;

(C) for a federally chartered entity or an investment company registered under the Investment Company Act of 1940[, as amended], 15 U.S.C. Sections 80a-1 through 80a-64, the state of its home office; and

(D) for any other holder, the state of its principal place of business.

(7) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(8) “Electronic mail” means a communication by electronic means which is automatically retained and stored and may be readily accessed or retrieved.

(9) “Financial organization” means a savings and loan association, building and loan association, savings bank, industrial bank, bank, banking organization, or credit union.

(10) “Game-related digital content” means digital content that exists only in an electronic game or electronic-game platform. The term:

(A) includes:

(i) game-play currency such as a virtual wallet, even if denominated in United States currency; and

(ii) the following if for use or redemption only within the game or platform or another electronic game or electronic-game platform:

(I) points sometimes referred to as gems, tokens, gold, and similar names; and

(II) digital codes; and

(B) does not include an item that the issuer:

(i) permits to be redeemed for use outside a game or platform for:

(I) money; or

(II) goods or services that have more than minimal value; or

(ii) otherwise monetizes for use outside a game or platform.

(11) “Gift card” means:

(A) a stored-value card:

(i) the value of which does not expire;

(ii) that may be decreased in value only by redemption for merchandise, goods, or services; and

(iii) that, unless required by law, may not be redeemed for or converted into money or otherwise monetized by the issuer; and

(B) includes a prepaid commercial mobile radio service, as defined in 47 C.F.R. 20.3, as amended.

(12) “Holder” means a person obligated to hold for the account of, or to deliver or pay to, the owner, property subject to this act.

(13) “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 worker-compensation insurance.

(14) “Loyalty card” means a record given without direct monetary consideration under an award, reward, benefit, loyalty, incentive, rebate, or promotional program which may be used or redeemed only to obtain goods or services or a discount on goods or services. The term does not include a record that may be redeemed for money or otherwise monetized by the issuer.

(15) “Mineral” means gas, oil, coal, oil shale, other gaseous liquid or solid hydrocarbon, 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 resources, and any other substance defined as a mineral by law of this state other than this act.

(16) “Mineral proceeds” means an amount payable for extraction, production, or sale of minerals, or, on the abandonment of the amount, an amount that becomes payable after abandonment. The term includes an amount payable:

(A) for the acquisition and retention of a mineral lease, including a bonus, royalty, compensatory royalty, shut-in royalty, minimum royalty, and delay rental;

(B) for the extraction, production, or sale of minerals, including a net revenue interest, royalty, overriding royalty, extraction payment, and production payment; and

(C) under an agreement or option, including a joint-operating agreement, unit agreement, pooling agreement, and farm-out agreement.

(17) “Money order” means a payment order for a specified amount of money. The term includes an express money order and a personal money order on which the remitter is the purchaser.

(18) “Municipal bond” means a bond or evidence of indebtedness issued by a municipality or other political subdivision of a state.

(19) “Net card value” means the original purchase price or original issued value of a stored-value card, plus amounts added to the original price or value, minus amounts used and any service charge, fee, or dormancy charge permitted by law.

(20) “Non-freely transferable security” means a security that cannot be delivered to the administrator by the Depository Trust Clearing Corporation or similar custodian of securities providing post-trade clearing and settlement services to financial markets or cannot be delivered because there is no agent to effect transfer. The term includes a worthless security.

(21) “Owner” means a person that has a legal, beneficial, or equitable interest in property subject to this [act] or the person’s legal representative when acting on behalf of the owner. The term includes:

(A) a depositor, for a deposit;

(B) a beneficiary, for a trust other than a deposit in trust;

(C) a creditor, claimant, or payee, for other property; and

(D) the lawful bearer of a record that may be used to obtain money, a reward, or a thing of value.

(22) “Payroll card” means a record that evidences a payroll-card account as defined in Regulation E, 12 C.F.R. Part 1005, as amended.

(23) “Person” means an individual, estate, business association, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(24) “Property” means a fixed and certain interest in intangible property held, issued, or owed in the course of a holder’s business or by a government, governmental subdivision, agency, or instrumentality. The term:

(A) includes all income from or increments to the property;

(B) includes property referred to as or evidenced by:

(i) money, virtual currency, interest, or a dividend, check, draft, deposit, or payroll card;

(ii) a credit balance, customer’s overpayment, stored-value card, security deposit, refund, credit memorandum, unpaid wage, unused ticket for which the issuer has an obligation to provide a refund, mineral proceeds, or unidentified remittance;

(iii) a security except for:

(I) a worthless security; or

(II) a security that is subject to a lien, legal hold, or restriction evidenced on the records of the holder or imposed by operation of law, if the lien, legal hold, or restriction restricts the holder’s or owner’s ability to receive, transfer, sell, or otherwise negotiate the security;

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

(v) money deposited to redeem a security, make a distribution, or pay a dividend;

(vi) an amount due and payable under an annuity contract or insurance policy; 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 a similar benefit; and

(C) does not include:

(i) property held in a plan described in Section 529A of the Internal Revenue Code[, as amended], 26 U.S.C. Section 529A;

(ii) game-related digital content; or

(iii) a loyalty card.

(25) “Putative holder” means a person believed by the administrator to be a holder, until the person pays or delivers to the administrator property subject to this [act] or the administrator or a court makes a final determination that the person is or is not a holder.

(26) “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.

(27) “Security” means:

(A) a security as defined in the Uniform Commercial Code, N.J.S. 12A:8-102;

(B) a security entitlement as defined in the Uniform Commercial Code, N.J.S. 12A:8-102, including a customer security account held by a registered broker-dealer, to the extent the financial assets held in the security account are not:

(i) registered on the books of the issuer in the name of the person for which the broker-dealer holds the assets;

(ii) payable to the order of the person; or

(iii) specifically indorsed to the person; or

(C) an equity interest in a business association not included in subparagraph (A) or (B).

(28) “Sign” means, with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic symbol, sound, or process.

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

(30) “Stored-value card” means a record evidencing a promise made for consideration by the seller or issuer of the record that goods, services, or money will be provided to the owner of the record to the value or amount shown in the record. The term:

(A) includes:

(i) a record that contains or consists of a microprocessor chip, magnetic strip, or other means for the storage of information, which is prefunded and whose value or amount is decreased on each use and increased by payment of additional consideration; and

(ii) a gift card and payroll card; and

(B) does not include a loyalty card or game-related digital content.

(31) “Utility” means a person that owns or operates for public use a plant, equipment, real property, franchise, or license for the following public services:

(A) transmission of communications or information;

(B) production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas; or

(C) provision of sewage or septic services, or trash, garbage, or recycling disposal.

(32) “Virtual currency” means a digital representation of value used as a medium of exchange, unit of account, or store of value, which does not have legal tender status recognized by the United States. The term does not include:

(A) the software or protocols governing the transfer of the digital representation of value;

(B) game-related digital content; or

(C) a loyalty card.

(33) “Worthless security” means a security whose cost of liquidation and delivery to the administrator would exceed the value of the security on the date a report is due under this [act].

SECTION 103. INAPPLICABILITY TO FOREIGN TRANSACTION.

This act does not apply to property held, due, and owing in a foreign country if the transaction out of which the property arose was a foreign transaction.

SECTION 104. RULEMAKING.

The administrator may adopt rules under the Administrative Procedure Act to implement and administer this act.

ARTICLE 2

PRESUMPTION OF ABANDONMENT

SECTION 201. WHEN PROPERTY PRESUMED ABANDONED.

Subject to Section 210, the following property is presumed abandoned if it is unclaimed by the apparent owner during the period specified below:

- (1) a traveler’s check, 15 years after issuance;
- (2) a money order, seven years after issuance;
- (3) a state or municipal bond, bearer bond, or original-issue-discount bond, three years after the earliest of the date the bond matures or is called or the obligation to pay the principal of the bond arises;
- (4) a debt of a business association, three years after the obligation to pay arises;
- (5) a payroll card or demand, savings, or time deposit, including a deposit that is automatically renewable, three years after the maturity of the deposit, except a deposit that is automatically renewable is deemed matured on its initial date of maturity unless the apparent owner consented in a record on file with the holder to renewal at or about the time of the renewal;
- (6) money or a credit owed to a customer as a result of a retail business transaction, three years after the obligation arose;
- (7) an amount owed by an insurance company on a life or endowment insurance policy or an annuity contract that has matured or terminated, three years after the obligation to pay arose under the terms of the policy or contract or, if a policy or contract for which an amount is owed on proof of death has not matured by proof of the death of the insured or annuitant, as follows:
 - (A) with respect to an amount owed on a life or endowment insurance policy, three years after the earlier of the date:
 - (i) the insurance company has knowledge of the death of the insured; or

(ii) the insured has attained, or would have attained if living, the limiting age under the mortality table on which the reserve for the policy is based; and

(B) with respect to an amount owed on an annuity contract, three years after the date the insurance company has knowledge of the death of the annuitant.

(8) property distributable by a business association in the course of dissolution, one year after the property becomes distributable;

(9) property held by a court, including property received as proceeds of a class action, one year after the property becomes distributable;

(10) property held by a government or governmental subdivision, agency, or instrumentality, including municipal bond interest and unredeemed principal under the administration of a paying agent or indenture trustee, one year after the property becomes distributable;

(11) wages, commissions, bonuses, or reimbursements to which an employee is entitled, or other compensation for personal services, other than amounts held in a payroll card, one year after the amount becomes payable;

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

(13) property not specified in this section or Section 202 through [207][208], the earlier of three years after the owner first has a right to demand the property or the obligation to pay or distribute the property arises.

SECTION 202. WHEN TAX-DEFERRED RETIREMENT ACCOUNT PRESUMED ABANDONED.

(a) Subject to Section 210, property held in a pension account or retirement account that qualifies for tax deferral under the income-tax laws of the United States is presumed abandoned if it is unclaimed by the apparent owner three years after the later of:

(1) the following dates:

(A) except as in subparagraph (B), the date a second consecutive communication sent by the holder by first-class United States mail to the apparent owner is returned to the holder undelivered by the United States Postal Service; or

(B) if the second communication is sent later than 30 days after the date the first communication is returned undelivered, the date the first communication was returned undelivered by the United States Postal Service; or

(2) the earlier of the following dates:

(A) the date the apparent owner becomes 70.5 years of age, if determinable by the holder; or

(B) if the Internal Revenue Code, as amended, 26 U.S.C. Section 1 et seq., requires distribution to avoid a tax penalty, two years after the date the holder:

(i) receives confirmation of the death of the apparent owner in the ordinary course of its business; or

(ii) confirms the death of the apparent owner under subsection (b).

(b) If a holder in the ordinary course of its business receives notice or an indication of the death of an apparent owner and subsection (a)(2) applies, the holder shall attempt not later than 90 days after receipt of the notice or indication to confirm whether the apparent owner is deceased.

(c) If the holder does not send communications to the apparent owner of an account described in subsection (a) by first-class United States mail, the holder shall attempt to confirm the apparent owner's interest in the property by sending the apparent owner an electronic-mail communication not later than two years after the apparent owner's last indication of interest in the property. However, the holder promptly shall attempt to contact the apparent owner by first-class United States mail if:

(1) the holder does not have information needed to send the apparent owner an electronic mail communication or the holder believes that the apparent owner's electronic mail address in the holder's records is not valid;

(2) the holder receives notification that the electronic-mail communication was not received; or

(3) the apparent owner does not respond to the electronic-mail communication not later than 30 days after the communication was sent.

(d) If first-class United States mail sent under subsection (c) is returned to the holder undelivered by the United States Postal Service, the property is presumed abandoned three years after the later of:

(1) except as in paragraph (2), the date a second consecutive communication to contact the apparent owner sent by first-class United States mail is returned to the holder undelivered;

(2) if the second communication is sent later than 30 days after the date the first communication is returned undelivered, the date the first communication was returned undelivered; or

(3) the date established by subsection (a)(2).

SECTION 203. WHEN OTHER TAX-DEFERRED ACCOUNT PRESUMED ABANDONED.

Subject to Section 210 and except for property described in Section 202 and property held in a plan described in Section 529A of the Internal Revenue Code as amended, 26 U.S.C. Section 529A, property held in an account or plan, including a health savings account, that qualifies for tax deferral under the income-tax laws of the United States is presumed abandoned if it is unclaimed by the apparent owner three years after the earlier of:

(1) the date, if determinable by the holder, specified in the income-tax laws and regulations of the United States by which distribution of the property must begin to avoid a tax penalty, with no distribution having been made; or

(2) 30 years after the date the account was opened.

SECTION 204. WHEN CUSTODIAL ACCOUNT FOR MINOR PRESUMED ABANDONED.

(a) Subject to Section 210, property held in an account established under a state's Uniform Gifts to Minors Act or Uniform Transfers to Minors Act is presumed abandoned if it is unclaimed by or on behalf of the minor on whose behalf the account was opened three years after the later of:

(1) except as in subparagraph (2), the date a second consecutive communication sent by the holder by first-class United States mail to the custodian of the minor on whose behalf the account was opened is returned undelivered to the holder by the United States Postal Service;

(2) if the second communication is sent later than 30 days after the date the first communication is returned undelivered, the date the first communication was returned undelivered; or

(3) the date on which the custodian is required to transfer the property to the minor or the minor's estate in accordance with the Uniform Gifts to Minors Act or Uniform Transfers to Minors Act of the state in which the account was opened.

(b) If the holder does not send communications to the custodian of the minor on whose behalf an account described in subsection (a) was opened by first-class United States mail, the holder shall attempt to confirm the custodian's interest in the property by sending the custodian an electronic-mail communication not later than two years after the custodian's last indication of interest in the property. However, the holder promptly shall attempt to contact the custodian by first-class United States mail if:

(1) the holder does not have information needed to send the custodian an electronic mail communication or the holder believes that the custodian's electronic-mail address in the holder's records is not valid;

(2) the holder receives notification that the electronic-mail communication was not received; or

(3) the custodian does not respond to the electronic-mail communication not later than 30 days after the communication was sent.

(c) If first-class United States mail sent under subsection (b) is returned undelivered to the holder by the United States Postal Service, the property is presumed abandoned three years after the later of:

(1) the date a second consecutive communication to contact the custodian by first-class United States mail is returned to the holder undelivered by the United States Postal Service; or

(2) the date established by subsection (a)(3).

(d) When the property in the account described in subsection (a) is transferred to the minor on whose behalf an account was opened or to the minor's estate, the property in the account is no longer subject to this section.

SECTION 205. WHEN CONTENTS OF SAFE-DEPOSIT BOX PRESUMED ABANDONED.

Proceeds from a sale of the property by the holder permitted by N.J.S. 17:14A-51 or other law of this state other than this act are presumed abandoned if the property remains unclaimed by the apparent owner five years after the earlier of the:

- (1) expiration of the lease or rental period for the box; or
- (2) earliest date when the lessor of the box is authorized by law of this state other than this act to enter the box and remove or dispose of the contents without consent or authorization of the lessee.

SECTION 206. WHEN STORED-VALUE CARD PRESUMED ABANDONED.

(a) Subject to Section 210, the net card value of a stored-value card, other than a payroll card, is presumed abandoned on the latest of three years after:

- (1) December 31 of the year in which the card is issued or additional funds are deposited into it;
- (2) the most recent indication of interest in the card by the apparent owner; or
- (3) a verification or review of the balance by or on behalf of the apparent owner.

(b) The amount presumed abandoned in a stored-value card other than a gift card is the net card value at the time it is presumed abandoned.

SECTION 207. WHEN GIFT CARD PRESUMED ABANDONED.

(a) Subject to Section 210, a gift card is presumed abandoned if it is unclaimed by the apparent owner five years after the later of the date of purchase or its most recent use.

(b) The amount presumed abandoned in a a gift card is 60% of the net card value at the time it is presumed abandoned.

SECTION 208. WHEN SECURITY PRESUMED ABANDONED.

(a) Subject to Section 210, a security is presumed abandoned three years after:

- (1) the date a second consecutive communication sent by the holder by first-class United States mail to the apparent owner is returned to the holder undelivered by the United States Postal Service; or
- (2) if the second communication is made later than 30 days after the first communication is returned, the date the first communication is returned undelivered to the holder by the United States Postal Service.

(b) If the holder does not send communications to the apparent owner of a security by first-class United States mail, the holder shall attempt to confirm the apparent owner's interest in the security by sending the apparent owner an electronic-mail communication not later than two years after the apparent owner's last indication of interest in the security. However the holder promptly shall attempt to contact the apparent owner by first-class United States mail if:

(1) the holder does not have information needed to send the apparent owner an electronic-mail communication or the holder believes that the apparent owner's electronic-mail address in the holder's records is not valid;

(2) the holder receives notification that the electronic-mail communication was not received; or

(3) the apparent owner does not respond to the electronic-mail communication not later 30 days after the communication was sent.

(c) If first-class United States mail sent under subsection (b) is returned to the holder undelivered by the United States Postal Service, the security is presumed abandoned three years after the date the mail is returned.

SECTION 209. WHEN RELATED PROPERTY PRESUMED ABANDONED.

At and after the time property is presumed abandoned under this act, any other property right or interest accrued or accruing from the property and not previously presumed abandoned is also presumed abandoned.

SECTION 210. INDICATION OF APPARENT OWNER INTEREST IN PROPERTY.

(a) The period after which property is presumed abandoned is measured from the later of:

(1) the date the property is presumed abandoned under this [article]; or

(2) the latest indication of interest by the apparent owner in the property.

(b) Under this act, an indication of an apparent owner's interest in property includes:

(1) a record communicated by the apparent owner to the holder or agent of the holder concerning the property or the account in which the property is held;

(2) an oral communication by the apparent owner to the holder or agent of the holder concerning the property or the account in which the property is held, if the holder or its agent contemporaneously makes and preserves a record of the fact of the apparent owner's communication;

(3) presentment of a check or other instrument of payment of a dividend, interest payment, or other distribution, or evidence of receipt of a distribution made by electronic or similar means, with respect to an account, underlying security, or interest in a business association.

(4) activity directed by an apparent owner in the account in which the property is held, including accessing the account or information concerning the account, or a direction by the apparent owner to increase, decrease, or otherwise change the amount or type of property held in the account;

(5) a deposit into or withdrawal from an account at a financial organization, including an automatic deposit or withdrawal previously authorized by the apparent owner other than an automatic reinvestment of dividends or interest;

(6) subject to subsection (e), payment of a premium on an insurance policy; and

(7) any other action by the apparent owner which reasonably demonstrates to the holder that the apparent owner knows that the property exists.

(c) An action by an agent or other representative of an apparent owner, other than the holder acting as the apparent owner's agent, is presumed to be an action on behalf of the apparent owner.

(d) A communication with an apparent owner by a person other than the holder or the holder's representative is not an indication of interest in the property by the apparent owner unless a record of the communication evidences the apparent owner's knowledge of a right to the property.

(e) If the insured dies or the insured or beneficiary of an insurance policy otherwise becomes entitled to the proceeds before depletion of the cash surrender value of the policy by operation of an automatic-premium-loan provision or other nonforfeiture provision contained in the policy, the operation does not prevent the policy from maturing or terminating.

SECTION 211. KNOWLEDGE OF DEATH OF INSURED OR ANNUITANT.

(a) In this section, "death master file" means the United States Social Security Administration Death Master File or other database or service that is at least as comprehensive as the United States Social Security Administration Death Master File for determining that an individual reportedly has died.

(b) With respect to a life or endowment insurance policy or annuity contract for which an amount is owed on proof of death, but which has not matured by proof of death of the insured or annuitant, the company has knowledge of the death of an insured or annuitant when:

(1) the company receives a death certificate or court order determining that the insured or annuitant has died;

(2) due diligence, performed as required under state law and regulations relating to the business of insurance to maintain contact with the insured or annuitant or determine whether the insured or annuitant has died, validates the death of the insured or annuitant;

(3) the company conducts a comparison for any purpose between a death master file and the names of some or all of the company's insureds or annuitants, finds a match that provides notice that the insured or annuitant has died, and validates the death;

(4) the administrator or the administrator's agent conducts a comparison for the purpose of finding matches during an examination conducted under Article 10 between a death master file and the names of some or all of the company's insureds or annuitants, finds a match that provides notice that the insured or annuitant has died, and the company validates the death;
or

(5) the company:

(A) receives notice of the death of the insured or annuitant from an administrator, beneficiary, policy owner, relative of the insured, or trustee or from an executor], or other legal representative of the insured's or annuitant's estate; and

(B) validates the death of the insured or annuitant.

(c) The following rules apply under this section:

(1) A death-master-file match under subsection (b)(3) or (4) occurs if the criteria for an exact or partial match are satisfied as provided by:

(A) law of this state other than this act;

(B) a rule or policy adopted by the Department of Banking and Insurance;

or

(C) absent a law, rule, or policy under subparagraph (A) or (B) standards in the National Conference of Insurance Legislators' "Model Unclaimed Life Insurance Benefits Act" as published in 2014.

(2) The death-master-file match does not constitute proof of death for the purpose of submission to an insurance company of a claim by a beneficiary, annuitant, or owner of the policy or contract for an amount due under an insurance policy or annuity contract.

(3) The death-master-file match or validation of the insured's or annuitant's death does not alter the requirements for a beneficiary, annuitant, or owner of the policy or contract to make a claim to receive proceeds under the terms of the policy or contract.

(4) If no provision in insurance statutes or rules which establishes a time for validation of a death of an insured or annuitant, the insurance company shall make a good faith effort using other available records and information to validate the death and document the effort taken not later than 90 days after the insurance company has notice of the death.

(d) This act does not affect the determination of the extent to which an insurance company before the effective date of this act had knowledge of the death of an insured or annuitant or was required to conduct a death-master-file comparison to determine whether amounts owed by the company on a life or endowment insurance policy or annuity contract were presumed abandoned or unclaimed.

SECTION 212. DEPOSIT ACCOUNT FOR PROCEEDS OF INSURANCE POLICY OR ANNUITY CONTRACT.

If proceeds payable under a life or endowment insurance policy or annuity contract are deposited into an account with check or draft-writing privileges for the beneficiary of the policy or contract and, under a supplementary contract not involving annuity benefits other than death benefits, the proceeds are retained by the insurance company or the financial organization where the account is held, the policy or contract includes the assets in the account.

SECTION 213. UNCLAIMED REAL PROPERTY

a. An action seeking a declaration that an interest in real property is presumed to be abandoned 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 presumed abandoned if, after reasonable efforts, the owner of the interest cannot be ascertained or cannot be located.

c. The Judgment of Presumed Abandonment shall include a legal description of the parcel of property and the interest in it that is abandoned,. 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 court shall order the sale of the property and shall transfer the proceeds of the sale to the Unclaimed Property Administrator.

ARTICLE 3

RULES FOR TAKING CUSTODY OF PROPERTY PRESUMED ABANDONED

SECTION 301. ADDRESS OF APPARENT OWNER TO ESTABLISH PRIORITY.

In this article, the following rules apply:

(1) The last-known address of an apparent owner is any description, code, or other indication of the location of the apparent owner which identifies the state, even if the description, code, or indication of location is not sufficient to direct the delivery of first-class United States mail to the apparent owner.

(2) If the United States postal zip code associated with the apparent owner is for a post office located in this state, this state is deemed to be the state of the last-known address of the apparent owner unless other records associated with the apparent owner specifically identify the physical address of the apparent owner to be in another state.

(3) If the address under paragraph (2) is in another state, the other state is deemed to be the state of the last-known address of the apparent owner.

(4) The address of the apparent owner of a life or endowment insurance policy or annuity contract or its proceeds is presumed to be the address of the insured or annuitant if a person other than the insured or annuitant is entitled to the amount owed under the policy or contract and the address of the other person is not known by the insurance company and cannot be determined under Section 302.

SECTION 302. ADDRESS OF APPARENT OWNER IN THIS STATE.

The administrator may take custody of property that is presumed abandoned, whether located in this state, another state, or a foreign country if:

(1) the last-known address of the apparent owner in the records of the holder is in this state; or

(2) the records of the holder do not reflect the identity or last-known address of the apparent owner, but the administrator has determined that the last-known address of the apparent owner is in this state.

SECTION 303. IF RECORDS SHOW MULTIPLE ADDRESSES OF APPARENT OWNER.

(a) Except as in subsection (b), if records of a holder reflect multiple addresses for an apparent owner and this state is the state of the most recently recorded address, this state may take custody of property presumed abandoned, whether located in this state or another state.

(b) If it appears from records of the holder that the most recently recorded address of the apparent owner under subsection (a) is a temporary address and this state is the state of the next most recently recorded address that is not a temporary address, this state may take custody of the property presumed abandoned.

SECTION 304. HOLDER DOMICILED IN THIS STATE.

(a) Except as in subsection (b) or Section 302 or 303, the administrator may take custody of property presumed abandoned, whether located in this state, another state, or a foreign country, if the holder is domiciled in this state or is this state or a governmental subdivision, agency, or instrumentality of this state, and

(1) another state or foreign country is not entitled to the property because there is no last-known address of the apparent owner or other person entitled to the property in the records of the holder; or

(2) the state or foreign country of the last-known address of the apparent owner or other person entitled to the property does not provide for custodial taking of the property.

(b) Property is not subject to custody of the administrator under subsection (a) if the property is specifically exempt from custodial taking under the law of this state or the state or foreign country of the last-known address of the apparent owner.

(c) If a holder's state of domicile has changed since the time property was presumed abandoned, the holder's state of domicile in this section is deemed to be the state where the holder was domiciled at the time the property was presumed abandoned.

SECTION 305. CUSTODY IF TRANSACTION TOOK PLACE IN THIS STATE.

Except as in Section 302, 303, or 304, the administrator may take custody of property presumed abandoned whether located in this state or another state if:

(1) the transaction out of which the property arose took place in this state;

(2) the holder is domiciled in a state that does not provide for the custodial taking of the property, except that if the property is specifically exempt from custodial taking under the law of the state of the holder's domicile, the property is not subject to the custody of the administrator; and

(3) the last-known address of the apparent owner or other person entitled to the property is unknown or in a state that does not provide for the custodial taking of the property, except that if the property is specifically exempt from custodial taking under the law of the state of the last-known address, the property is not subject to the custody of the administrator.

SECTION 306. TRAVELER'S CHECK, MONEY ORDER, OR SIMILAR INSTRUMENT.

The administrator may take custody of sums payable on a traveler's check, money order, or similar instrument presumed abandoned to the extent permissible under federal law.

SECTION 307. BURDEN OF PROOF TO ESTABLISH ADMINISTRATOR'S RIGHT TO CUSTODY.

If the administrator asserts a right to custody of unclaimed property, the administrator has the burden to prove:

- (1) the existence and amount of the property;
- (2) the property is presumed abandoned; and
- (3) the property is subject to the custody of the administrator.

ARTICLE 4

REPORT BY HOLDER

SECTION 401. REPORT REQUIRED BY HOLDER.

(a) A holder of property presumed abandoned and subject to the custody of the administrator shall report in a record to the administrator concerning the property. The administrator may not require a holder to file a paper report.

(b) A holder may contract with a third party to make the report required under subsection (a).

(c) Whether or not a holder contracts with a third party under subsection (b), the holder is responsible:

(1) to the administrator for the complete, accurate, and timely reporting of property presumed abandoned; and

(2) for paying or delivering to the administrator property described in the report.

SECTION 402. CONTENT OF REPORT.

(a) The report required under Section 401 must:

(1) be signed by or on behalf of the holder and verified as to its completeness and accuracy;

(2) if filed electronically, be in a secure format approved by the administrator which protects confidential information of the apparent owner in the same manner as required of the administrator and the administrator's agent under [Article] 14;

(3) describe the property;

(4) except for a traveler's check, money order, or similar instrument, contain the name, if known, last-known address, if known, and Social Security number or taxpayer identification number, if known or readily ascertainable, of the apparent owner of property with a value of \$[50] or more;

(5) for an amount held or owing under a life or endowment insurance policy or annuity contract, contain the name and last-known address of the insured, annuitant or other apparent owner of the policy or contract and of the beneficiary;

(6) for property removed from a safe-deposit box, indicate any amounts owed to the holder under Section 606;

(7) contain the commencement date for determining abandonment under [Article] 2;

(8) state that the holder has complied with the notice requirements of Section 501;

(9) identify property that is a non-freely transferable security and explain why it is a non-freely transferable security; and

(10) contain other information the administrator prescribes by rules.

(b) A report under Section 401 may include in the aggregate items valued under \$[50] each. If the report includes items in the aggregate valued under \$[50] each, the administrator may not require the holder to provide the name and address of an apparent owner of an item unless the information is necessary to verify or process a claim in progress by the apparent owner.

(c) A report under Section 401 may include personal information as defined in Section 1401(a) about the apparent owner or the apparent owner's property to the extent not otherwise prohibited by federal law.

(d) If a holder has changed its name while holding property presumed abandoned or is a successor to another person that previously held the property for the apparent owner, the holder must include in the report under Section 401 its former name or the name of the previous holder, if any, and the known name and address of each previous holder of the property.

SECTION 403. WHEN REPORT TO BE FILED.

(a) Except as otherwise provided in subsection (b) and subject to subsection (c), the report under Section 401 must be filed before November 1 of each year and cover the 12 months preceding July 1 of that year.

(b) Subject to subsection (c), the report under Section 401 to be filed by an insurance company must be filed before May 1 of each year for the immediately preceding calendar year.

(c) Before the date for filing the report under Section 401, the holder of property presumed abandoned may request the administrator to extend the time for filing. The administrator may grant an extension. If the extension is granted, the holder may pay or make a partial payment of the amount the holder estimates ultimately will be due. The payment or partial payment terminates accrual of interest on the amount paid.

SECTION 404. RETENTION OF RECORDS BY HOLDER.

A holder required to file a report under Section 401 shall retain records for 10 years after the later of the date the report was filed or the last date a timely report was due to be filed, unless a shorter period is provided by rule of the administrator. The holder may satisfy the requirement to retain records under this section through an agent. The records must contain:

- (1) the information required to be included in the report;
- (2) the date, place, and nature of the circumstances that gave rise to the property right;
- (3) the amount or value of the property;
- (4) the last address of the apparent owner, if known to the holder; and

(5) if the holder 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 holder is directly liable, a record of the instruments while they remain outstanding indicating the state and date of issue.

SECTION 405. PROPERTY REPORTABLE AND PAYABLE OR DELIVERABLE ABSENT OWNER DEMAND.

Property is reportable and payable or deliverable under this act even if the owner fails to make demand or present an instrument or document otherwise required to obtain payment.

ARTICLE 5

NOTICE TO APPARENT OWNER OF PROPERTY PRESUMED ABANDONED

SECTION 501. NOTICE TO APPARENT OWNER BY HOLDER.

(a) Subject to subsection (b), the holder of property presumed abandoned shall send to the apparent owner notice by first-class United States mail that complies with Section 502 in a format acceptable to the administrator not more than 180 days nor less than 60 days before filing the report under Section 401 if:

(1) the holder has in its records an address for the apparent owner which the holder's records do not disclose to be invalid and is sufficient to direct the delivery of first-class United States mail to the apparent owner; and

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

(b) If an apparent owner has consented to receive electronic-mail delivery from the holder, the holder shall send the notice described in subsection (a) both by first-class United States mail to the apparent owner's last-known mailing address and by electronic mail, unless the holder believes that the apparent owner's electronic-mail address is invalid.

SECTION 502. CONTENTS OF NOTICE BY HOLDER.

(a) Notice under Section 501 must contain a heading that reads substantially as follows: “Notice. The State of New Jersey requires us to notify you that your property may be transferred to the custody of the New Jersey Unclaimed Property Administrator if you do not contact us before (insert date that is 30 days after the date of this notice).”.

(b) The notice under Section 501 must:

(1) identify the nature and, except for property that does not have a fixed value, the value of the property that is the subject of the notice;

(2) state that the property will be turned over to the administrator;

(3) state that after the property is turned over to the administrator an apparent owner that seeks return of the property must file a claim with the administrator;

(4) state that property that is not legal tender of the United States may be sold by the administrator; and

(5) provide instructions that the apparent owner must follow to prevent the holder from reporting and paying or delivering the property to the administrator.

SECTION 503. NOTICE BY ADMINISTRATOR.

(a) The administrator shall give notice to an apparent owner that property presumed abandoned and appears to be owned by the apparent owner is held by the administrator under this act.

(b) In providing notice under subsection (a), the administrator shall:

(1) except as otherwise provided in paragraph (2), send written notice by first-class United States mail to each apparent owner of property valued at \$[50] or more held by the administrator, unless the administrator determines that a mailing by first-class United States mail would not be received by the apparent owner, and, in the case of a security held in an account for which the apparent owner had consented to receiving electronic mail from the holder, send notice by electronic mail if the electronic-mail address of the apparent owner is known to the administrator instead of by first-class United States mail; or

(2) send the notice to the apparent owner’s electronic-mail address if the administrator does not have a valid United States mail address for an apparent owner, but has an electronic-mail address that the administrator does not know to be invalid.

(c) In addition to the notice under subsection (b), the administrator shall:

(1) publish every six months in at least one newspaper of general circulation in each county in this state notice of property held by the administrator which must include:

(A) the total value of property received by the administrator during the preceding six-month period, taken from the reports under Section 401;

(B) the total value of claims paid by the administrator during the preceding [six]-month period;

(C) the Internet web address of the unclaimed property website maintained by the administrator;

(D) a telephone number and electronic-mail address to contact the administrator to inquire about or claim property; and

(E) a statement that a person may access the Internet by a computer to search for unclaimed property and a computer may be available as a service to the public at a local public library; and

(2) maintain a website or database accessible by the public and electronically searchable which contains the names reported to the administrator of all apparent owners for whom property is being held by the administrator.

(d) The website or database maintained under subsection (c)(2) must include instructions for filing with the administrator a claim to property and a printable claim form with instructions for its use.

(e) In addition to giving notice under subsection (b), publishing the information under subsection (c)(1) and maintaining the website or database under subsection (c)(2), the administrator may use other printed publication, telecommunication, the Internet, or other media to inform the public of the existence of unclaimed property held by the administrator.

SECTION 504. COOPERATION AMONG STATE OFFICERS AND AGENCIES TO LOCATE APPARENT OWNER.

Unless prohibited by law of this state other than this act, on request of the administrator, each officer, agency, board, commission, division, and department of this state, any body politic and corporate created by this state for a public purpose, and each political subdivision of this state shall make its books and records available to the administrator and cooperate with the administrator to determine the current address of an apparent owner of property held by the administrator under this act.

ARTICLE 6

TAKING CUSTODY OF PROPERTY BY ADMINISTRATOR

SECTION 601. DEFINITION OF GOOD FAITH.

In this article, payment or delivery of property is made in good faith if a holder:

(1) had a reasonable basis for believing, based on the facts then known, that the property was required or permitted to be paid or delivered to the administrator under this act; or

(2) made payment or delivery:

(A) in response to a demand by the administrator or administrator's agent; or

(B) under a guidance or ruling issued by the administrator which the holder reasonably believed required or permitted the property to be paid or delivered.

SECTION 602. DORMANCY CHARGE.

(a) Except as provided in subsections (b) (c) and (d), a holder may deduct a dormancy charge from property required to be paid or delivered to the administrator if:

(1) a valid contract between the holder and the apparent owner authorizes imposition of the charge for the apparent owner's failure to claim the property within a specified time; and

(2) the holder regularly imposes the charge and regularly does not reverse or otherwise cancel the charge.

(b) The amount of the deduction under subsection (a) is limited to an amount that is not unconscionable considering all relevant factors, including the marginal transactional costs incurred by the holder in maintaining the apparent owner's property and any services received by the apparent owner.

(c) A holder may not deduct from the amount of a stored value card including a gift card a dormancy charge or other charge imposed by reason of the failure to present the instrument for payment. Neither the property nor an agreement with respect to the property may contain language suggesting that the property may be subject to that kind of charge, fee or penalty for inactivity.

(d) A holder may not deduct from the amount of a travelers check or money order any dormancy charge or other charge imposed by reason of the failure to present the instrument for payment in an amount exceeding \$2 per month, and dormancy charge, or other similar charge shall be imposed against a travelers check or money order within the twelve months immediately following the date of sale.

SECTION 603. PAYMENT OR DELIVERY OF PROPERTY TO ADMINISTRATOR.

(a) Except as otherwise provided in this section, on filing a report under Section 401, the holder shall pay or deliver to the administrator the property described in the report.

(b) If property in a report under Section 401 is an automatically renewable deposit and a penalty or forfeiture in the payment of interest would result from paying the deposit to the administrator at the time of the report, the date for payment of the property to the administrator is extended until a penalty or forfeiture no longer would result from payment, if the holder informs the administrator of the extended date.

(d) If property reported to the administrator under Section 401 is a security, the administrator may:

(1) make an endorsement, instruction, or entitlement order on behalf of the apparent owner to invoke the duty of the issuer, its transfer agent, or the securities intermediary to transfer the security; or

(2) dispose of the security under Section 702.

(e) If the holder of property reported to the administrator under Section 401 is the issuer of a certificated security, the administrator may obtain a replacement certificate in physical or

book-entry form under the Uniform Commercial Code, N.J.S. 12A: 8-405. An indemnity bond is not required.

(f) The administrator shall establish procedures for the registration, issuance, method of delivery, transfer, and maintenance of securities delivered to the administrator by a holder.

(g) An issuer, holder, and transfer agent or other person acting under this section under instructions of and on behalf of the issuer or holder is not liable to the apparent owner for, and must be indemnified by the state against, a claim arising with respect to property after the property has been delivered to the administrator.

(h) A holder is not required to deliver to the administrator a security identified by the holder as a non-freely transferable security. If the administrator or holder determines that a security is no longer a non-freely transferable security, the holder shall deliver the security on the next regular date prescribed for delivery of securities under this act. The holder shall make a determination annually whether a security identified in a report filed under Section 401 as a non-freely transferable security is no longer a non-freely transferable security.

SECTION 604. EFFECT OF PAYMENT OR DELIVERY OF PROPERTY TO ADMINISTRATOR.

(a) On payment or delivery of property to the administrator under this act, the administrator as agent for the state assumes custody and responsibility for safekeeping the property. A holder that pays or delivers property to the administrator in good faith and substantially complies with Sections 501 and 502 is relieved of liability arising thereafter with respect to payment or delivery of the property to the administrator.

(b) This state shall defend and indemnify a holder against liability on a claim against the holder resulting from the payment or delivery of property to the administrator made in good faith and after the holder substantially complied with Sections 501 and 502.

SECTION 605. RECOVERY OF PROPERTY BY HOLDER FROM ADMINISTRATOR.

(a) A holder that under this act pays money to the administrator may file a claim for reimbursement from the administrator of the amount paid if the holder:

(1) paid the money in error; or

(2) after paying the money to the administrator, paid money to a person the holder reasonably believed entitled to the money.

(b) If a claim for reimbursement under subsection (a) is made for a payment made on a negotiable instrument, including a traveler's check, money order, or similar instrument, the holder must submit proof that the instrument was presented and payment was made to a person the holder reasonably believed entitled to payment. The holder may claim reimbursement even if the payment was made to a person whose claim was made after expiration of a period of limitation on the owner's right to receive or recover property, whether specified by contract, statute, or court order.

(c) If a holder is reimbursed by the administrator under subsection (a)(2), the holder may also recover from the administrator income or gain under Section 607 that would have been paid

to the owner if the money had been claimed from the administrator by the owner to the extent the income or gain was paid by the holder to the owner.

(d) A holder that under this act delivers property other than money to the administrator may file a claim for return of the property from the administrator if:

- (1) the holder delivered the property in error; or
- (2) the apparent owner has claimed the property from the holder.

(e) If a claim for return of property under subsection (d) is made, the holder shall include with the claim evidence sufficient to establish that the apparent owner has claimed the property from the holder or that the property was delivered by the holder to the administrator in error.

(f) The administrator may determine that an affidavit submitted by a holder is evidence sufficient to establish that the holder is entitled to reimbursement or to recover property under this section.

(g) A holder is not required to pay a fee or other charge for reimbursement or return of property under this section.

(h) Not later than 90 days after a claim is filed under subsection (a) or (d), the administrator shall allow or deny the claim and give the claimant notice of the decision in a record. If the administrator denies the claim or does not take action on a claim during the 90 day period, the claim shall constitute a contested case to be decided as provided in the Administrative Procedure Act.

SECTION 607. CREDITING INCOME OR GAIN TO OWNER'S ACCOUNT.

(a) If property other than money is delivered to the administrator, the owner is entitled to receive from the administrator income or gain realized or accrued on the property before the property is sold. If the property was an interest-bearing demand, savings, or time deposit, the administrator shall pay interest at the lesser of the legal rate of interest or the rate the property earned while in the possession of the holder. Interest begins to accrue when the property is delivered to the administrator and ends on the earlier of the expiration of 10 years after its delivery or the date on which payment is made to the owner.

(b) Interest on interest-bearing property is not payable under this section for any period before the effective date of this act, unless authorized by law superseded by this act.

SECTION 608. ADMINISTRATOR'S OPTIONS AS TO CUSTODY.

(a) The administrator may decline to take custody of property reported under Section 401 if the administrator determines that:

- (1) the property has a value less than the estimated expenses of notice and sale of the property; or
- (2) taking custody of the property would be unlawful.

(b) A holder may pay or deliver property to the administrator before the property is presumed abandoned under this act if the holder:

(1) sends the apparent owner of the property notice required by Section 501 and provides the administrator evidence of the holder's compliance with this paragraph;

(2) includes with the payment or delivery a report regarding the property conforming to Section 402; and

(3) first obtains the administrator's consent in a record to accept payment or delivery.

(c) A holder's request for the administrator's consent under subsection (b)(3) must be in a record. If the administrator fails to respond to the request not later than 30 days after receipt of the request, the administrator is deemed to consent to the payment or delivery of the property and the payment or delivery is considered to have been made in good faith.

(d) On payment or delivery of property under subsection (b), the property is presumed abandoned.

SECTION 609. DISPOSITION OF PROPERTY HAVING NO SUBSTANTIAL VALUE; IMMUNITY FROM LIABILITY.

(a) If the administrator takes custody of property delivered under this act and later determines that the property has no substantial commercial value or that the cost of disposing of the property will exceed the value of the property, the administrator may return the property to the holder or destroy or otherwise dispose of the property.

(b) An action or proceeding may not be commenced against the state, an agency of the state, the administrator, another officer, employee, or agent of the state, or a holder for or because of an act of the administrator under this section, except for intentional misconduct or malfeasance.

SECTION 610. PERIODS OF LIMITATION AND REPOSE.

(a) Expiration, before, on, or after the effective date of this act, of a period of limitation on an owner's right to receive or recover property, whether specified by contract, statute, or court order, does not prevent the property from being presumed abandoned or affect the duty of a holder under this act to file a report or pay or deliver property to the administrator.

(b) The administrator may not commence an action or proceeding to enforce this act with respect to the reporting, payment, or delivery of property more than five years after the holder filed a non-fraudulent report under Section 401 with the administrator. The parties may agree in a record to extend the limitation in this subsection.

(c) The administrator may not commence an action, proceeding, or examination with respect to a duty of a holder under this [act] more than 10 years after the duty arose.

ARTICLE 7

SALE OF PROPERTY BY ADMINISTRATOR

SECTION 701. PUBLIC SALE OF PROPERTY.

(a) Subject to Section 702, not earlier than one year after receipt of property presumed abandoned, the administrator may sell the property.

(b) Before selling property under subsection (a), the administrator shall give notice to the public of:

- (1) the date of the sale; and
- (2) a reasonable description of the property.

(c) A sale under subsection (a) must be to the highest bidder:

(1) at public sale at a location in this state which the administrator determines to be the most favorable market for the property;

(2) on the Internet; or

(3) on another forum the administrator determines is likely to yield the highest net proceeds of sale.

(d) The administrator may decline the highest bid at a sale under this section and reoffer the property for sale if the administrator determines the highest bid is insufficient.

(e) If a sale held under this section is to be conducted other than on the Internet, the administrator must publish at least one notice of the sale, at least three weeks but not more than five weeks before the sale, in a newspaper of general circulation in the county in which the property is sold.

SECTION 702. DISPOSAL OF SECURITIES.

(a) The administrator may not sell or otherwise liquidate a security until the administrator receives the security and gives the apparent owner notice under Section 503 that the administrator holds the security.

(b) The administrator may not sell a security listed on an established stock exchange for less than the price prevailing on the exchange at the time of sale. The administrator may sell a security not listed on an established exchange by any commercially-reasonable method.

SECTION 704. PURCHASER OWNS PROPERTY AFTER SALE.

A purchaser of property at a sale conducted by the administrator under this act takes the property free of all claims of the owner, a previous holder, or a person claiming through the owner or holder. The administrator shall execute documents necessary to complete the transfer of ownership to the purchaser.

ARTICLE 8

ADMINISTRATION OF PROPERTY

SECTION 801. DEPOSIT OF FUNDS BY ADMINISTRATOR.

(a) Except as otherwise provided in this section, the administrator shall deposit in the general fund of the state all funds received under this act, including proceeds from the sale of property under Article 7.

(b) The administrator shall maintain an account with an amount of funds the administrator reasonably estimates is sufficient to pay claims allowed under this act in each fiscal year. If the aggregate amount of claims by owners allowed at any time exceeds the amount held in the account, an excess claim must be paid out of the general funds of the state.

SECTION 802. ADMINISTRATOR TO RETAIN RECORDS OF PROPERTY.

The administrator shall:

(1) record and retain the name and last-known address of each person shown on a report filed under Section 401 to be the apparent owner of property delivered to the administrator;

(2) record and retain the name and last-known address of each insured or annuitant and beneficiary shown on the report;

(3) for each policy of insurance or annuity contract listed in the report of an insurance company, record and retain the policy or account number, the name of the company, and the amount due or paid; and

(4) for each apparent owner listed in the report, record and retain the name of the holder that filed the report and the amount due or paid.

SECTION 803. EXPENSES AND SERVICE CHARGES OF ADMINISTRATOR.

Before making a deposit of funds received under this act to the general fund of the state, the administrator may deduct:

(1) expenses of disposition of property delivered to the administrator under this act;

(2) costs of mailing and publication in connection with property delivered to the administrator under this act;

(3) reasonable service charges; and

(4) expenses incurred in examining records of or collecting property from a putative holder or holder.

SECTION 804. ADMINISTRATOR HOLDS PROPERTY AS CUSTODIAN FOR OWNER.

Property received by the administrator under this act is held in custody for the benefit of the owner and is not owned by the state.

ARTICLE 9

CLAIM TO RECOVER PROPERTY FROM ADMINISTRATOR

SECTION 901. CLAIM OF ANOTHER STATE TO RECOVER PROPERTY.

(a) If the administrator knows that property held by the administrator under this act is subject to a superior claim of another state, the administrator shall:

(1) report and pay or deliver the property to the other state; or

(2) return the property to the holder so that the holder may pay or deliver the property to the other state.

(b) The administrator is not required to enter into an agreement to transfer property to the other state under subsection (a).

SECTION 902. WHEN PROPERTY SUBJECT TO RECOVERY BY ANOTHER STATE.

(a) Property held under this act by the administrator is subject to the right of another state to take custody of the property if:

(1) the property was paid or delivered to the administrator because the records of the holder did not reflect a last-known address in the other state of the apparent owner and:

(A) the other state establishes that the last-known address of the apparent owner or other person entitled to the property was in the other state; or

(B) under the law of the other state, the property has become subject to a claim by the other state of abandonment;

(2) the records of the holder did not accurately identify the owner of the property, the last-known address of the owner was in another state, and, under the law of the other state, the property has become subject to a claim by the other state of abandonment;

(3) the property was subject to the custody of the administrator of this state under Section 305 and, under the law of the state of domicile of the holder, the property has become subject to a claim by the state of domicile of the holder of abandonment; or

(4) the property:

(A) is a sum payable on a traveler's check, money order, or similar instrument that was purchased in the other state and delivered to the administrator under Section 306; and

(B) under the law of the other state, has become subject to a claim by the other state of abandonment.

(b) A claim by another state to recover property under this section must be presented in a form prescribed by the administrator, unless the administrator waives presentation of the form.

(c) The administrator shall decide a claim under this section not later than 90 days after it is presented. If the administrator determines that the other state is entitled under subsection (a) to

custody of the property, the administrator shall allow the claim and pay or deliver the property to the other state.

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

SECTION 903. CLAIM FOR PROPERTY BY PERSON CLAIMING TO BE OWNER.

(a) A person claiming to be the owner of property held under this act by the administrator may file a claim for the property on a form prescribed by the administrator. The claimant must verify the claim as to its completeness and accuracy.

(b) The administrator may waive the requirement in subsection (a) and may pay or deliver property directly to a person if:

(1) the person receiving the property or payment is shown to be the apparent owner included on a report filed under Section 401;

(2) the administrator reasonably believes the person is entitled to receive the property or payment; and

(3) the property has a value of less than \$250.

SECTION 904. WHEN ADMINISTRATOR MUST HONOR CLAIM FOR PROPERTY.

(a) The administrator shall pay or deliver property to a claimant under Section 903(a) if the administrator receives evidence sufficient to establish to the satisfaction of the administrator that the claimant is the owner of the property.

(b) Not later than 90 days after a claim is filed under Section 903(a), the administrator shall allow or deny the claim and give the claimant notice in a record of the decision.

(c) If the claim is denied under subsection (b):

(1) the administrator shall inform the claimant of the reason for the denial and specify what additional evidence, if any, is required for the claim to be allowed;

(2) the claimant may file an amended claim with the administrator or commence an action under Section 906; and

(3) the administrator shall consider an amended claim filed under paragraph (2) as an initial claim.

(d) If the administrator denies a claim or does not take action on a claim during the 90 day period following the filing of a claim under Section 903(a), at the request of the claimant, the claim shall constitute a contested case and shall be decided as provided by the Administrative Procedure Act.

SECTION 905. ALLOWANCE OF CLAIM FOR PROPERTY.

(a) Not later than 30 days after a claim is allowed under Section 904(b), the administrator shall pay or deliver to the owner the property or pay to the owner the net proceeds of a sale of the property.

(b) Property held under this act by the administrator is subject to a claim for the payment of an enforceable debt the owner owes in this state for:

(1) child-support arrearages, including child-support collection costs and child-support arrearages that are combined with maintenance;

(2) a civil or criminal fine or penalty, court costs, a surcharge, or restitution imposed by a final order of an administrative agency or a final court judgment; or

(3) state taxes, penalties, and interest that have been determined to be delinquent or as to which notice has been recorded with the Secretary of State.

(c) Before delivery or payment to an owner under subsection (a) of property or payment to the owner of net proceeds of a sale of the property, the administrator first shall apply the property or net proceeds to a debt under subsection (b) the administrator determines is owed by the owner. The administrator shall pay the amount to the appropriate state agency and notify the owner of the payment.

(d) The administrator may make periodic inquiries of state agencies in the absence of a claim filed under Section 903 to determine whether an apparent owner included in the unclaimed-property records of this state have enforceable debts described in subsection (b). The administrator first shall apply the property or net proceeds of a sale of property held by the administrator to a debt under subsection (b) of an apparent owner which appears in the records of the administrator and deliver the amount to the appropriate state agency. The administrator shall notify the apparent owner of the payment.

ARTICLE 10

VERIFIED REPORT OF PROPERTY; EXAMINATION OF RECORDS

SECTION 1001. VERIFIED REPORT OF PROPERTY.

If a person does not file a report required by Section 401 or the administrator believes that a person may have filed an inaccurate, incomplete, or false report, the administrator may require the person to file a verified report in a form prescribed by the administrator. The verified report must:

(1) state whether the person is holding property reportable under this act;

(2) describe property not previously reported or about which the administrator has inquired;

(3) specifically identify property described under paragraph (2) about which there is a dispute whether it is reportable under this [act]; and

(4) state the amount or value of the property.

SECTION 1002. EXAMINATION OF RECORDS TO DETERMINE COMPLIANCE.

The administrator, at reasonable times and on reasonable notice, may:

- (1) examine the records of a person, including examination of appropriate records in the possession of an agent of the person under examination, if the records are reasonably necessary to determine whether the person has complied with this act;
- (2) issue an administrative subpoena requiring the person or agent of the person to make records available for examination; and
- (3) bring an action seeking judicial enforcement of the subpoena.

SECTION 1003. RULES FOR CONDUCTING EXAMINATION.

(a) The administrator shall adopt rules governing procedures and standards for an examination under Section 1002, including rules for use of an estimation, extrapolation, and statistical sampling in conducting an examination.

(b) An examination under Section 1002 must be performed under rules adopted under subsection (a) and with generally accepted examination practices and standards applicable to an unclaimed-property examination.

(c) If a person subject to examination under Section 1002 has filed the reports required under Section 401 and Section 1001 and has retained the records required by Section 404, the following rules apply:

- (1) The examination must include a review of the person's records.
- (2) The examination may not be based on an estimate unless the person expressly consents in a record to the use of an estimate.
- (3) The person conducting the examination shall consider the evidence presented in good faith by the person in preparing the findings of the examination under Section 1007.

SECTION 1004. RECORDS OBTAINED IN EXAMINATION.

Records obtained and records, including work papers, compiled by the administrator in the course of conducting an examination under Section 1002:

- (1) are subject to the confidentiality and security provisions of [Article] 14 and are not public records;
- (2) may be used by the administrator in an action to collect property or otherwise enforce this act;
- (3) may be used in a joint examination conducted with another state, the United States, a foreign country or subordinate unit of a foreign country, or any other governmental entity if the governmental entity conducting the examination is legally bound to maintain the confidentiality and security of information obtained from a person subject to examination in a manner substantially equivalent to Article 14;
- (4) must be disclosed, on request, to the person that administers the unclaimed property law of another state for that state's use in circumstances equivalent to circumstances described in

this [article], if the other state is required to maintain the confidentiality and security of information obtained in a manner substantially equivalent to Article 14;

(5) must be produced by the administrator under an administrative or judicial subpoena or administrative or court order; and

(6) must be produced by the administrator on request of the person subject to the examination in an administrative or judicial proceeding relating to the property.

SECTION 1005. EVIDENCE OF UNPAID DEBT OR UNDISCHARGED OBLIGATION.

(a) A record of a putative holder showing an unpaid debt or undischarged obligation is prima facie evidence of the debt or obligation.

(b) A putative holder may establish by a preponderance of the evidence that there is no unpaid debt or undischarged obligation for a debt or obligation described in subsection (a) or that the debt or obligation was not, or no longer is, a fixed and certain obligation of the putative holder.

(c) A putative holder may overcome prima facie evidence under subsection (a) by establishing by a preponderance of the evidence that a check, draft, or similar instrument was:

(1) issued as an unaccepted offer in settlement of an unliquidated amount;

(2) issued but later was replaced with another instrument because the earlier instrument was lost or contained an error that was corrected;

(3) issued to a party affiliated with the issuer;

(4) paid, satisfied, or discharged;

(5) issued in error;

(6) issued without consideration;

(7) issued but there was a failure of consideration;

(8) voided [not later than 90 days] [within a reasonable time] after issuance for a valid business reason set forth in a contemporaneous record; or

(9) issued but not delivered to the third-party payee for a sufficient reason recorded within a reasonable time after issuance.

(d) In asserting a defense under this section, a putative holder may present evidence of a course of dealing between the putative holder and the apparent owner or of custom and practice.

SECTION 1006. FAILURE OF PERSON EXAMINED TO RETAIN RECORDS.

If a person subject to examination under Section 1002 does not retain the records required by Section 404, the administrator may determine the value of property due using a reasonable method of estimation based on all information available to the administrator, including extrapolation and use of statistical sampling when appropriate and necessary, consistent with examination procedures and standards adopted under Section 1003(a) and in accord with Section 1003(b).

SECTION 1007. REPORT TO PERSON WHOSE RECORDS WERE EXAMINED.

At the conclusion of an examination under Section 1002, the administrator shall provide to the person whose records were examined a complete and unredacted examination report that specifies:

- (1) the work performed;
- (2) the property types reviewed;
- (3) the methodology of any estimation technique, extrapolation, or statistical sampling used in conducting the examination;
- (4) each calculation showing the value of property determined to be due; and
- (5) the findings of the person conducting the examination.

SECTION 1008. COMPLAINT TO ADMINISTRATOR ABOUT CONDUCT OF PERSON CONDUCTING EXAMINATION.

(a) If a person subject to examination under Section 1002 believes the person conducting the examination has made an unreasonable or unauthorized request or is not proceeding expeditiously to complete the examination, the person in a record may ask the administrator to intervene and take appropriate remedial action, including countermanding the request of the person conducting the examination, imposing a time limit for completion of the examination, or reassigning the examination to another person.

(b) If a person in a record requests a conference with the administrator to present matters that are the basis of a request under subsection (a), the administrator shall hold the conference not later than [30] days after receiving the request. The administrator may hold the conference in person, by telephone, or by electronic means.

(c) If a conference is held under subsection (b), not later than 30 days after the conference ends, the administrator shall provide a report in a record of the conference to the person that requested the conference.

SECTION 1009. ADMINISTRATOR'S CONTRACT WITH ANOTHER TO CONDUCT EXAMINATION.

(a) In this section, "related to the administrator" refers to an individual who is:

- (1) the administrator's spouse, partner in a civil union, domestic partner, or reciprocal beneficiary;
- (2) the administrator's child, stepchild, grandchild, parent, stepparent, sibling, step-sibling, half-sibling, aunt, uncle, niece, or nephew;
- (3) a spouse, partner in a civil union, domestic partner, or reciprocal beneficiary of an individual under paragraph (2); or
- (4) any individual residing in the administrator's household.

(b) The administrator may contract with a person to conduct an examination under this [article]. The contract may be awarded only under [insert citation to the state competitive procurement of services of private contractors statute].

(c) If the person with which the administrator contracts under subsection (b) is:

(1) an individual, the individual may not be related to the administrator; or

(2) a business entity, the entity may not be owned in whole or in part by the administrator or an individual related to the administrator.

(d) At least 60 days before assigning a person under contract with the administrator under subsection (b) to conduct an examination, the administrator shall demand in a record that the person to be examined submit a report and deliver property that is previously unreported.

(e) If the administrator contracts with a person under subsection (b):

(1) the contract may provide for compensation of the person based on a fixed fee, hourly fee, or contingent fee;

(2) a contingent fee arrangement may not provide for a payment that exceeds [10] percent of the amount or value of property paid or delivered as a result of the examination; and

(3) on request by a person subject to examination by a contractor, the administrator shall deliver to the person a complete and unredacted copy of the contract and any contract between the contractor and a person employed or engaged by the contractor to conduct the examination.

(f) A contract under subsection (b) is subject to public disclosure without redaction under the Open Public Records Act.

SECTION 1010. LIMIT ON FUTURE EMPLOYMENT.

The administrator or an individual employed by the administrator who participates in, recommends, or approves the award of a contract under Section 1009(b) on or after the effective date of this act may not be employed by, contracted with, or compensated in any capacity by the contractor or an affiliate of the contractor for two years after the latest of participation in, recommendation of, or approval of the award or conclusion of the contract.

SECTION 1011. REPORT BY ADMINISTRATOR TO STATE OFFICIAL.

(a) Not later than three months after the end of the state fiscal year, the administrator shall compile and submit a report to the Treasurer. The report must contain the following information about property presumed abandoned for the preceding fiscal year for the state:

(1) the total amount and value of all property paid or delivered under this [act] to the administrator, separated into:

(A) the part voluntarily paid or delivered; and

(B) the part paid or delivered as a result of an examination under Section 1002, separated into the part recovered as a result of an examination conducted by:

(i) a state employee; and

(ii) a contractor under Section 1009;

(2) the name of and amount paid to each contractor under Section 1009 and the percentage the total compensation paid to all contractors under Section 1009 bears to the total amount paid or delivered to the administrator as a result of all examinations performed under Section 1009;

(3) the total amount and value of all property paid or delivered by the administrator to persons that made claims for property held by the administrator under this [act] and the percentage the total payments made and value of property delivered to claimants bears to the total amounts paid and value delivered to the administrator; and

(4) the total amount of claims made by persons claiming to be owners which:

(A) were denied;

(B) were allowed; and

(C) are pending.

(b) The report under subsection (a) is a public record subject to public disclosure without redaction under freedom of information act.

SECTION 1012. DETERMINATION OF LIABILITY FOR UNREPORTED REPORTABLE PROPERTY.

If the administrator determines from an examination conducted under Section 1002 that a putative holder failed or refused to pay or deliver to the administrator property which is reportable under this act, the administrator shall issue a determination of the putative holder's liability to pay or deliver and give notice in a record to the putative holder of the determination.

ARTICLE 11

DETERMINATION OF LIABILITY; PUTATIVE HOLDER REMEDIES

SECTION 1101. INFORMAL CONFERENCE.

(a) Not later than 30 days after receipt of a notice under Section 1012, the putative holder may request an informal conference with the administrator to review the determination. Except as otherwise provided in this section, the administrator may designate an employee to act on behalf of the administrator.

(b) If a putative holder makes a timely request under subsection (a) for an informal conference:

(1) not later than 20 days after the date of the request, the administrator shall set the time and place of the conference;

(2) the administrator shall give the putative holder notice in a record of the time and place of the conference;

(3) the conference may be held in person, by telephone, or by electronic means, as determined by the administrator;

(4) the request tolls the 90-day period under Sections 1103 and 1104 until notice of a decision under paragraph (7) has been given to the putative holder or the putative holder withdraws the request for the conference;

(5) the conference may be postponed, adjourned, and reconvened as the administrator determines appropriate;

(6) the administrator or administrator's designee with the approval of the administrator may modify a determination made under Section 1012 or withdraw it; and

(7) the administrator shall issue a decision in a record and provide a copy of the record to the putative holder and examiner not later than 20 days after the conference ends.

(c) A conference under subsection (b) is not an administrative remedy and is not a contested case subject to Administrative Procedure Act. An oath is not required and rules of evidence do not apply in the conference.

(d) At a conference under subsection (b), the putative holder must be given an opportunity to confer informally with the administrator and the person that examined the records of the putative holder to:

(1) discuss the determination made under Section 1012; and

(2) present any issue concerning the validity of the determination.

(e) If the administrator fails to act within the period prescribed in subsection (b)(1) or (7), the failure does not affect a right of the administrator, except that interest does not accrue on the amount for which the putative holder was determined to be liable under Section 1012 during the period in which the administrator failed to act until the earlier of:

(1) the date under Section 1103 the putative holder initiates administrative review or files an action under Section 1104; or

(2) 90 days after the putative holder received notice of the administrator's determination under Section 1012 if no review was initiated under Section 1103 and no action was filed under Section 1104.

(f) The administrator may hold an informal conference with a putative holder about a determination under Section 1012 without a request at any time before the putative holder initiates administrative review under Section 1103 or files an action under Section 1104.

(g) Interest and penalties under Section 1204 continue to accrue on property not reported, paid, or delivered as required by this act after the initiation, and during the pendency, of an informal conference under this section.

SECTION 1102. REVIEW OF ADMINISTRATOR'S DETERMINATION.

A putative holder may seek relief from a determination under Section as a contested case under the Administrative Procedure Act.

ARTICLE 12

ENFORCEMENT BY ADMINISTRATOR

SECTION 1201. JUDICIAL ACTION TO ENFORCE LIABILITY.

(a) If a determination under Section 1012 becomes final and is not subject to administrative or judicial review, the administrator may commence an action in the [court] or in an appropriate court of another state to enforce the determination and secure payment or delivery of past due, unpaid, or undelivered property. The action must be brought not later than [one] year after the determination becomes final.

(b) In an action under subsection (a), if no court in this state has jurisdiction over the defendant, the administrator may commence an action in any court having jurisdiction over the defendant.

SECTION 1202. INTERSTATE AND INTERNATIONAL AGREEMENT; COOPERATION.

(a) Subject to subsection (b), the administrator may:

(1) exchange information with another state or foreign country relating to property presumed abandoned or relating to the possible existence of property presumed abandoned; and

(2) authorize in a record another state or foreign country or a person acting on behalf of the other state or country to examine its records of a putative holder as provided in Article 10.

(b) An exchange or examination under subsection (a) may be done only if the state or foreign country has confidentiality and security requirements substantially equivalent to those in Article 14 or agrees in a record to be bound by this state's confidentiality and security requirements.

SECTION 1203. ACTION INVOLVING ANOTHER STATE OR FOREIGN COUNTRY.

(a) The administrator may join another state or foreign country to examine and seek enforcement of this [act] against a putative holder.

(b) On request of another state or foreign country, the Attorney General may commence an action on behalf of the other state or country to enforce, in this state, the law of the other state or country against a putative holder subject to a claim by the other state or country, if the other state or country agrees to pay costs incurred by the Attorney General in the action.

(c) The administrator may request the official authorized to enforce the unclaimed property law of another state or foreign country to commence an action to recover property in the other state or country on behalf of the administrator. This state shall pay the costs, including reasonable attorney's fees and expenses, incurred by the other state or foreign country in an action under this subsection.

(d) The administrator may pursue an action on behalf of this state to recover property subject to this [act] but delivered to the custody of another state if the administrator believes the property is subject to the custody of the administrator.

(e) The administrator may retain an attorney in this state, another state or a foreign country to commence an action to recover property on behalf of the administrator and may agree to pay attorney's fees based in whole or in part on a fixed fee, hourly fee, or a percentage of the amount or value of property recovered in the action.

(f) Expenses incurred by this state in an action under this section may be paid from property received under this [act] or the net proceeds of the property. Expenses paid to recover property may not be deducted from the amount that is subject to a claim under this [act] by the owner.

SECTION 1204. INTEREST AND PENALTY FOR FAILURE TO ACT IN TIMELY MANNER.

(a) A holder that fails to report, pay, or deliver property within the time prescribed by this act shall pay to the administrator interest at an annual rate of [[] percent] [the rate of interest payable to the department of revenue of this state on delinquent taxes] on the property or value of the property from the date the property should have been reported, paid, or delivered to the administrator until the date reported, paid, or delivered.

(b) Except as otherwise provided in Section 1205 or 1206, the administrator may require a holder that fails to report, pay, or deliver property within the time prescribed by this [act] to pay to the administrator, in addition to interest included under subsection (a), a civil penalty of \$200 for each day the duty is not performed, up to a cumulative maximum amount of \$5,000.

SECTION 1205. OTHER CIVIL PENALTIES.

(a) If a holder enters into a contract or other arrangement for the purpose of evading an obligation under this act or otherwise willfully fails to perform a duty imposed on the holder under this act, the administrator may require the holder to pay the administrator, in addition to interest as provided in Section 1204(a), a civil penalty of \$1,000 for each day the obligation is evaded or the duty is not performed, up to a cumulative maximum amount of \$25,000, plus 25 percent of the amount or value of property that should have been but was not reported, paid, or delivered as a result of the evasion or failure to perform.

(b) If a holder makes a fraudulent report under this [act], the administrator may require the holder to pay to the administrator, in addition to interest under Section 1204(a), a civil penalty of \$1,000 for each day from the date the report was made until corrected, up to a cumulative maximum of \$25,000, plus 25 percent of the amount or value of any property that should have been reported but was not included in the report or was underreported.

SECTION 1206. WAIVER OF INTEREST AND PENALTY.

The administrator:

(1) may waive, in whole or in part, [interest under Section 1204(a) and] penalties under Section 1204(b) or 1205; and

(2) shall waive a penalty under Section 1204(b) if the administrator determines that the holder acted in good faith and without negligence.

ARTICLE 13

AGREEMENT TO LOCATE PROPERTY OF APPARENT OWNER HELD BY ADMINISTRATOR

SECTION 1301. WHEN AGREEMENT TO LOCATE PROPERTY ENFORCEABLE.

An agreement by an apparent owner and another person, the primary purpose of which is to locate, deliver, recover, or assist in the location, delivery, or recovery of property held by the administrator, is enforceable only if the agreement:

(1) is in a record that clearly states the nature of the property and the services to be provided;

(2) is signed by or on behalf of the apparent owner; and

(3) states the amount or value of the property reasonably expected to be recovered, computed before and after a fee or other compensation to be paid to the person has been deducted.

SECTION 1302. WHEN AGREEMENT TO LOCATE PROPERTY VOID.

(a) Subject to subsection (b), an agreement under Section 1301 is void if it is entered into during the period beginning on the date the property was paid or delivered by a holder to the administrator and ending 24 months after the payment or delivery.

(b) If a provision in an agreement described in subsection (a) applies to mineral proceeds for which compensation is to be paid to the other person based in whole or in part on a part of the underlying minerals or mineral proceeds not then presumed abandoned, the provision is void regardless of when the agreement was entered into.

(c) An agreement under subsection (a) which provides for compensation in an amount that is unconscionable is unenforceable except by the apparent owner. An apparent owner that believes the compensation the apparent owner has agreed to pay is unconscionable or the administrator, acting on behalf of an apparent owner, or both, may file an action in the Superior Court to reduce the compensation to the maximum amount that is not unconscionable

(d) An apparent owner or the administrator may assert that an agreement described in this section is void on a ground other than it provides for payment of unconscionable compensation.

(e) This section does not apply to an apparent owner's agreement with an attorney to pursue a claim for recovery of specifically identified property held by the administrator or to contest the administrator's denial of a claim for recovery of the property.

SECTION 1303. RIGHT OF AGENT OF APPARENT OWNER TO RECOVER PROPERTY HELD BY ADMINISTRATOR.

(a) An apparent owner that contracts with another person to locate, deliver, recover, or assist in the location, delivery, or recovery of property of the apparent owner which is held by the administrator may designate the person as the agent of the apparent owner. The designation must be in a record signed by the apparent owner.

(b) The administrator shall give the agent of the apparent owner all information concerning the property which the apparent owner is entitled to receive, including information that otherwise is confidential information under Section 1402.

(c) If authorized by the apparent owner, the agent of the apparent owner may bring an action against the administrator on behalf of and in the name of the apparent owner.

ARTICLE 14

CONFIDENTIALITY AND SECURITY OF INFORMATION

SECTION 1401. DEFINITIONS; APPLICABILITY.

(a) In this article, “personal information” means:

(1) information that identifies or reasonably can be used to identify an individual, such as first and last name in combination with the individual’s:

(A) social security number or other government-issued number or identifier;

(B) date of birth;

(C) home or physical address;

(D) electronic-mail address or other online contact information or Internet provider address;

(E) financial account number or credit or debit card number;

(F) biometric data, health or medical data, or insurance information; or

(G) passwords or other credentials that permit access to an online or other account;

(2) personally identifiable financial or insurance information, including nonpublic personal information defined by applicable federal law; and

(3) any combination of data that, if accessed, disclosed, modified, or destroyed without authorization of the owner of the data or if lost or misused, would require notice or reporting under [insert citation to state statute regarding privacy and security] and federal privacy and data security law, whether or not the administrator or the administrator’s agent is subject to the law.

(b) A provision of this article that applies to the administrator or the administrator’s records applies to an administrator’s agent.

SECTION 1402. CONFIDENTIAL INFORMATION.

(a) Except as otherwise provided in this [act], the following are confidential and exempt from public inspection or disclosure:

(1) records of the administrator and the administrator's agent related to the administration of this act;

(2) reports and records of a holder in the possession of the administrator or the administrator's agent; and

(3) personal information and other information derived or otherwise obtained by or communicated to the administrator or the administrator's agent from an examination under this [act] of the records of a person.

(b) A record or other information that is confidential under law of this state other than this [act], another state, or the United States continues to be confidential when disclosed or delivered under this act to the administrator or administrator's agent.

SECTION 1403. WHEN CONFIDENTIAL INFORMATION MAY BE DISCLOSED.

(a) When reasonably necessary to enforce or implement this act, the administrator may disclose confidential information concerning property held by the administrator or the administrator's agent only to:

(1) an apparent owner or the apparent owner's personal representative, attorney, other legal representative, relative, or agent designated under Section 1303 to have the information;

(2) the administrator, executor, other legal representative, relative of a deceased apparent owner, agent designated under Section 1303 by the deceased apparent owner, or a person entitled to inherit from the deceased apparent owner;

(3) another department or agency of this state or the United States;

(4) the person that administers the unclaimed property law of another state, if the other state accords substantially reciprocal privileges to the administrator of this state if the other state is required to maintain the confidentiality and security of information obtained in a manner substantially equivalent to Article 14;

(5) a person subject to an examination as required by Section 1004(6).

(b) Except as otherwise provided in Section 1402(a), the administrator shall include on the website or in the database required by Section 503(c)(2) the name of each apparent owner of property held by the administrator. The administrator may include in published notices, printed publications, telecommunications, the Internet, or other media and on the website or in the database additional information concerning the apparent owner's property if the administrator believes the information will assist in identifying and returning property to the owner and does not disclose personal information except the home or physical address of an apparent owner.

(c) The administrator and the administrator's agent may not use confidential information provided to them or in their possession except as expressly authorized by this [act] or required by law other than this act.

SECTION 1404. CONFIDENTIALITY AGREEMENT.

A person to be examined under Section 1002 may require, as a condition of disclosure of the records of the person to be examined, that each person having access to the records disclosed in the examination execute and deliver to the person to be examined a confidentiality agreement that:

- (1) is in a form that is reasonably satisfactory to the administrator; and
- (2) requires the person having access to the records to comply with the provisions of this [article] applicable to the person.

SECTION 1405. NO CONFIDENTIAL INFORMATION IN NOTICE.

Except as otherwise provided in Sections 501 and 502, a holder is not required under this [act] to include confidential information in a notice the holder is required to provide to an apparent owner under this [act].

SECTION 1406. SECURITY OF INFORMATION.

(a) If a holder is required to include confidential information in a report to the administrator, the information must be provided by a secure means.

(b) If confidential information in a record is provided to and maintained by the administrator or administrator's agent as required by this [act], the administrator or agent shall:

(1) implement administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of the information required by state law and federal privacy and data security law whether or not the administrator or the administrator's agent is subject to the law;

(2) protect against reasonably anticipated threats or hazards to the security, confidentiality, or integrity of the information; and

(3) protect against unauthorized access to or use of the information which could result in substantial harm or inconvenience to a holder or the holder's customers, including insureds, annuitants, and policy or contract owners and their beneficiaries.

(c) The administrator:

(1) after notice and comment, shall adopt and implement a security plan that identifies and assesses reasonably foreseeable internal and external risks to confidential information in the administrator's possession and seeks to mitigate the risks; and

(2) shall ensure that an administrator's agent adopts and implements a similar plan with respect to confidential information in the agent's possession.

(d) The administrator and the administrator's agent shall educate and train their employees regarding the plan adopted under subsection (c).

(e) The administrator and the administrator's agent shall in a secure manner return or destroy all confidential information no longer reasonably needed under this act.

SECTION 1407. SECURITY BREACH.

(a) Except to the extent prohibited by law other than this act, the administrator or administrator's agent shall notify a holder as soon as practicable of:

(1) a suspected loss, misuse or unauthorized access, disclosure, modification, or destruction of confidential information obtained from the holder in the possession of the administrator or an administrator's agent; and

(2) any interference with operations in any system hosting or housing confidential information which:

(A) compromises the security, confidentiality, or integrity of the information; or

(B) creates a substantial risk of identity fraud or theft.

(b) Except as necessary to inform an insurer, attorney, investigator, or others as required by law, the administrator and an administrator's agent may not disclose, without the express consent in a record of the holder, an event described in subsection (a) to a person whose confidential information was supplied by the holder.

(c) If an event described in subsection (a) occurs, the administrator and the administrator's agent shall:

(1) take action necessary for the holder to understand and minimize the effect of the event and determine its scope; and

(2) cooperate with the holder with respect to:

(A) any notification required by law concerning a data or other security breach; and

(B) a regulatory inquiry, litigation, or similar action.

SECTION 1408. INDEMNIFICATION FOR BREACH.

(a) If a claim is made or action commenced arising out of an event described in Section 1407(a) relating to confidential information possessed by the administrator, this state shall indemnify, defend, and hold harmless a holder and the holder's affiliates, officers, directors, employees, and agents as to:

(1) any claim or action; and

(2) a liability, obligation, loss, damage, cost, fee, penalty, fine, settlement, charge, or other expense, including costs, established by the claim or action.

(b) If a claim is made or action commenced arising out of an event described in Section 1407(a) relating to confidential information possessed by an administrator's agent, the administrator's agent shall indemnify, defend, and hold harmless a holder and the holder's affiliates, officers, directors, employees, and agents as to:

(1) any claim or action and

(2) a liability, obligation, loss, damage, cost, fee, penalty, fine, settlement, charge, or other expense, including reasonable attorney's fees and costs, established by the claim or action.

[(c)] The administrator shall require an administrator's agent that will receive confidential information required under this [act] to maintain adequate insurance for indemnification obligations of the administrator's agent under subsection (b). The agent required to maintain the insurance shall provide evidence of the insurance to:

(1) the administrator not less frequently than annually; and

(2) the holder on commencement of an examination and annually thereafter until all confidential information is returned or destroyed under Section 1406(e).

Legislative Note: Section 1408(a) is bracketed to indicate that states which may not provide for blanket indemnification may delete this section.

ARTICLE 15

MISCELLANEOUS PROVISIONS

SECTION 1501. UNIFORMITY OF APPLICATION AND CONSTRUCTION.

In applying and construing this uniform act consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 1502. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.

This act modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

SECTION 1503. TRANSITIONAL PROVISION.

(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 that is required to be reported under 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.

(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. Subject to Section 610(b) and (c), a holder that did not comply with the law governing unclaimed property before the effective date of this [act] is subject to applicable provisions for enforcement and penalties in effect before the effective date of this act.