

To: New Jersey Law Revision Commission
From: John Cannel
Re: Uniform Unclaimed Property Act
Date: November 6, 2017

MEMORANDUM

A copy of the “Revised Uniform Unclaimed Property Act” is included with this memorandum. It was approved by the Uniform Law Commission in 2016 and has been already enacted in three states. It is pending in four more. New Jersey now has the 1981 version of the Uniform Act. There was a 1995 version of the Act that clarified the rules for interstate disputes. It was enacted in 14 states but not in New Jersey. The Revised 2016 Act clarifies which types of intangible property are covered in the Act, provides specific dormancy periods and prioritizes information security. I have had preliminary discussions with staff to the Unclaimed Property Administrator; they have expressed interest in the Act.

I have put particular provisions of the draft in bold type where the provisions seem to require Commission decisions. Most of these are places where the Uniform Law Commission provided alternative provisions. One, rights of an owner if property is sold, is an issue that engendered a lot of discussion during ULC consideration. Another, the nature of appeal from Administrator decisions, is a provision that differs from usual New Jersey practice. I am sure that there will be additional provisions that the Commission will find or that will be called to the Commission’s attention when the Unclaimed Property Administrator can provide more formal comment.

1. *Gift Cards*. The RUUPA provides alternative language as to whether unused gift cards should be included as unclaimed property. Current New Jersey law includes all “stored value cards”. N.J.S. 46:30B-6(r) and (t). A related issue concerns “inactivity fees”. The RUUPA provision is substantially similar to several current provisions concerning particular kinds of asset. See, 46:30B-13, -17 and -20.

2. *Attorney’s fees*. Several RUUPA provisions would allow a successful litigant the right to recover attorney’s fees and costs. There is no current New Jersey provision as to attorney’s fees.

3. *Nature of appeal*. Several RUUPA provisions allow an appeal from an Administrator decision to include a fact-finding hearing. Current New Jersey law is that an appeal from a State administrative decision is to the Appellate Division and is on the administrative record.

4. *Rights of owner when property is sold*. RUUPA provides that when property is sold by the administrator before six years have elapsed, the owner can claim the greater of the sale price or the current value. The result is that while property may be sold after three years, if the Administrator sells property before six, the State may have to pay more than the property yielded. That amount could be substantial where securities are concerned. Current law allows property to be sold after one year and provides no rights to the owner beyond the sale price.