

## 1 SENATE BILL NO. 125

2 INTRODUCED BY CHRISTIAENS

3 BY REQUEST OF THE DEPARTMENT OF REVENUE  
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING THE UNIFORM UNCLAIMED PROPERTY ACT;  
6 AMENDING SECTIONS 17-8-303 AND 72-14-102, MCA; REPEALING SECTIONS 70-9-101, 70-9-102,  
7 70-9-104, 70-9-105, 70-9-106, 70-9-111, 70-9-121, 70-9-122, 70-9-201, 70-9-202, 70-9-203, 70-9-204,  
8 70-9-205, 70-9-206, 70-9-207, 70-9-208, 70-9-209, 70-9-210, 70-9-301, 70-9-302, 70-9-303, 70-9-304,  
9 70-9-305, 70-9-306, 70-9-307, 70-9-308, 70-9-309, 70-9-310, 70-9-311, 70-9-312, 70-9-314, 70-9-315,  
10 AND 70-9-316, MCA; AND PROVIDING AN EFFECTIVE DATE."

11  
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
13

14 NEW SECTION. **Section 1. Short title.** [Sections 1 through 29] may be cited as the  
15 "Uniform Unclaimed Property Act".  
16

17 NEW SECTION. **Section 2. Definitions.** In [sections 1 through 29], unless the context  
18 requires otherwise, the following definitions apply:

19 (1) "Administrator" means the department of revenue provided for in 2-15-1301.

20 (2) "Apparent owner" means a person whose name appears on the records of a holder as the  
21 person entitled to property held, issued, or owing by the holder.

22 (3) "Business association" means a corporation, joint-stock company, investment company,  
23 partnership, unincorporated association, joint venture, limited liability company, business trust, trust  
24 company, land bank, safe deposit company, financial organization, insurance company, mutual fund, utility,  
25 or other business entity consisting of one or more persons, whether or not for profit.

26 (4) "Domicile" means the state of incorporation of a corporation and the state of the principal place  
27 of business of a holder other than a corporation.

28 (5) "Financial organization" means a savings and loan association, bank, banking organization, or  
29 credit union.

30 (6) "Holder" means a person obligated to hold for the account of, or deliver or pay to, the owner

1 property that is subject to [sections 1 through 29].

2 (7) "Insurance company" means an association, corporation, or fraternal or mutual benefit  
3 organization, whether or not for profit, engaged in the business of providing life endowments, annuities,  
4 or insurance, including accident, burial, casualty, credit life, contract performance, dental, disability, fidelity,  
5 fire, health, hospitalization, illness, life, malpractice, marine, mortgage, surety, wage protection, and  
6 workers' compensation insurance.

7 (8) "Mineral" means gas; oil; coal; other gaseous, liquid, and solid hydrocarbons; oil shale; cement  
8 material; sand and gravel; road material; building stone; chemical raw material; gemstone; fissionable and  
9 nonfissionable ores; colloidal and other clay; steam and other geothermal resource; or any other substance  
10 defined as a mineral by the law of this state.

11 (9) "Mineral proceeds" means amounts payable for the extraction, production, or sale of minerals  
12 or, upon the abandonment of those payments, all payments that become payable after abandonment. The  
13 term includes amounts payable:

14 (a) for the acquisition and retention of a mineral lease, including bonuses, royalties, compensatory  
15 royalties, shut-in royalties, minimum royalties, and delay rentals;

16 (b) for the extraction, production, or sale of minerals, including net revenue interests, royalties,  
17 overriding royalties, extraction payments, and production payments; and

18 (c) under an agreement or option, including a joint operating agreement, unit agreement, pooling  
19 agreement, and farmout agreement.

20 (10) "Money order" includes an express money order and a personal money order, on which the  
21 remitter is the purchaser. The term does not include a bank money order or any other instrument sold by  
22 a financial organization if the seller has obtained the name and address of the payee.

23 (11) "Owner" means a person who has a legal or equitable interest in property subject to [sections  
24 1 through 29] or the person's legal representative. The term includes a depositor in the case of a deposit,  
25 a beneficiary in the case of a trust other than a deposit in trust, and a creditor, claimant, or payee in the  
26 case of other property.

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

29 (13) "Property" means tangible property described in [section 4] or a fixed and certain interest in  
30 intangible property that is held, issued, or owed in the course of a holder's business, or by a government,

1 governmental subdivision, agency, or instrumentality, and all income or increments from the property. The  
2 term includes property that is referred to as or evidenced by:

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

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

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

8 (d) bond, debenture, note, or other evidence of indebtedness;

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

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

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

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

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

20 (16) "Utility" means a person who owns or operates for public use any plant, equipment, real  
21 property, franchise, or license for the transmission of communications or the production, storage,  
22 transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

23  
24 **NEW SECTION. Section 3. Presumptions of abandonment.** (1) Property is presumed  
25 abandoned if it is unclaimed by the apparent owner during the time set forth below for the particular  
26 property:

27 (a) traveler's check, 15 years after issuance;

28 (b) money order, 7 years after issuance;

29 (c) stock or other equity interest in a business association or financial organization, including a  
30 security entitlement under Title 30, chapter 8, 5 years after the earlier of:

- 1 (i) the date of the most recent dividend, stock split, or other distribution that was unclaimed by  
2 the apparent owner; or
- 3 (ii) the date of the second mailing of a statement of account or other notification or communication  
4 that was returned as undeliverable or after the holder discontinued mailings, notifications, or  
5 communications to the apparent owner;
- 6 (d) debt of a business association or financial organization, other than a bearer bond or an original  
7 issue discount bond, 5 years after the date of the most recent interest payment that was unclaimed by the  
8 apparent owner;
- 9 (e) demand, savings, or time deposit, including a deposit that is automatically renewable, 5 years  
10 after the earlier of maturity or the date of the last indication by the owner of interest in the property;  
11 however, a deposit that is automatically renewable is considered matured for purposes of this section upon  
12 its initial date of maturity unless the owner has consented to a renewal at or about the time of the renewal  
13 and the consent is in writing or is evidenced by a memorandum or other record on file with the holder;
- 14 (f) money or credits owed to a customer as a result of a retail business transaction, 3 years after  
15 the obligation accrued;
- 16 (g) gift certificate, 3 years after December 31 of the year in which the certificate was sold, but if  
17 redeemable in merchandise only, the amount abandoned is considered to be 60% of the certificate's face  
18 value;
- 19 (h) amount that is owed by an insurer on a life or endowment insurance policy or an annuity that  
20 has matured or terminated, 3 years after the obligation to pay arose or, in the case of a policy or annuity  
21 payable upon proof of death, 3 years after the insured has attained, or would have attained if living, the  
22 limiting age under the mortality table on which the reserve is based;
- 23 (i) property distributable by a business association or financial organization in a course of  
24 dissolution, 1 year after the property becomes distributable;
- 25 (j) property received by a court as proceeds of a class action and not distributed pursuant to the  
26 judgment, 1 year after the distribution date;
- 27 (k) property held by a court, government, governmental subdivision, agency, or instrumentality,  
28 1 year after the property becomes distributable;
- 29 (l) wages or other compensation for personal services, 1 year after the compensation becomes  
30 payable;

1 (m) deposit or refund owed to a subscriber by a utility, 1 year after the deposit or refund becomes  
2 payable;

3 (n) property in an individual retirement account, defined benefit plan, or other account or plan that  
4 is qualified for tax deferral under the income tax laws of the United States, 3 years after the earliest of the  
5 date of the distribution or attempted distribution of the property, the date of the required distribution as  
6 stated in the plan or trust agreement governing the plan, or the date, if determinable by the holder,  
7 specified in the income tax laws of the United States by which distribution of the property must begin in  
8 order to avoid a tax penalty; and

9 (o) all other property, 5 years after the owner's right to demand the property or after the obligation  
10 to pay or distribute the property arises, whichever first occurs.

11 (2) At the time that an interest is presumed abandoned under subsection (1), any other property  
12 right accrued or accruing to the owner as a result of the interest, and not previously presumed abandoned,  
13 is also presumed abandoned.

14 (3) Property is unclaimed if, for the applicable period set forth in subsection (1), the apparent owner  
15 has not communicated in writing or by other means reflected in a contemporaneous record prepared by or  
16 on behalf of the holder with the holder concerning the property or the account in which the property is held  
17 and has not otherwise indicated an interest in the property. A communication with an owner by a person  
18 other than the holder or its representative who has not in writing identified the property to the owner is not  
19 an indication of interest in the property by the owner.

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

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

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

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

28 (d) the payment of a premium with respect to a property interest in an insurance policy; however,  
29 the application of an automatic premium loan provision or other nonforfeiture provision contained in an  
30 insurance policy does not prevent a policy from maturing or terminating if the insured has died or the

1 insured or the beneficiary of the policy has otherwise become entitled to the proceeds before the depletion  
2 of the cash surrender value of a policy by the application of those provisions.

3 (5) Property is payable or distributable for purposes of [sections 1 through 29] notwithstanding the  
4 owner's failure to make demand or present an instrument or document otherwise required to obtain  
5 payment.

6  
7 **NEW SECTION. Section 4. Contents of safe deposit box or other safekeeping**  
8 **depository.** Tangible property held in a safe deposit box or other safekeeping depository in this state  
9 in the ordinary course of the holder's business and proceeds resulting from the sale of the property  
10 permitted by other law are presumed abandoned if the property remains unclaimed by the owner for more  
11 than 5 years after expiration of the lease or rental period on the box or other depository.

12  
13 **NEW SECTION. Section 5. Rules for taking custody.** Except as otherwise provided in  
14 [sections 1 through 29] or by other statute of this state, property that is presumed abandoned, whether  
15 located in this or another state, is subject to the custody of this state if:

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

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

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

22 (a) the last-known address of the person entitled to the property is in this state; or

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

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

29 (5) the last-known address of the apparent owner, as shown on the records of the holder, is in a  
30 foreign country and the holder is domiciled in this state or is a government or governmental subdivision,

1 agency, or instrumentality of this state;

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

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

10

11 **NEW SECTION. Section 6. Dormancy charge.** A holder may deduct from property presumed  
12 abandoned a charge imposed by reason of the owner's failure to claim the property within a specified time  
13 only if there is a valid and enforceable written contract between the holder and the owner under which the  
14 holder may impose the charge and the holder regularly imposes the charge, which is not regularly reversed  
15 or otherwise canceled. The amount of the deduction is limited to an amount that is not unconscionable.

16

17 **NEW SECTION. Section 7. Burden of proof as to property evidenced by record of**  
18 **check or draft.** A record of the issuance of a check, draft, or similar instrument is prima facie evidence  
19 of an obligation. In claiming property from a holder that is also the issuer, the administrator's burden of  
20 proof as to the existence and amount of the property and its abandonment is satisfied by showing issuance  
21 of the instrument and passage of the requisite period of abandonment. Defenses of payment, satisfaction,  
22 discharge, and want of consideration are affirmative defenses that must be established by the holder.

23

24 **NEW SECTION. Section 8. Report of abandoned property.** (1) A holder of property  
25 presumed abandoned shall make a report to the administrator concerning the property.

26 (2) The report must be verified and must contain:

27 (a) a description of the property;

28 (b) except with respect to a traveler's check or money order, the name, if known, and last-known  
29 address, if any, and the social security number or taxpayer identification number, if readily ascertainable,  
30 of the apparent owner of property of the value of \$50 or more;

- 1 (c) an aggregated amount of items valued under \$50 each;
- 2 (d) in the case of an amount of \$50 or more held or owing under an annuity or a life or endowment  
3 insurance policy, the full name and last-known address of the annuitant or insured and of the beneficiary;
- 4 (e) in the case of property held in a safe deposit box or other safekeeping depository, an indication  
5 of the place where it is held and where it may be inspected by the administrator and any amounts owing  
6 to the holder;
- 7 (f) the date, if any, on which the property became payable, demandable, or returnable and the date  
8 of the last transaction with the apparent owner with respect to the property; and
- 9 (g) other information that the administrator by rule prescribes as necessary for the administration  
10 of [sections 1 through 29].
- 11 (3) If a holder of property presumed abandoned is a successor to another person that previously  
12 held the property for the apparent owner or the holder has changed its name while holding the property,  
13 the holder shall file with the report its former names, if any, and the known names and addresses of all  
14 previous holders of the property.
- 15 (4) The report must be filed before November 1 of each year and cover the 12 months next  
16 preceding July 1 of that year, but a report with respect to a life insurance company must be filed before  
17 May 1 of each year for the calendar year next preceding.
- 18 (5) The holder of property that is presumed abandoned shall send written notice to the apparent  
19 owner, not more than 120 days or less than 60 days before filing the report, stating that the holder is in  
20 possession of property subject to [sections 1 through 29] if:
- 21 (a) the holder has in its records an address for the apparent owner that the holder's records do not  
22 disclose to be inaccurate;
- 23 (b) the claim of the apparent owner is not barred by a statute of limitations; and
- 24 (c) the value of the property is \$50 or more.
- 25 (6) Before the date for filing the report, the holder of property presumed abandoned may request  
26 the administrator to extend the time for filing the report. The administrator may grant the extension for  
27 good cause. The holder, upon receipt of the extension, may make an interim payment on the amount the  
28 holder estimates will ultimately be due, which terminates the accrual of additional interest on the amount  
29 paid.
- 30 (7) The holder of property presumed abandoned shall file with the report an affidavit stating that



1 the holder has complied with subsection (5).

2

3 **NEW SECTION.** **Section 9. Payment or delivery of abandoned property.** (1) Except  
4 for property held in a safe deposit box or other safekeeping depository, upon filing the report required by  
5 [section 8], the holder of property presumed abandoned shall pay, deliver, or cause to be paid or delivered  
6 to the administrator the property described in the report as unclaimed; however, if the property is an  
7 automatically renewable deposit and a penalty or forfeiture in the payment of interest would result, the time  
8 for compliance is extended until a penalty or forfeiture would no longer result. Tangible property held in  
9 a safe deposit box or other safekeeping depository may not be delivered to the administrator until 60 days  
10 after filing the report required by [section 8].

11 (2) If the property reported to the administrator is a security or security entitlement under Title 30,  
12 chapter 8, the administrator is an appropriate person to make an endorsement, instruction, or entitlement  
13 order on behalf of the apparent owner to invoke the duty of the issuer or its transfer agent or the securities  
14 intermediary to transfer or dispose of the security or the security entitlement in accordance with Title 30,  
15 chapter 8.

16 (3) If the holder of property reported to the administrator is the issuer of a certificated security, the  
17 administrator has the right to obtain a replacement certificate pursuant to 30-8-408, but an indemnity bond  
18 is not required.

19 (4) An issuer, the holder, and any transfer agent or other person acting pursuant to the instructions  
20 of and on behalf of the issuer or holder in accordance with this section is not liable to the apparent owner  
21 and must be indemnified against claims of any person in accordance with [section 11].

22

23 **NEW SECTION.** **Section 10. Notice and publication of lists of abandoned**  
24 **property.** (1) The administrator shall publish a notice not later than November 30 of the year following  
25 the year in which abandoned property has been paid or delivered to the administrator. The notice must be  
26 published in a newspaper of general circulation in the county of this state in which is located the last-known  
27 address of any person named in the notice. If a holder does not report an address for the apparent owner  
28 or the address is outside this state, the notice must be published in the county in which the holder has its  
29 principal place of business within this state or another county that the administrator reasonably selects.  
30 The advertisement must be in a form that, in the judgment of the administrator, is likely to attract the

1 attention of the apparent owner of the unclaimed property. The form must contain:

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

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

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

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

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

13

14 **NEW SECTION. Section 11. Custody by state -- recovery by holder -- defense of**  
15 **holder.** (1) In this section, payment or delivery is made in "good faith" if:

16 (a) payment or delivery was made in a reasonable attempt to comply with [sections 1 through 29];

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

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

22 (2) Upon payment or delivery of property to the administrator, the state assumes custody and  
23 responsibility for the safekeeping of the property. A holder that pays or delivers property to the  
24 administrator in good faith is relieved of all liability arising thereafter with respect to the property.

25 (3) A holder that has paid money to the administrator pursuant to [sections 1 through 29] may  
26 subsequently make payment to a person reasonably appearing to the holder to be entitled to payment.  
27 Upon a filing by the holder of proof of payment and proof that the payee was entitled to the payment, the  
28 administrator shall promptly reimburse the holder for the payment without imposing a fee or other charge.  
29 If reimbursement is sought for a payment made on a negotiable instrument, including a traveler's check or  
30 money order, the holder must be reimbursed upon filing proof that the instrument was duly presented and

1 that payment was made to a person that reasonably appeared to be entitled to payment. The holder must  
2 be reimbursed for payment made even if the payment was made to a person whose claim was barred under  
3 [section 19].

4 (4) A holder that has delivered property other than money to the administrator pursuant to [sections  
5 1 through 29] may reclaim the property if it is still in the possession of the administrator, without paying  
6 any fee or other charge, upon filing proof that the apparent owner has claimed the property from the holder.

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

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

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

19  
20 **NEW SECTION.** **Section 12. Public sale of abandoned property.** (1) Except as  
21 otherwise provided in this section, the administrator, within 3 years after the receipt of abandoned property,  
22 shall sell it to the highest bidder at public sale at a location in the state, which in the judgment of the  
23 administrator affords the most favorable market for the property. The administrator may decline the highest  
24 bid and reoffer the property for sale if the administrator considers the bid to be insufficient. The  
25 administrator need not offer the property for sale if the administrator considers that the probable cost of  
26 sale will exceed the proceeds of the sale. A sale held under this section must be preceded by a single  
27 publication of notice, at least 3 weeks before sale, in a newspaper of general circulation in the county in  
28 which the property is to be sold.

29 (2) Securities listed on an established stock exchange must be sold at prices prevailing on the  
30 exchange at the time of sale. Other securities may be sold over the counter at prices prevailing at the time

1 of sale or by any reasonable method selected by the administrator. If securities are sold by the  
2 administrator before the expiration of 3 years after their delivery to the administrator, a person making a  
3 claim under [sections 1 through 29] before the end of the 3-year period is entitled to the proceeds of the  
4 sale of the securities or the market value of the securities at the time the claim is made, whichever is  
5 greater, plus dividends, interest, and other increments up to the time the claim is made, less any deduction  
6 for expenses of sale. A person making a claim under [sections 1 through 29] after the expiration of the  
7 3-year period is entitled to receive the securities delivered to the administrator by the holder, if they still  
8 remain in the custody of the administrator, or the net proceeds received from sale and is not entitled to  
9 receive any appreciation in the value of the property occurring after delivery to the administrator except  
10 in a case of intentional misconduct or malfeasance by the administrator.

11 (3) A purchaser of property at a sale conducted by the administrator pursuant to [sections 1  
12 through 29] takes the property free of all claims of the owner or previous holder and of all persons claiming  
13 through or under them. The administrator shall execute all documents necessary to complete the transfer  
14 of ownership.

15

16 **NEW SECTION. Section 13. Deposit of funds.** (1) Except as otherwise provided by this  
17 section, the administrator shall promptly deposit in the general fund of this state all funds received under  
18 [sections 1 through 29], including the proceeds from the sale of abandoned property under [section 12].  
19 The administrator shall retain in a separate trust fund at least \$100,000 from which the administrator shall  
20 pay claims allowed. The administrator shall record the name and last-known address of each person  
21 appearing from the holders' reports to be entitled to the property and the name and last-known address of  
22 each insured person or annuitant and beneficiary and, with respect to each policy or annuity listed in the  
23 report of an insurance company, its number, the name of the company, and the amount due.

24 (2) Before making a deposit to the credit of the general fund, the administrator may deduct:

25 (a) expenses of sale of abandoned property;

26 (b) costs of mailing and publication in connection with abandoned property;

27 (c) reasonable service charges; and

28 (d) expenses incurred in examining records of holders of property and in collecting the property from  
29 those holders.

30

1           **NEW SECTION.**   **Section 14. Claim of another state to recover property.**   (1) After  
2 property has been paid or delivered to the administrator under [sections 1 through 29], another state may  
3 recover the property if:

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

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

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

16           (d) the property was subjected to custody by this state under [section 5(6)], and under the laws  
17 of the state of domicile of the holder, the property has escheated or become subject to a claim of  
18 abandonment by that state; or

19           (e) the property is a sum payable on a traveler's check, money order, or similar instrument that was  
20 purchased in the other state and delivered into the custody of this state under [section 5(7)], and under the  
21 laws of the other state, the property has escheated or become subject to a claim of abandonment by that  
22 state.

23           (2) A claim of another state to recover escheated or abandoned property must be presented in a  
24 form prescribed by the administrator, who shall decide the claim within 90 days after it is presented. The  
25 administrator shall allow the claim upon determining that the other state is entitled to the abandoned  
26 property under subsection (1).

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

29  
30           **NEW SECTION.**   **Section 15. Filing claim with administrator -- handling of claims**

1 **by administrator.** (1) A person, excluding another state, claiming property paid or delivered to the  
2 administrator may file a claim on a form prescribed by the administrator and verified by the claimant.

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

8 (3) Within 30 days after a claim is allowed, the property or the net proceeds of a sale of the  
9 property must be delivered or paid by the administrator to the claimant, together with any dividend,  
10 interest, or other increment to which the claimant is entitled under [section 12].

11 (4) A holder that pays the owner for property that has been delivered to the state and that, if  
12 claimed from the administrator by the owner, would be subject to an increment under [section 12] may  
13 recover from the administrator the amount of the increment.

14

15 **NEW SECTION. Section 16. Action to establish claim.** A person aggrieved by a decision  
16 of the administrator or whose claim has not been acted upon within 90 days after its filing may maintain  
17 an original action to establish the claim in the district court, naming the administrator as a defendant. If  
18 the aggrieved person establishes the claim in an action against the administrator, the court may award the  
19 claimant reasonable attorney fees.

20

21 **NEW SECTION. Section 17. Election to take payment or delivery.** (1) The  
22 administrator may decline to receive property reported under [sections 1 through 29] that the administrator  
23 considers to have a value less than the expenses of notice and sale.

24 (2) A holder, with the written consent of the administrator and upon conditions and terms  
25 prescribed by the administrator, may report and deliver property before the property is presumed  
26 abandoned. Property that is delivered must be held by the administrator and is not presumed abandoned  
27 until it otherwise would be presumed abandoned under [sections 1 through 29].

28

29 **NEW SECTION. Section 18. Destruction or disposition of property having no**  
30 **substantial commercial value -- immunity from liability.** If the administrator determines

1 after investigation that property delivered under [sections 1 through 29] has no substantial commercial  
2 value, the administrator may destroy or otherwise dispose of the property at any time. An action or  
3 proceeding may not be maintained against the state or any officer or against the holder for or on account  
4 of an act of the administrator under this section except for intentional misconduct or malfeasance.

5  
6 **NEW SECTION. Section 19. Periods of limitation.** (1) The expiration, before or after  
7 [the effective date of this act], of a period of limitation on the owner's right to receive or recover property,  
8 whether specified by contract, statute, or court order, does not preclude the property from being presumed  
9 abandoned or affect a duty to file a report or to pay or deliver or transfer property to the administrator as  
10 required by [sections 1 through 29].

11 (2) An action or proceeding may not be maintained by the administrator to enforce [sections 1  
12 through 29] in regard to the reporting, delivery, or payment of property more than 10 years after the holder  
13 specifically identified the property in a report filed with the administrator or gave express notice to the  
14 administrator of a dispute regarding the property. In the absence of such a report or other express notice  
15 the period of limitation is tolled. The period of limitation is also tolled by the filing of a report that is  
16 fraudulent.

17  
18 **NEW SECTION. Section 20. Requests for reports and examination of records.** (1)  
19 The administrator may require a person that has not filed a report or a person that the administrator believes  
20 has filed an inaccurate, incomplete, or false report to file a verified report in a form specified by the  
21 administrator. The report must state whether the person is holding property reportable under [sections 1  
22 through 29], describe property not previously reported or as to which the administrator has made inquiry,  
23 and specifically identify and state the amounts of property that may be in issue.

24 (2) The administrator, at reasonable times and upon reasonable notice, may examine the records  
25 of any person to determine whether the person has complied with [sections 1 through 29]. The  
26 administrator may conduct the examination even if the person believes it is not in possession of any  
27 property that must be reported, paid, or delivered under [sections 1 through 29]. The administrator may  
28 contract with any other person to conduct the examination on behalf of the administrator.

29 (3) The administrator, at reasonable times, may examine the records of an agent, including a  
30 dividend disbursing agent or transfer agent, of a business association or financial organization that is the

1 holder of property presumed abandoned if the administrator has given the notice required by subsection  
2 (2) to both the association or organization and the agent at least 90 days before the examination.

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

6 (a) used by the administrator in the course of an action to collect unclaimed property or otherwise  
7 enforce [sections 1 through 29];

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

10 (c) produced pursuant to subpoena or court order; or

11 (d) disclosed to the abandoned property office of another state for that state's use in circumstances  
12 equivalent to those described in this subsection (4) if the other state is bound to keep the documents and  
13 papers confidential.

14 (5) If an examination of the records of a person results in the disclosure of property reportable  
15 under [sections 1 through 29], the administrator may assess the cost of the examination against the holder  
16 at the rate of \$200 a day for each examiner, or a greater amount that is reasonable and was incurred, but  
17 the assessment may not exceed the value of the property found to be reportable. The cost of an  
18 examination made pursuant to subsection (3) may be assessed only against the business association or  
19 financial organization.

20 (6) If, after [the effective date of this act], a holder does not maintain the records required by  
21 [section 21] and the records of the holder available for the periods subject to [sections 1 through 29] are  
22 insufficient to permit the preparation of a report, the administrator may require the holder to report and pay  
23 to the administrator the amount the administrator reasonably estimates, on the basis of any available  
24 records of the holder or by any other reasonable method of estimation, should have been but was not  
25 reported.

26  
27 **NEW SECTION. Section 21. Retention of records.** (1) Except as otherwise provided in  
28 subsection (2), a holder required to file a report under [section 8] shall maintain the records containing the  
29 information required to be included in the report for 10 years after the holder files the report unless a  
30 shorter period is provided by rule of the administrator.



1           (2) A business association or financial organization that sells, issues, or provides to others for sale  
2 or issue in this state traveler's checks, money orders, or similar instruments other than third-party bank  
3 checks, on which the business association or financial organization is directly liable, shall maintain a record  
4 of the instruments while they remain outstanding, indicating the state and date of issue, for 3 years after  
5 the holder files the report.

6  
7           NEW SECTION. **Section 22. Enforcement.** The administrator may maintain an action in this  
8 or another state to enforce [sections 1 through 29]. The court may award reasonable attorney fees to the  
9 prevailing party.

10  
11           NEW SECTION. **Section 23. Interstate agreements and cooperation -- joint and**  
12 **reciprocal actions with other states.** (1) The administrator may enter into an agreement with  
13 another state to exchange information relating to abandoned property or its possible existence. The  
14 agreement may permit the other state, or another person acting on behalf of a state, to examine records  
15 as authorized in [section 20]. The administrator by rule may require the reporting of information needed  
16 to enable compliance with an agreement made under this section and prescribe the form.

17           (2) The administrator may join with another state to seek enforcement of [sections 1 through 29]  
18 against any person that is or may be holding property reportable under [sections 1 through 29].

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

23           (4) The administrator may request that the attorney general of another state or another attorney  
24 commence an action in the other state on behalf of the administrator. With the approval of the attorney  
25 general of this state, the administrator may retain any other attorney to commence an action in this state  
26 on behalf of the administrator. This state shall pay all expenses, including attorney fees, in maintaining an  
27 action under this subsection. With the administrator's approval, the expenses and attorney fees may be  
28 paid from money received under [sections 1 through 29]. The administrator may agree to pay expenses  
29 and attorney fees based in whole or in part on a percentage of the value of any property recovered in the  
30 action. Any expenses or attorney fees paid under this subsection may not be deducted from the amount

1 that is subject to the claim by the owner under [sections 1 through 29].

2

3 NEW SECTION. **Section 24. Interest and penalties.** (1) A holder that fails to report,  
4 pay, or deliver property within the time prescribed by [sections 1 through 29] shall pay to the administrator  
5 interest at the annual rate of 12% on the property or value of the property from the date the property  
6 should have been reported, paid, or delivered.

7 (2) Except as otherwise provided in subsection (3), a holder that fails to report, pay, or deliver  
8 property within the time prescribed by [sections 1 through 29], or fails to perform other duties imposed by  
9 [sections 1 through 29], shall pay to the administrator, in addition to interest as provided in subsection (1),  
10 a civil penalty of \$200 for each day the report, payment, or delivery is withheld, or the duty is not  
11 performed, up to a maximum of \$5,000.

12 (3) A holder that willfully fails to report, pay, or deliver property within the time prescribed by  
13 [sections 1 through 29], or willfully fails to perform other duties imposed by [sections 1 through 29], shall  
14 pay to the administrator, in addition to interest as provided in subsection (1), a civil penalty of \$1,000 for  
15 each day the report, payment, or delivery is withheld, or the duty is not performed, up to a maximum of  
16 \$25,000, plus 25% of the value of any property that should have been but was not reported.

17 (4) A holder that makes a fraudulent report shall pay to the administrator, in addition to interest  
18 as provided in subsection (1), a civil penalty of \$1,000 for each day from the date a report under [sections  
19 1 through 29] was due, up to a maximum of \$25,000, plus 25% of the value of any property that should  
20 have been but was not reported.

21 (5) The administrator for good cause may waive, in whole or in part, interest under subsection (1)  
22 and penalties under subsections (2) and (3) and shall waive penalties if the holder acted in good faith and  
23 without negligence.

24

25 NEW SECTION. **Section 25. Agreement to locate property.** (1) An agreement by an  
26 owner, the primary purpose of which is to locate, deliver, recover, or assist in the recovery of property that  
27 is presumed abandoned, is void and unenforceable if it was entered into during the period commencing on  
28 the date the property was presumed abandoned and extending to a time that is 24 months after the date  
29 the property is paid or delivered to the administrator. This subsection does not apply to an owner's  
30 agreement with an attorney to file a claim as to identified property or contest the administrator's denial of

1 a claim.

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

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

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

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

16

17 **NEW SECTION.** **Section 26. Foreign transactions.** [Sections 1 through 29] do not apply  
18 to property held, due, and owing in a foreign country and arising out of a foreign transaction.

19

20 **NEW SECTION.** **Section 27. Transitional provisions.** (1) An initial report filed under  
21 [sections 1 through 29] for property that was not required to be reported before [the effective date of this  
22 act] but that is subject to [sections 1 through 29] must include all items of property that would have been  
23 presumed abandoned during the 10-year period next preceding [the effective date of this act] as if [sections  
24 1 through 29] had been in effect during that period.

25 (2) [Sections 1 through 29] do not relieve a holder of a duty that arose before [the effective date  
26 of this act] to report, pay, or deliver property. Except as otherwise provided in [section 19(2)], a holder  
27 that did not comply with the law in effect before [the effective date of this act] is subject to the applicable  
28 provisions for enforcement and penalties that then existed, which are continued in effect for the purpose  
29 of this section.

30

1           **NEW SECTION. Section 28. Rules.** The administrator may adopt, pursuant to Title 2, chapter  
2 4, rules necessary to carry out [sections 1 through 29].

3  
4           **NEW SECTION. Section 29. Uniformity of application and construction.** [Sections  
5 1 through 29] must be applied and construed to effectuate its general purpose to make uniform the law  
6 with respect to the subject of [sections 1 through 29] among states enacting it.

7  
8           **Section 30.** Section 17-8-303, MCA, is amended to read:

9           **"17-8-303. Warrants -- presentation and cancellation.** (1) State warrants must be  
10 presented for payment within the time limits specified as follows:

11           (a) Except as provided in subsection (1)(b), all warrants drawn by the state treasurer on the state  
12 treasury must be presented for payment within 6 months after the date of issue.

13           (b) Warrants issued for the department of public health and human services that are funded to any  
14 extent with federal money must be presented for payment within 180 days after the date of issue.

15           (2) If the payee or legal holder of any warrant fails to present it for payment within the time  
16 specified in subsection (1), the state treasurer shall record the warrant as canceled and the amount must  
17 be credited to a separate expendable trust fund account administered by the treasurer. If the payee or legal  
18 owner of a canceled warrant presents it for payment or presents a claim for payment within 4 years from  
19 the date of issue, the state treasurer may, upon proper showing by affidavit, issue a new warrant in lieu  
20 of the canceled warrant.

21           (3) Three years and 6 months after cancellation, the warrant must be classed as unclaimed  
22 property subject to the provisions of ~~Title 70, chapter 9, parts 1 through 3~~ [sections 1 through 29]. If the  
23 payee or legal owner of a canceled warrant presents it for payment or presents a claim for payment, the  
24 presentation must be to the department of revenue as provided in ~~70-9-310~~ [section 15]."

25  
26           **Section 31.** Section 72-14-102, MCA, is amended to read:

27           **"72-14-102. When title to escheated property vests in state.** (1) Whenever the title  
28 to any property, either real or personal or mixed, fails for any reason, including want of heirs or next of kin,  
29 the title vests in the state of Montana immediately upon the death of the owner without an inquest or other  
30 similar proceeding and there is no presumption that the owner died leaving heirs or next of kin.

1           (2) This chapter does not apply to any rural electric or telephone cooperative organized under Title  
2 35, chapter 18, if the board of trustees of the cooperative has acted to retain patronage refunds that are  
3 made by the cooperative to a member or former member and that remain unclaimed for 5 years,~~as provided~~  
4 ~~in 70-9-203."~~

5

6           NEW SECTION.   **Section 32. Severability.** If a part of [this act] is invalid, all valid parts  
7 that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of  
8 its applications, the part remains in effect in all valid applications that are severable from the invalid  
9 applications.

10

11           NEW SECTION.   **Section 33. Two-thirds vote.** Because [section 18] limits governmental  
12 liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of  
13 each house for passage.

14

15           NEW SECTION.   **Section 34. Repealer.** Sections 70-9-101, 70-9-102, 70-9-104, 70-9-105,  
16 70-9-106, 70-9-111, 70-9-121, 70-9-122, 70-9-201, 70-9-202, 70-9-203, 70-9-204, 70-9-205, 70-9-206,  
17 70-9-207, 70-9-208, 70-9-209, 70-9-210, 70-9-301, 70-9-302, 70-9-303, 70-9-304, 70-9-305, 70-9-306,  
18 70-9-307, 70-9-308, 70-9-309, 70-9-310, 70-9-311, 70-9-312, 70-9-314, 70-9-315, and 70-9-316, MCA,  
19 are repealed.

20

21           NEW SECTION.   **Section 35. Effective date.** [This act] is effective July 1, 1997.

22

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0125, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill adopting the Uniform Unclaimed Property Act.

ASSUMPTIONS:

1. Under current law monies received from unclaimed property are deposited in the common school trust fund (CSTF). The proposed law requires that monies received from unclaimed property be switched to the general fund.
2. The net funds received from unclaimed property will be \$1.075 million in both FY98 and FY99. This amount is the same under current law and the proposal, and is based upon a five-year average.
3. Annual interest income on the \$1,075,000 is estimated to be \$65,000 (assuming 6% rate).
4. Under current law, 95% of the of the earnings of education trust fund are transferred annually to the general fund, and expended as appropriated. In FY98 the 95% figure is \$62,000, but in FY99 it doubles because the principle has been allocated for two years.

FISCAL IMPACT:

<u>Revenues:</u>	<u>FY98</u> <u>Difference</u>	<u>FY99</u> <u>Difference</u>
Unclaimed Prop.-General fund	\$ 1,075,000	\$ 1,075,000
Unclaimed Prop.- CSTF	(1,075,000)	(1,075,000)
Interest transfer -General fund	(62,000)	(124,000)
Interest income- CSTF	<u>(65,000)</u>	<u>(130,000)</u>
Total	(127,000)	(254,000)
 <u>Net Impact On Fund Balance:</u>		
General fund (01)	\$ 1,013,000	\$ 951,000
Common School Trust fund (09)	(1,075,000)	(1,075,000)

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

In approximately 20 years after the effective date, the loss of interest income that would be transferred under current law would equal the amount of unclaimed property transferred to the general fund under the proposal.

*Dave Lewis* 1-17-97  
 \_\_\_\_\_  
 DAVE LEWIS, BUDGET DIRECTOR      DATE  
 Office of Budget and Program Planning

*Chris Christiaens* 1/17/97  
 \_\_\_\_\_  
 CHRIS CHRISTIAENS, SPONSOR      DATE

Fiscal Note for SB0125, as introduced

SB 125

APPROVED BY COM ON  
STATE ADMINISTRATION

1 SENATE BILL NO. 125

2 INTRODUCED BY CHRISTIAENS

3 BY REQUEST OF THE DEPARTMENT OF REVENUE

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING THE UNIFORM UNCLAIMED PROPERTY ACT;  
6 AMENDING SECTIONS 17-8-303 AND 72-14-102, MCA; REPEALING SECTIONS 70-9-101, 70-9-102,  
7 70-9-104, 70-9-105, 70-9-106, 70-9-111, 70-9-121, 70-9-122, 70-9-201, 70-9-202, 70-9-203, 70-9-204,  
8 70-9-205, 70-9-206, 70-9-207, 70-9-208, 70-9-209, 70-9-210, 70-9-301, 70-9-302, 70-9-303, 70-9-304,  
9 70-9-305, 70-9-306, 70-9-307, 70-9-308, 70-9-309, 70-9-310, 70-9-311, 70-9-312, 70-9-314, 70-9-315,  
10 AND 70-9-316, MCA; AND PROVIDING AN EFFECTIVE DATE."

11  
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13  
14 NEW SECTION. **Section 1. Short title.** [Sections 1 through 29] may be cited as the "Uniform  
15 Unclaimed Property Act".

16  
17 NEW SECTION. **Section 2. Definitions.** In [sections 1 through 29], unless the context requires  
18 otherwise, the following definitions apply:

19 (1) "Administrator" means the department of revenue provided for in 2-15-1301.

20 (2) "Apparent owner" means a person whose name appears on the records of a holder as the  
21 person entitled to property held, issued, or owing by the holder.

22 (3) "Business association" means a corporation, joint-stock company, investment company,  
23 partnership, unincorporated association, joint venture, limited liability company, business trust, trust  
24 company, land bank, safe deposit company, financial organization, insurance company, mutual fund, utility,  
25 or other business entity consisting of one or more persons, whether or not for profit.

26 (4) "Domicile" means the state of incorporation of a corporation and the state of the principal place  
27 of business of a holder other than a corporation.

28 (5) "Financial organization" means a savings and loan association, bank, banking organization, or  
29 credit union.

30 (6) "Holder" means a person obligated to hold for the account of, or deliver or pay to, the owner

1 property that is subject to [sections 1 through 29].

2 (7) "Insurance company" means an association, corporation, or fraternal or mutual benefit  
3 organization, whether or not for profit, engaged in the business of providing life endowments, annuities,  
4 or insurance, including accident, burial, casualty, credit life, contract performance, dental, disability, fidelity,  
5 fire, health, hospitalization, illness, life, malpractice, marine, mortgage, surety, wage protection, and  
6 workers' compensation insurance.

7 (8) "Mineral" means gas; oil; coal; other gaseous, liquid, and solid hydrocarbons; oil shale; cement  
8 material; sand and gravel; road material; building stone; chemical raw material; gemstone; fissionable and  
9 nonfissionable ores; colloidal and other clay; steam and other geothermal resource; or any other substance  
10 defined as a mineral by the law of this state.

11 (9) "Mineral proceeds" means amounts payable for the extraction, production, or sale of minerals  
12 or, upon the abandonment of those payments, all payments that become payable after abandonment. The  
13 term includes amounts payable:

14 (a) for the acquisition and retention of a mineral lease, including bonuses, royalties, compensatory  
15 royalties, shut-in royalties, minimum royalties, and delay rentals;

16 (b) for the extraction, production, or sale of minerals, including net revenue interests, royalties,  
17 overriding royalties, extraction payments, and production payments; and

18 (c) under an agreement or option, including a joint operating agreement, unit agreement, pooling  
19 agreement, and farmout agreement.

20 (10) "Money order" includes an express money order and a personal money order, on which the  
21 remitter is the purchaser. The term does not include a bank money order or any other instrument sold by  
22 a financial organization if the seller has obtained the name and address of the payee.

23 (11) "Owner" means a person who has a legal or equitable interest in property subject to [sections  
24 1 through 29] or the person's legal representative. The term includes a depositor in the case of a deposit,  
25 a beneficiary in the case of a trust other than a deposit in trust, and a creditor, claimant, or payee in the  
26 case of other property.

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

29 (13) "Property" means tangible property described in [section 4] or a fixed and certain interest in  
30 intangible property that is held, issued, or owed in the course of a holder's business, or by a government,



1 governmental subdivision, agency, or instrumentality, and all income or increments from the property. The  
 2 term includes property that is referred to as or evidenced by:

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

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

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

8 (d) bond, debenture, note, or other evidence of indebtedness;

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

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

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

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

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

20 (16) "Utility" means a person who owns or operates for public use any plant, equipment, real  
 21 property, franchise, or license for the transmission of communications or the production, storage,  
 22 transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

23  
 24 **NEW SECTION. Section 3. Presumptions of abandonment.** (1) ~~Property~~ **EXCEPT AS PROVIDED**  
 25 **IN SUBSECTION (6), PROPERTY** is presumed abandoned if it is unclaimed by the apparent owner during  
 26 the time set forth below for the particular property:

27 (a) traveler's check, 15 years after issuance;

28 (b) money order, 7 years after issuance;

29 (c) stock or other equity interest in a business association or financial organization, including a  
 30 security entitlement under Title 30, chapter 8, 5 years after the earlier of:

1 (i) the date of the most recent dividend, stock split, or other distribution that was unclaimed by  
2 the apparent owner; or

3 (ii) the date of the second mailing of a statement of account or other notification or communication  
4 that was returned as undeliverable or after the holder discontinued mailings, notifications, or  
5 communications to the apparent owner;

6 (d) debt of a business association or financial organization, other than a bearer bond or an original  
7 issue discount bond, 5 years after the date of the most recent interest payment that was unclaimed by the  
8 apparent owner;

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

14 (f) money or credits owed to a customer as a result of a retail business transaction, 3 years after  
15 the obligation accrued;

16 (g) gift certificate, 3 years after December 31 of the year in which the certificate was sold, but if  
17 redeemable in merchandise only, the amount abandoned is considered to be 60% of the certificate's face  
18 value;

19 (h) amount that is owed by an insurer on a life or endowment insurance policy or an annuity that  
20 has matured or terminated, 3 years after the obligation to pay arose or, in the case of a policy or annuity  
21 payable upon proof of death, 3 years after the insured has attained, or would have attained if living, the  
22 limiting age under the mortality table on which the reserve is based;

23 (i) property distributable by a business association or financial organization in a course of  
24 dissolution, 1 year after the property becomes distributable;

25 (j) property received by a court as proceeds of a class action and not distributed pursuant to the  
26 judgment, 1 year after the distribution date;

27 (k) property held by a court, government, governmental subdivision, agency, or instrumentality,  
28 1 year after the property becomes distributable;

29 (l) wages or other compensation for personal services, 1 year after the compensation becomes  
30 payable;

1 (m) deposit or refund owed to a subscriber by a utility, 1 year after the deposit or refund becomes  
2 payable;

3 (n) property in an individual retirement account, defined benefit plan, or other account or plan that  
4 is qualified for tax deferral under the income tax laws of the United States, 3 years after the earliest of the  
5 date of the distribution or attempted distribution of the property, the date of the required distribution as  
6 stated in the plan or trust agreement governing the plan, or the date, if determinable by the holder,  
7 specified in the income tax laws of the United States by which distribution of the property must begin in  
8 order to avoid a tax penalty; ~~and~~

9 (O) A PATRONAGE REFUND OWED TO A MEMBER OF A RURAL ELECTRIC OR TELEPHONE  
10 COOPERATIVE ORGANIZED UNDER TITLE 35, CHAPTER 18, THAT IS NOT USED BY THE COOPERATIVE  
11 FOR EDUCATIONAL PURPOSES, 5 YEARS AFTER THE DISTRIBUTION DATE; AND

12 ~~(P)~~ all other property, 5 years after the owner's right to demand the property or after the  
13 obligation to pay or distribute the property arises, whichever first occurs.

14 (2) At the time that an interest is presumed abandoned under subsection (1), any other property  
15 right accrued or accruing to the owner as a result of the interest, and not previously presumed abandoned,  
16 is also presumed abandoned.

17 (3) Property is unclaimed if, for the applicable period set forth in subsection (1), the apparent owner  
18 has not communicated in writing or by other means reflected in a contemporaneous record prepared by or  
19 on behalf of the holder with the holder concerning the property or the account in which the property is held  
20 and has not otherwise indicated an interest in the property. A communication with an owner by a person  
21 other than the holder or its representative who has not in writing identified the property to the owner is not  
22 an indication of interest in the property by the owner.

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

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

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

30 (c) the making of a deposit to or withdrawal from ~~a bank account~~ AN ACCOUNT IN A FINANCIAL

1 ORGANIZATION; and

2 (d) the payment of a premium with respect to a property interest in an insurance policy; however,  
3 the application of an automatic premium loan provision or other nonforfeiture provision contained in an  
4 insurance policy does not prevent a policy from maturing or terminating if the insured has died or the  
5 insured or the beneficiary of the policy has otherwise become entitled to the proceeds before the depletion  
6 of the cash surrender value of a policy by the application of those provisions.

7 (5) Property is payable or distributable for purposes of [sections 1 through 29] notwithstanding the  
8 owner's failure to make demand or present an instrument or document otherwise required to obtain  
9 payment.

10 (6) THE PRESUMPTION PROVIDED IN SUBSECTION (1) DOES NOT APPLY TO UNCLAIMED  
11 PATRONAGE REFUNDS OF A RURAL ELECTRIC OR TELEPHONE COOPERATIVE IF THE COOPERATIVE  
12 USES THE REFUNDS EXCLUSIVELY FOR EDUCATIONAL PURPOSES.

13

14 NEW SECTION. Section 4. Contents of safe deposit box or other safekeeping depository. Tangible  
15 property held in a safe deposit box or other safekeeping depository in this state in the ordinary course of  
16 the holder's business and proceeds resulting from the sale of the property permitted by other law are  
17 presumed abandoned if the property remains unclaimed by the owner for more than 5 years after expiration  
18 of the lease or rental period on the box or other depository.

19

20 NEW SECTION. Section 5. Rules for taking custody. Except as otherwise provided in [sections  
21 1 through 29] or by other statute of this state, property that is presumed abandoned, whether located in  
22 this or another state, is subject to the custody of this state if:

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

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

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

29 (a) the last-known address of the person entitled to the property is in this state; or

30 (b) the holder is domiciled in this state or is a government or governmental subdivision, agency, or

1 instrumentality of this state and has not previously paid or delivered the property to the state of the  
 2 last-known address of the apparent owner or other person entitled to the property;

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

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

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

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

17  
 18 **NEW SECTION. Section 6. Dormancy charge.** A holder may deduct from property presumed  
 19 abandoned a charge imposed by reason of the owner's failure to claim the property within a specified time  
 20 only if there is a valid and enforceable written contract between the holder and the owner under which the  
 21 holder may impose the charge and the holder regularly imposes the charge, which is not regularly reversed  
 22 or otherwise canceled. The amount of the deduction is limited to an amount that is not unconscionable.

23  
 24 **NEW SECTION. Section 7. Burden of proof as to property evidenced by record of check or draft.**  
 25 A record of the issuance of a check, draft, or similar instrument is prima facie evidence of an obligation.  
 26 In claiming property from a holder that is also the issuer, the administrator's burden of proof as to the  
 27 existence and amount of the property and its abandonment is satisfied by showing issuance of the  
 28 instrument and passage of the requisite period of abandonment. Defenses of payment, satisfaction,  
 29 discharge, and want of consideration are affirmative defenses that must be established by the holder.

30

1           **NEW SECTION. Section 8. Report of abandoned property.** (1) A holder of property presumed  
2 abandoned shall make a report to the administrator concerning the property.

3           (2) The report must be verified and must contain:

4           (a) a description of the property;

5           (b) except with respect to a traveler's check or money order, the name, if known, and last-known  
6 address, if any, and the social security number or taxpayer identification number, if readily ascertainable,  
7 of the apparent owner of property of the value of \$50 or more;

8           (c) an aggregated amount of items valued under \$50 each;

9           (d) in the case of an amount of \$50 or more held or owing under an annuity or a life or endowment  
10 insurance policy, the full name and last-known address of the annuitant or insured and of the beneficiary;

11           (e) in the case of property held in a safe deposit box or other safekeeping depository, an indication  
12 of the place where it is held and where it may be inspected by the administrator and any amounts owing  
13 to the holder;

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

16           (g) other information that the administrator by rule prescribes as necessary for the administration  
17 of [sections 1 through 29].

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

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

25           (5) The holder of property that is presumed abandoned shall send written notice to the apparent  
26 owner, not more than 120 days or less than 60 days before filing the report, stating that the holder is in  
27 possession of property subject to [sections 1 through 29] if:

28           (a) the holder has in its records an address for the apparent owner that the holder's records do not  
29 disclose to be inaccurate;

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

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

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

7 (7) The holder of property presumed abandoned shall file with the report an affidavit stating that  
8 the holder has complied with subsection (5).

9  
10 **NEW SECTION. Section 9. Payment or delivery of abandoned property.** (1) Except for property  
11 held in a safe deposit box or other safekeeping depository, upon filing the report required by [section 8],  
12 the holder of property presumed abandoned shall pay, deliver, or cause to be paid or delivered to the  
13 administrator the property described in the report as unclaimed; however, if the property is an automatically  
14 renewable deposit and a penalty or forfeiture in the payment of interest would result, the time for  
15 compliance is extended until a penalty or forfeiture would no longer result. Tangible property held in a safe  
16 deposit box or other safekeeping depository may not be delivered to the administrator until 60 days after  
17 filing the report required by [section 8].

18 (2) If the property reported to the administrator is a security or security entitlement under Title 30,  
19 chapter 8, the administrator is an appropriate person to make an endorsement, instruction, or entitlement  
20 order on behalf of the apparent owner to invoke the duty of the issuer or its transfer agent or the securities  
21 intermediary to transfer or dispose of the security or the security entitlement in accordance with Title 30,  
22 chapter 8.

23 (3) If the holder of property reported to the administrator is the issuer of a certificated security, the  
24 administrator has the right to obtain a replacement certificate pursuant to 30-8-408, but an indemnity bond  
25 is not required.

26 (4) An issuer, the holder, and any transfer agent or other person acting pursuant to the instructions  
27 of and on behalf of the issuer or holder in accordance with this section is not liable to the apparent owner  
28 and must be indemnified against claims of any person in accordance with [section 11].

29  
30 **NEW SECTION. Section 10. Notice and publication of lists of abandoned property.** (1) The

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

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

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

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

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

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

20  
 21 **NEW SECTION. Section 11. Custody by state -- recovery by holder -- defense of holder.** (1) In  
 22 this section, payment or delivery is made in "good faith" if:

23 (a) payment or delivery was made in a reasonable attempt to comply with [sections 1 through 29];

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

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

29 (2) Upon payment or delivery of property to the administrator, the state assumes custody and  
 30 responsibility for the safekeeping of the property. A holder that pays or delivers property to the



1 administrator in good faith is relieved of all liability arising thereafter with respect to the property.

2 (3) A holder that has paid money to the administrator pursuant to [sections 1 through 29] may  
3 subsequently make payment to a person reasonably appearing to the holder to be entitled to payment.  
4 Upon a filing by the holder of proof of payment and proof that the payee was entitled to the payment, the  
5 administrator shall promptly reimburse the holder for the payment without imposing a fee or other charge.  
6 If reimbursement is sought for a payment made on a negotiable instrument, including a traveler's check or  
7 money order, the holder must be reimbursed upon filing proof that the instrument was duly presented and  
8 that payment was made to a person that reasonably appeared to be entitled to payment. The holder must  
9 be reimbursed for payment made even if the payment was made to a person whose claim was barred under  
10 [section 19].

11 (4) A holder that has delivered property other than money to the administrator pursuant to [sections  
12 1 through 29] may reclaim the property if it is still in the possession of the administrator, without paying  
13 any fee or other charge, upon filing proof that the apparent owner has claimed the property from the holder.

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

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

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

26  
27 **NEW SECTION. Section 12. Public sale of abandoned property.** (1) Except as otherwise provided  
28 in this section, the administrator, within 3 years after the receipt of abandoned property, shall sell it to the  
29 highest bidder at public sale at a location in the state, which in the judgment of the administrator affords  
30 the most favorable market for the property. The administrator may decline the highest bid and reoffer the

1 property for sale if the administrator considers the bid to be insufficient. The administrator need not offer  
2 the property for sale if the administrator considers that the probable cost of sale will exceed the proceeds  
3 of the sale. A sale held under this section must be preceded by a single publication of notice, at least 3  
4 weeks before sale, in a newspaper of general circulation in the county in which the property is to be sold.

5 (2) Securities listed on an established stock exchange must be sold at prices prevailing on the  
6 exchange at the time of sale. Other securities may be sold over the counter at prices prevailing at the time  
7 of sale or by any reasonable method selected by the administrator. If securities are sold by the  
8 administrator before the expiration of 3 years after their delivery to the administrator, a person making a  
9 claim under [sections 1 through 29] before the end of the 3-year period is entitled to the proceeds of the  
10 sale of the securities or the market value of the securities at the time the claim is made, whichever is  
11 greater, plus dividends, interest, and other increments up to the time the claim is made, less any deduction  
12 for expenses of sale. A person making a claim under [sections 1 through 29] after the expiration of the  
13 3-year period is entitled to receive the securities delivered to the administrator by the holder, if they still  
14 remain in the custody of the administrator, or the net proceeds received from sale and is not entitled to  
15 receive any appreciation in the value of the property occurring after delivery to the administrator except  
16 in a case of intentional misconduct or malfeasance by the administrator.

17 (3) A purchaser of property at a sale conducted by the administrator pursuant to [sections 1  
18 through 29] takes the property free of all claims of the owner or previous holder and of all persons claiming  
19 through or under them. The administrator shall execute all documents necessary to complete the transfer  
20 of ownership.

21  
22 **NEW SECTION. Section 13. Deposit of funds.** (1) Except as otherwise provided by this section,  
23 the administrator shall promptly deposit in the general fund of this state all funds received under [sections  
24 1 through 29], including the proceeds from the sale of abandoned property under [section 12]. The  
25 administrator shall retain in a separate trust fund at least \$100,000 from which the administrator shall pay  
26 claims allowed. The administrator shall record the name and last-known address of each person appearing  
27 from the holders' reports to be entitled to the property and the name and last-known address of each  
28 insured person or annuitant and beneficiary and, with respect to each policy or annuity listed in the report  
29 of an insurance company, its number, the name of the company, and the amount due.

30 (2) Before making a deposit to the credit of the general fund, the administrator may deduct:

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

6

7 **NEW SECTION. Section 14. Claim of another state to recover property.** (1) After property has  
 8 been paid or delivered to the administrator under [sections 1 through 29], another state may recover the  
 9 property if:

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

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

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

22 (d) the property was subjected to custody by this state under [section 5(6)], and under the laws  
 23 of the state of domicile of the holder, the property has escheated or become subject to a claim of  
 24 abandonment by that state; or

25 (e) the property is a sum payable on a traveler’s check, money order, or similar instrument that was  
 26 purchased in the other state and delivered into the custody of this state under [section 5(7)], and under the  
 27 laws of the other state, the property has escheated or become subject to a claim of abandonment by that  
 28 state.

29 (2) A claim of another state to recover escheated or abandoned property must be presented in a  
 30 form prescribed by the administrator, who shall decide the claim within 90 days after it is presented. The

1 administrator shall allow the claim upon determining that the other state is entitled to the abandoned  
2 property under subsection (1).

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

5

6 **NEW SECTION. Section 15. Filing claim with administrator -- handling of claims by administrator.**

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

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

14 (3) Within 30 days after a claim is allowed, the property or the net proceeds of a sale of the  
15 property must be delivered or paid by the administrator to the claimant, together with any dividend,  
16 interest, or other increment to which the claimant is entitled under [section 12].

17 (4) A holder that pays the owner for property that has been delivered to the state and that, if  
18 claimed from the administrator by the owner, would be subject to an increment under [section 12] may  
19 recover from the administrator the amount of the increment.

20

21 **NEW SECTION. Section 16. Action to establish claim.** A person aggrieved by a decision of the  
22 administrator or whose claim has not been acted upon within 90 days after its filing may maintain an  
23 original action to establish the claim in the district court, naming the administrator as a defendant. If the  
24 aggrieved person establishes the claim in an action against the administrator, the court may award the  
25 claimant reasonable attorney fees.

26

27 **NEW SECTION. Section 17. Election to take payment or delivery.** (1) The administrator may  
28 decline to receive property reported under [sections 1 through 29] that the administrator considers to have  
29 a value less than the expenses of notice and sale.

30 (2) A holder, with the written consent of the administrator and upon conditions and terms

1 prescribed by the administrator, may report and deliver property before the property is presumed  
2 abandoned. Property that is delivered must be held by the administrator and is not presumed abandoned  
3 until it otherwise would be presumed abandoned under [sections 1 through 29].

4  
5 **NEW SECTION. Section 18. Destruction or disposition of property having no substantial**  
6 **commercial value -- immunity from liability.** If the administrator determines after investigation that property  
7 delivered under [sections 1 through 29] has no substantial commercial value, the administrator may destroy  
8 or otherwise dispose of the property at any time. An action or proceeding may not be maintained against  
9 the state or any officer or against the holder for or on account of an act of the administrator under this  
10 section except for intentional misconduct or malfeasance.

11  
12 **NEW SECTION. Section 19. Periods of limitation.** (1) The expiration, before or after [the effective  
13 date of this act], of a period of limitation on the owner's right to receive or recover property, whether  
14 specified by contract, statute, or court order, does not preclude the property from being presumed  
15 abandoned or affect a duty to file a report or to pay or deliver or transfer property to the administrator as  
16 required by [sections 1 through 29].

17 (2) An action or proceeding may not be maintained by the administrator to enforce [sections 1  
18 through 29] in regard to the reporting, delivery, or payment of property more than 10 years after the holder  
19 specifically identified the property in a report filed with the administrator or gave express notice to the  
20 administrator of a dispute regarding the property. In the absence of such a report or other express notice  
21 the period of limitation is tolled. The period of limitation is also tolled by the filing of a report that is  
22 fraudulent.

23  
24 **NEW SECTION. Section 20. Requests for reports and examination of records.** (1) The  
25 administrator may require a person that has not filed a report or a person that the administrator believes  
26 has filed an inaccurate, incomplete, or false report to file a verified report in a form specified by the  
27 administrator. The report must state whether the person is holding property reportable under [sections 1  
28 through 29], describe property not previously reported or as to which the administrator has made inquiry,  
29 and specifically identify and state the amounts of property that may be in issue.

30 (2) The administrator, at reasonable times and upon reasonable notice, may examine the records

1 of any person to determine whether the person has complied with [sections 1 through 29]. The  
2 administrator may conduct the examination even if the person believes it is not in possession of any  
3 property that must be reported, paid, or delivered under [sections 1 through 29]. The administrator may  
4 contract with any other person to conduct the examination on behalf of the administrator.

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

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

12 (a) used by the administrator in the course of an action to collect unclaimed property or otherwise  
13 enforce [sections 1 through 29];

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

16 (c) produced pursuant to subpoena or court order; or

17 (d) disclosed to the abandoned property office of another state for that state's use in circumstances  
18 equivalent to those described in this subsection (4) if the other state is bound to keep the documents and  
19 papers confidential.

20 (5) If an examination of the records of a person results in the disclosure of property reportable  
21 under [sections 1 through 29], the administrator may assess the cost of the examination against the holder  
22 at the rate of \$200 a day for each examiner, or a greater amount that is reasonable and was incurred, but  
23 the assessment may not exceed the value of the property found to be reportable. The cost of an  
24 examination made pursuant to subsection (3) may be assessed only against the business association or  
25 financial organization.

26 (6) If, after [the effective date of this act], a holder does not maintain the records required by  
27 [section 21] and the records of the holder available for the periods subject to [sections 1 through 29] are  
28 insufficient to permit the preparation of a report, the administrator may require the holder to report and pay  
29 to the administrator the amount the administrator reasonably estimates, on the basis of any available  
30 records of the holder or by any other reasonable method of estimation, should have been but was not

1 reported.

2

3 **NEW SECTION. Section 21. Retention of records.** (1) Except as otherwise provided in subsection  
4 (2), a holder required to file a report under [section 8] shall maintain the records containing the information  
5 required to be included in the report for 10 years after the holder files the report unless a shorter period is  
6 provided by rule of the administrator.

7 (2) A business association or financial organization that sells, issues, or provides to others for sale  
8 or issue in this state traveler's checks, money orders, or similar instruments other than third-party bank  
9 checks, on which the business association or financial organization is directly liable, shall maintain a record  
10 of the instruments while they remain outstanding, indicating the state and date of issue, for 3 years after  
11 the holder files the report.

12

13 **NEW SECTION. Section 22. Enforcement.** The administrator may maintain an action in this or  
14 another state to enforce [sections 1 through 29]. The court may award reasonable attorney fees to the  
15 prevailing party.

16

17 **NEW SECTION. Section 23. Interstate agreements and cooperation -- joint and reciprocal actions**  
18 **with other states.** (1) The administrator may enter into an agreement with another state to exchange  
19 information relating to abandoned property or its possible existence. The agreement may permit the other  
20 state, or another person acting on behalf of a state, to examine records as authorized in [section 20]. The  
21 administrator by rule may require the reporting of information needed to enable compliance with an  
22 agreement made under this section and prescribe the form.

23 (2) The administrator may join with another state to seek enforcement of [sections 1 through 29]  
24 against any person that is or may be holding property reportable under [sections 1 through 29].

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

29 (4) The administrator may request that the attorney general of another state or another attorney  
30 commence an action in the other state on behalf of the administrator. With the approval of the attorney

1 general of this state, the administrator may retain any other attorney to commence an action in this state  
2 on behalf of the administrator. This state shall pay all expenses, including attorney fees, in maintaining an  
3 action under this subsection. With the administrator's approval, the expenses and attorney fees may be  
4 paid from money received under [sections 1 through 29]. The administrator may agree to pay expenses  
5 and attorney fees based in whole or in part on a percentage of the value of any property recovered in the  
6 action. Any expenses or attorney fees paid under this subsection may not be deducted from the amount  
7 that is subject to the claim by the owner under [sections 1 through 29].

8  
9 **NEW SECTION. Section 24. Interest and penalties.** (1) A holder that fails to report, pay, or deliver  
10 property within the time prescribed by [sections 1 through 29] shall pay to the administrator interest at the  
11 annual rate of 12% on the property or value of the property from the date the property should have been  
12 reported, paid, or delivered.

13 (2) Except as otherwise provided in subsection (3), a holder that fails to report, pay, or deliver  
14 property within the time prescribed by [sections 1 through 29], or fails to perform other duties imposed by  
15 [sections 1 through 29], shall pay to the administrator, in addition to interest as provided in subsection (1),  
16 a civil penalty of ~~\$200~~ \$100 for each day the report, payment, or delivery is withheld, or the duty is not  
17 performed, up to a maximum of ~~\$5,000~~ \$2,500.

18 (3) A holder that willfully fails to report, pay, or deliver property within the time prescribed by  
19 [sections 1 through 29], or willfully fails to perform other duties imposed by [sections 1 through 29], shall  
20 pay to the administrator, in addition to interest as provided in subsection (1), a civil penalty of \$1,000 for  
21 each day the report, payment, or delivery is withheld, or the duty is not performed, up to a maximum of  
22 \$25,000, plus 25% of the value of any property that should have been but was not reported.

23 (4) A holder that makes a fraudulent report shall pay to the administrator, in addition to interest  
24 as provided in subsection (1), a civil penalty of \$1,000 for each day from the date a report under [sections  
25 1 through 29] was due, up to a maximum of \$25,000, plus 25% of the value of any property that should  
26 have been but was not reported.

27 (5) The administrator for good cause may waive, in whole or in part, interest under subsection (1)  
28 and penalties under subsections (2) and (3) and shall waive penalties if the holder acted in good faith and  
29 without negligence.



1           **NEW SECTION. Section 25. Agreement to locate property.** (1) An agreement by an owner, the  
2 primary purpose of which is to locate, deliver, recover, or assist in the recovery of property that is  
3 presumed abandoned, is void and unenforceable if it was entered into during the period commencing on  
4 the date the property was presumed abandoned and extending to a time that is 24 months after the date  
5 the property is paid or delivered to the administrator. This subsection does not apply to an owner's  
6 agreement with an attorney to file a claim as to identified property or contest the administrator's denial of  
7 a claim.

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

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

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

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

22  
23           **NEW SECTION. Section 26. Foreign transactions.** [Sections 1 through 29] do not apply to  
24 property held, due, and owing in a foreign country and arising out of a foreign transaction.

25  
26           **NEW SECTION. Section 27. Transitional provisions.** (1) An initial report filed under [sections 1  
27 through 29] for property that was not required to be reported before [the effective date of this act] but that  
28 is subject to [sections 1 through 29] must include all items of property that would have been presumed  
29 abandoned during the 10-year period next preceding [the effective date of this act] as if [sections 1 through  
30 29] had been in effect during that period.

1 (2) [Sections 1 through 29] do not relieve a holder of a duty that arose before [the effective date  
2 of this act] to report, pay, or deliver property. Except as otherwise provided in [section 19(2)], a holder  
3 that did not comply with the law in effect before [the effective date of this act] is subject to the applicable  
4 provisions for enforcement and penalties that then existed, which are continued in effect for the purpose  
5 of this section.

6  
7 **NEW SECTION. Section 28. Rules.** The administrator may adopt, pursuant to Title 2, chapter 4,  
8 rules necessary to carry out [sections 1 through 29].

9  
10 **NEW SECTION. Section 29. Uniformity of application and construction.** [Sections 1 through 29]  
11 must be applied and construed to effectuate its general purpose to make uniform the law with respect to  
12 the subject of [sections 1 through 29] among states enacting it.

13  
14 **Section 30.** Section 17-8-303, MCA, is amended to read:

15 **"17-8-303. Warrants -- presentation and cancellation.** (1) State warrants must be presented for  
16 payment within the time limits specified as follows:

17 (a) Except as provided in subsection (1)(b), all warrants drawn by the state treasurer on the state  
18 treasury must be presented for payment within 6 months after the date of issue.

19 (b) Warrants issued for the department of public health and human services that are funded to any  
20 extent with federal money must be presented for payment within 180 days after the date of issue.

21 (2) If the payee or legal holder of any warrant fails to present it for payment within the time  
22 specified in subsection (1), the state treasurer shall record the warrant as canceled and the amount must  
23 be credited to a separate expendable trust fund account administered by the treasurer. If the payee or legal  
24 owner of a canceled warrant presents it for payment or presents a claim for payment within 4 years from  
25 the date of issue, the state treasurer may, upon proper showing by affidavit, issue a new warrant in lieu  
26 of the canceled warrant.

27 (3) Three years and 6 months after cancellation, the warrant must be classed as unclaimed  
28 property subject to the provisions of ~~Title 70, chapter 9, parts 1 through 3~~ [sections 1 through 29]. If the  
29 payee or legal owner of a canceled warrant presents it for payment or presents a claim for payment, the  
30 presentation must be to the department of revenue as provided in ~~70-9-310~~ [section 15]."

1           **Section 31.** Section 72-14-102, MCA, is amended to read:

2           **"72-14-102. When title to escheated property vests in state.** (1) Whenever the title to any  
3 property, either real or personal or mixed, fails for any reason, including want of heirs or next of kin, the  
4 title vests in the state of Montana immediately upon the death of the owner without an inquest or other  
5 similar proceeding and there is no presumption that the owner died leaving heirs or next of kin.

6           (2) This chapter does not apply to any rural electric or telephone cooperative organized under Title  
7 35, chapter 18, if the board of trustees of the cooperative has acted to retain patronage refunds that are  
8 made by the cooperative to a member or former member and that remain unclaimed for 5 years,~~as provided~~  
9 ~~in 70-9-203."~~

10  
11           **NEW SECTION. SECTION 32. COORDINATION INSTRUCTION. IF HOUSE BILL NO. 284 IS**  
12 **PASSED AND APPROVED AMENDING 82-4-241, 82-4-311, AND 82-4-424 TO PROVIDE THAT**  
13 **UNCLAIMED FUNDS OR BONDS ARE TO BE DEPOSITED INTO AN ACCOUNT IN THE STATE SPECIAL**  
14 **REVENUE FUND, THEN [SECTION 3(1) OF THE FIRST READING COPY OF THIS ACT] IS AMENDED TO**  
15 **INSERT AFTER "EXCEPT AS PROVIDED IN" THE WORDS "82-4-241, 82-4-311, 82-4-424, AND".**

16  
17           **NEW SECTION. Section 33. Severability.** If a part of [this act] is invalid, all valid parts that are  
18 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
19 applications, the part remains in effect in all valid applications that are severable from the invalid  
20 applications.

21  
22           **NEW SECTION. Section 34. Two-thirds vote.** Because [section 18] limits governmental liability,  
23 Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each  
24 house for passage.

25  
26           **NEW SECTION. Section 35. Repealer.** Sections 70-9-101, 70-9-102, 70-9-104, 70-9-105,  
27 70-9-106, 70-9-111, 70-9-121, 70-9-122, 70-9-201, 70-9-202, 70-9-203, 70-9-204, 70-9-205, 70-9-206,  
28 70-9-207, 70-9-208, 70-9-209, 70-9-210, 70-9-301, 70-9-302, 70-9-303, 70-9-304, 70-9-305, 70-9-306,  
29 70-9-307, 70-9-308, 70-9-309, 70-9-310, 70-9-311, 70-9-312, 70-9-314, 70-9-315, and 70-9-316, MCA,  
30 are repealed.



1 SENATE BILL NO. 125

2 INTRODUCED BY CHRISTIAENS

3 BY REQUEST OF THE DEPARTMENT OF REVENUE

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING THE UNIFORM UNCLAIMED PROPERTY ACT;  
6 AMENDING SECTIONS 17-8-303 AND 72-14-102, MCA; REPEALING SECTIONS 70-9-101, 70-9-102,  
7 70-9-104, 70-9-105, 70-9-106, 70-9-111, 70-9-121, 70-9-122, 70-9-201, 70-9-202, 70-9-203, 70-9-204,  
8 70-9-205, 70-9-206, 70-9-207, 70-9-208, 70-9-209, 70-9-210, 70-9-301, 70-9-302, 70-9-303, 70-9-304,  
9 70-9-305, 70-9-306, 70-9-307, 70-9-308, 70-9-309, 70-9-310, 70-9-311, 70-9-312, 70-9-314, 70-9-315,  
10 AND 70-9-316, MCA; AND PROVIDING AN EFFECTIVE DATE."

11

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE  
REPRINTED. PLEASE REFER TO SECOND READING COPY  
(YELLOW) FOR COMPLETE TEXT.**

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12

SENATE BILL NO. 125  
INTRODUCED BY CHRISTIAENS  
BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING THE UNIFORM UNCLAIMED PROPERTY ACT;  
AMENDING SECTIONS 17-8-303 AND 72-14-102, MCA; REPEALING SECTIONS 70-9-101, 70-9-102,  
70-9-104, 70-9-105, 70-9-106, 70-9-111, 70-9-121, 70-9-122, 70-9-201, 70-9-202, 70-9-203, 70-9-204,  
70-9-205, 70-9-206, 70-9-207, 70-9-208, 70-9-209, 70-9-210, 70-9-301, 70-9-302, 70-9-303, 70-9-304,  
70-9-305, 70-9-306, 70-9-307, 70-9-308, 70-9-309, 70-9-310, 70-9-311, 70-9-312, 70-9-314, 70-9-315,  
AND 70-9-316, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE REPRINTED. PLEASE REFER TO SECOND READING COPY (YELLOW) FOR COMPLETE TEXT.**

## 1 SENATE BILL NO. 125

2 INTRODUCED BY CHRISTIAENS

3 BY REQUEST OF THE DEPARTMENT OF REVENUE

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING THE UNIFORM UNCLAIMED PROPERTY ACT;  
6 AMENDING SECTIONS 17-8-303 AND 72-14-102, MCA; REPEALING SECTIONS 70-9-101, 70-9-102,  
7 70-9-104, 70-9-105, 70-9-106, 70-9-111, 70-9-121, 70-9-122, 70-9-201, 70-9-202, 70-9-203, 70-9-204,  
8 70-9-205, 70-9-206, 70-9-207, 70-9-208, 70-9-209, 70-9-210, 70-9-301, 70-9-302, 70-9-303, 70-9-304,  
9 70-9-305, 70-9-306, 70-9-307, 70-9-308, 70-9-309, 70-9-310, 70-9-311, 70-9-312, 70-9-314, 70-9-315,  
10 AND 70-9-316, MCA; AND PROVIDING AN EFFECTIVE DATE."

11  
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13  
14 **NEW SECTION. Section 1. Short title.** [Sections 1 through 29] may be cited as the "Uniform  
15 Unclaimed Property Act".

16  
17 **NEW SECTION. Section 2. Definitions.** In [sections 1 through 29], unless the context requires  
18 otherwise, the following definitions apply:

- 19 (1) "Administrator" means the department of revenue provided for in 2-15-1301.
- 20 (2) "Apparent owner" means a person whose name appears on the records of a holder as the  
21 person entitled to property held, issued, or owing by the holder.
- 22 (3) "Business association" means a corporation, joint-stock company, investment company,  
23 partnership, unincorporated association, joint venture, limited liability company, business trust, trust  
24 company, land bank, safe deposit company, financial organization, insurance company, mutual fund, utility,  
25 or other business entity consisting of one or more persons, whether or not for profit.
- 26 (4) "Domicile" means the state of incorporation of a corporation and the state of the principal place  
27 of business of a holder other than a corporation.
- 28 (5) "Financial organization" means a savings and loan association, bank, banking organization, or  
29 credit union.
- 30 (6) "Holder" means a person obligated to hold for the account of, or deliver or pay to, the owner

1 property that is subject to [sections 1 through 29].

2 (7) "Insurance company" means an association, corporation, or fraternal or mutual benefit  
3 organization, whether or not for profit, engaged in the business of providing life endowments, annuities,  
4 or insurance, including accident, burial, casualty, credit life, contract performance, dental, disability, fidelity,  
5 fire, health, hospitalization, illness, life, malpractice, marine, mortgage, surety, wage protection, and  
6 workers' compensation insurance.

7 (8) "Mineral" means gas; oil; coal; other gaseous, liquid, and solid hydrocarbons; oil shale; cement  
8 material; sand and gravel; road material; building stone; chemical raw material; gemstone; fissionable and  
9 nonfissionable ores; colloidal and other clay; steam and other geothermal resource; or any other substance  
10 defined as a mineral by the law of this state.

11 (9) "Mineral proceeds" means amounts payable for the extraction, production, or sale of minerals  
12 or, upon the abandonment of those payments, all payments that become payable after abandonment. The  
13 term includes amounts payable:

14 (a) for the acquisition and retention of a mineral lease, including bonuses, royalties, compensatory  
15 royalties, shut-in royalties, minimum royalties, and delay rentals;

16 (b) for the extraction, production, or sale of minerals, including net revenue interests, royalties,  
17 overriding royalties, extraction payments, and production payments; and

18 (c) under an agreement or option, including a joint operating agreement, unit agreement, pooling  
19 agreement, and farmout agreement.

20 (10) "Money order" includes an express money order and a personal money order, on which the  
21 remitter is the purchaser. The term does not include a bank money order or any other instrument sold by  
22 a financial organization if the seller has obtained the name and address of the payee.

23 (11) "Owner" means a person who has a legal or equitable interest in property subject to [sections  
24 1 through 29] or the person's legal representative. The term includes a depositor in the case of a deposit,  
25 a beneficiary in the case of a trust other than a deposit in trust, and a creditor, claimant, or payee in the  
26 case of other property.

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

29 (13) "Property" means tangible property described in [section 4] or a fixed and certain interest in  
30 intangible property that is held, issued, or owed in the course of a holder's business, or by a government,



1 governmental subdivision, agency, or instrumentality, and all income or increments from the property. The  
2 term includes property that is referred to as or evidenced by:

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

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

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

8 (d) bond, debenture, note, or other evidence of indebtedness;

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

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

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

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

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

20 (16) "Utility" means a person who owns or operates for public use any plant, equipment, real  
21 property, franchise, or license for the transmission of communications or the production, storage,  
22 transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

23  
24 **NEW SECTION. Section 3. Presumptions of abandonment.** (1) ~~Property~~ **EXCEPT AS PROVIDED**  
25 **IN SUBSECTION (6), PROPERTY** is presumed abandoned if it is unclaimed by the apparent owner during  
26 the time set forth below for the particular property:

27 (a) traveler's check, 15 years after issuance;

28 (b) money order, 7 years after issuance;

29 (c) stock or other equity interest in a business association or financial organization, including a  
30 security entitlement under Title 30, chapter 8, 5 years after the earlier of:

1 (i) the date of the most recent dividend, stock split, or other distribution that was unclaimed by  
2 the apparent owner; or

3 (ii) the date of the second mailing of a statement of account or other notification or communication  
4 that was returned as undeliverable or after the holder discontinued mailings, notifications, or  
5 communications to the apparent owner;

6 (d) debt of a business association or financial organization, other than a bearer bond or an original  
7 issue discount bond, 5 years after the date of the most recent interest payment that was unclaimed by the  
8 apparent owner;

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

14 (f) money or credits owed to a customer as a result of a retail business transaction, 3 years after  
15 the obligation accrued;

16 (g) gift certificate, 3 years after December 31 of the year in which the certificate was sold, but if  
17 redeemable in merchandise only, the amount abandoned is considered to be 60% of the certificate's face  
18 value;

19 (h) amount that is owed by an insurer on a life or endowment insurance policy or an annuity that  
20 has matured or terminated, 3 years after the obligation to pay arose or, in the case of a policy or annuity  
21 payable upon proof of death, 3 years after the insured has attained, or would have attained if living, the  
22 limiting age under the mortality table on which the reserve is based;

23 (i) property distributable by a business association or financial organization in a course of  
24 dissolution, 1 year after the property becomes distributable;

25 (j) property received by a court as proceeds of a class action and not distributed pursuant to the  
26 judgment, 1 year after the distribution date;

27 (k) property held by a court, government, governmental subdivision, agency, or instrumentality,  
28 1 year after the property becomes distributable;

29 (l) wages or other compensation for personal services, 1 year after the compensation becomes  
30 payable;

1 (m) deposit or refund owed to a subscriber by a utility, 1 year after the deposit or refund becomes  
2 payable;

3 (n) property in an individual retirement account, defined benefit plan, or other account or plan that  
4 is qualified for tax deferral under the income tax laws of the United States, 3 years after the earliest of the  
5 date of the distribution or attempted distribution of the property, the date of the required distribution as  
6 stated in the plan or trust agreement governing the plan, or the date, if determinable by the holder,  
7 specified in the income tax laws of the United States by which distribution of the property must begin in  
8 order to avoid a tax penalty; ~~and~~

9 (O) A PATRONAGE REFUND OWED TO A MEMBER OF A RURAL ELECTRIC OR TELEPHONE  
10 COOPERATIVE ORGANIZED UNDER TITLE 35, CHAPTER 18, THAT IS NOT USED BY THE COOPERATIVE  
11 FOR EDUCATIONAL PURPOSES, 5 YEARS AFTER THE DISTRIBUTION DATE; AND

12 ~~(P)~~, all other property, 5 years after the owner's right to demand the property or after the  
13 obligation to pay or distribute the property arises, whichever first occurs.

14 (2) At the time that an interest is presumed abandoned under subsection (1), any other property  
15 right accrued or accruing to the owner as a result of the interest, and not previously presumed abandoned,  
16 is also presumed abandoned.

17 (3) Property is unclaimed if, for the applicable period set forth in subsection (1), the apparent owner  
18 has not communicated in writing or by other means reflected in a contemporaneous record prepared by or  
19 on behalf of the holder with the holder concerning the property or the account in which the property is held  
20 and has not otherwise indicated an interest in the property. A communication with an owner by a person  
21 other than the holder or its representative who has not in writing identified the property to the owner is not  
22 an indication of interest in the property by the owner.

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

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

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

30 (c) the making of a deposit to or withdrawal from ~~a bank account~~ AN ACCOUNT IN A FINANCIAL

1 ORGANIZATION; and

2 (d) the payment of a premium with respect to a property interest in an insurance policy; however,  
3 the application of an automatic premium loan provision or other nonforfeiture provision contained in an  
4 insurance policy does not prevent a policy from maturing or terminating if the insured has died or the  
5 insured or the beneficiary of the policy has otherwise become entitled to the proceeds before the depletion  
6 of the cash surrender value of a policy by the application of those provisions.

7 (5) Property is payable or distributable for purposes of [sections 1 through 29] notwithstanding the  
8 owner's failure to make demand or present an instrument or document otherwise required to obtain  
9 payment.

10 (6) THE PRESUMPTION PROVIDED IN SUBSECTION (1) DOES NOT APPLY TO UNCLAIMED  
11 PATRONAGE REFUNDS OF A RURAL ELECTRIC OR TELEPHONE COOPERATIVE IF THE COOPERATIVE  
12 USES THE REFUNDS EXCLUSIVELY FOR EDUCATIONAL PURPOSES.

13

14 NEW SECTION. Section 4. Contents of safe deposit box or other safekeeping depository. Tangible  
15 property held in a safe deposit box or other safekeeping depository in this state in the ordinary course of  
16 the holder's business and proceeds resulting from the sale of the property permitted by other law are  
17 presumed abandoned if the property remains unclaimed by the owner for more than 5 years after expiration  
18 of the lease or rental period on the box or other depository.

19

20 NEW SECTION. Section 5. Rules for taking custody. Except as otherwise provided in [sections  
21 1 through 29] or by other statute of this state, property that is presumed abandoned, whether located in  
22 this or another state, is subject to the custody of this state if:

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

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

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

29 (a) the last-known address of the person entitled to the property is in this state; or

30 (b) the holder is domiciled in this state or is a government or governmental subdivision, agency, or

1 instrumentality of this state and has not previously paid or delivered the property to the state of the  
2 last-known address of the apparent owner or other person entitled to the property;

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

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

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

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

17  
18 **NEW SECTION. Section 6. Dormancy charge.** A holder may deduct from property presumed  
19 abandoned a charge imposed by reason of the owner's failure to claim the property within a specified time  
20 only if there is a valid and enforceable written contract between the holder and the owner under which the  
21 holder may impose the charge and the holder regularly imposes the charge, which is not regularly reversed  
22 or otherwise canceled. The amount of the deduction is limited to an amount that is not unconscionable.

23  
24 **NEW SECTION. Section 7. Burden of proof as to property evidenced by record of check or draft.**  
25 A record of the issuance of a check, draft, or similar instrument is prima facie evidence of an obligation.  
26 In claiming property from a holder that is also the issuer, the administrator's burden of proof as to the  
27 existence and amount of the property and its abandonment is satisfied by showing issuance of the  
28 instrument and passage of the requisite period of abandonment. Defenses of payment, satisfaction,  
29 discharge, and want of consideration are affirmative defenses that must be established by the holder.

30

1           **NEW SECTION. Section 8. Report of abandoned property.** (1) A holder of property presumed  
2 abandoned shall make a report to the administrator concerning the property.

3           (2) The report must be verified and must contain:

4           (a) a description of the property;

5           (b) except with respect to a traveler's check or money order, the name, if known, and last-known  
6 address, if any, and the social security number or taxpayer identification number, if readily ascertainable,  
7 of the apparent owner of property of the value of \$50 or more;

8           (c) an aggregated amount of items valued under \$50 each;

9           (d) in the case of an amount of \$50 or more held or owing under an annuity or a life or endowment  
10 insurance policy, the full name and last-known address of the annuitant or insured and of the beneficiary;

11           (e) in the case of property held in a safe deposit box or other safekeeping depository, an indication  
12 of the place where it is held and where it may be inspected by the administrator and any amounts owing  
13 to the holder;

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

16           (g) other information that the administrator by rule prescribes as necessary for the administration  
17 of [sections 1 through 29].

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

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

25           (5) The holder of property that is presumed abandoned shall send written notice to the apparent  
26 owner, not more than 120 days or less than 60 days before filing the report, stating that the holder is in  
27 possession of property subject to [sections 1 through 29] if:

28           (a) the holder has in its records an address for the apparent owner that the holder's records do not  
29 disclose to be inaccurate;

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

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

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

7 (7) The holder of property presumed abandoned shall file with the report an affidavit stating that  
8 the holder has complied with subsection (5).

9

10 **NEW SECTION. Section 9. Payment or delivery of abandoned property.** (1) Except for property  
11 held in a safe deposit box or other safekeeping depository, upon filing the report required by [section 8],  
12 the holder of property presumed abandoned shall pay, deliver, or cause to be paid or delivered to the  
13 administrator the property described in the report as unclaimed; however, if the property is an automatically  
14 renewable deposit and a penalty or forfeiture in the payment of interest would result, the time for  
15 compliance is extended until a penalty or forfeiture would no longer result. Tangible property held in a safe  
16 deposit box or other safekeeping depository may not be delivered to the administrator until 60 days after  
17 filing the report required by [section 8].

18 (2) If the property reported to the administrator is a security or security entitlement under Title 30,  
19 chapter 8, the administrator is an appropriate person to make an endorsement, instruction, or entitlement  
20 order on behalf of the apparent owner to invoke the duty of the issuer or its transfer agent or the securities  
21 intermediary to transfer or dispose of the security or the security entitlement in accordance with Title 30,  
22 chapter 8.

23 (3) If the holder of property reported to the administrator is the issuer of a certificated security, the  
24 administrator has the right to obtain a replacement certificate pursuant to 30-8-408, but an indemnity bond  
25 is not required.

26 (4) An issuer, the holder, and any transfer agent or other person acting pursuant to the instructions  
27 of and on behalf of the issuer or holder in accordance with this section is not liable to the apparent owner  
28 and must be indemnified against claims of any person in accordance with [section 11].

29

30 **NEW SECTION. Section 10. Notice and publication of lists of abandoned property.** (1) The

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

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

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

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

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

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

20

21 **NEW SECTION. Section 11. Custody by state -- recovery by holder -- defense of holder.** (1) In  
22 this section, payment or delivery is made in "good faith" if:

23 (a) payment or delivery was made in a reasonable attempt to comply with [sections 1 through 29];

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

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

29 (2) Upon payment or delivery of property to the administrator, the state assumes custody and  
30 responsibility for the safekeeping of the property. A holder that pays or delivers property to the



1 administrator in good faith is relieved of all liability arising thereafter with respect to the property.

2 (3) A holder that has paid money to the administrator pursuant to [sections 1 through 29] may  
3 subsequently make payment to a person reasonably appearing to the holder to be entitled to payment.  
4 Upon a filing by the holder of proof of payment and proof that the payee was entitled to the payment, the  
5 administrator shall promptly reimburse the holder for the payment without imposing a fee or other charge.  
6 If reimbursement is sought for a payment made on a negotiable instrument, including a traveler's check or  
7 money order, the holder must be reimbursed upon filing proof that the instrument was duly presented and  
8 that payment was made to a person that reasonably appeared to be entitled to payment. The holder must  
9 be reimbursed for payment made even if the payment was made to a person whose claim was barred under  
10 [section 19].

11 (4) A holder that has delivered property other than money to the administrator pursuant to [sections  
12 1 through 29] may reclaim the property if it is still in the possession of the administrator, without paying  
13 any fee or other charge, upon filing proof that the apparent owner has claimed the property from the holder.

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

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

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

26  
27 **NEW SECTION. Section 12. Public sale of abandoned property.** (1) Except as otherwise provided  
28 in this section, the administrator, within 3 years after the receipt of abandoned property, shall sell it to the  
29 highest bidder at public sale at a location in the state, which in the judgment of the administrator affords  
30 the most favorable market for the property. The administrator may decline the highest bid and reoffer the

1 property for sale if the administrator considers the bid to be insufficient. The administrator need not offer  
2 the property for sale if the administrator considers that the probable cost of sale will exceed the proceeds  
3 of the sale. A sale held under this section must be preceded by a single publication of notice, at least 3  
4 weeks before sale, in a newspaper of general circulation in the county in which the property is to be sold.

5 (2) Securities listed on an established stock exchange must be sold at prices prevailing on the  
6 exchange at the time of sale. Other securities may be sold over the counter at prices prevailing at the time  
7 of sale or by any reasonable method selected by the administrator. If securities are sold by the  
8 administrator before the expiration of 3 years after their delivery to the administrator, a person making a  
9 claim under [sections 1 through 29] before the end of the 3-year period is entitled to the proceeds of the  
10 sale of the securities or the market value of the securities at the time the claim is made, whichever is  
11 greater, plus dividends, interest, and other increments up to the time the claim is made, less any deduction  
12 for expenses of sale. A person making a claim under [sections 1 through 29] after the expiration of the  
13 3-year period is entitled to receive the securities delivered to the administrator by the holder, if they still  
14 remain in the custody of the administrator, or the net proceeds received from sale and is not entitled to  
15 receive any appreciation in the value of the property occurring after delivery to the administrator except  
16 in a case of intentional misconduct or malfeasance by the administrator.

17 (3) A purchaser of property at a sale conducted by the administrator pursuant to [sections 1  
18 through 29] takes the property free of all claims of the owner or previous holder and of all persons claiming  
19 through or under them. The administrator shall execute all documents necessary to complete the transfer  
20 of ownership.

21  
22 **NEW SECTION. Section 13. Deposit of funds.** (1) Except as otherwise provided by this section,  
23 the administrator shall promptly deposit in the general fund of this state all funds received under [sections  
24 1 through 29], including the proceeds from the sale of abandoned property under [section 12]. The  
25 administrator shall retain in a separate trust fund at least \$100,000 from which the administrator shall pay  
26 claims allowed. The administrator shall record the name and last-known address of each person appearing  
27 from the holders' reports to be entitled to the property and the name and last-known address of each  
28 insured person or annuitant and beneficiary and, with respect to each policy or annuity listed in the report  
29 of an insurance company, its number, the name of the company, and the amount due.

30 (2) Before making a deposit to the credit of the general fund, the administrator may deduct:

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

6

7 **NEW SECTION. Section 14. Claim of another state to recover property.** (1) After property has

8 been paid or delivered to the administrator under [sections 1 through 29], another state may recover the

9 property if:

10 (a) the property was paid or delivered to the custody of this state because the records of the holder

11 did not reflect a last-known location of the apparent owner within the borders of the other state and the

12 other state establishes that the apparent owner or other person entitled to the property was last known to

13 be located within the borders of that state, and under the laws of that state, the property has escheated

14 or become subject to a claim of abandonment by that state;

15 (b) the property was paid or delivered to the custody of this state because the laws of the other

16 state did not provide for the escheat or custodial taking of the property, and under the laws of that state

17 subsequently enacted, the property has escheated or become subject to a claim of abandonment by that

18 state;

19 (c) the records of the holder were erroneous in that they did not accurately identify the owner of

20 the property and the last-known location of the owner within the borders of another state, and under the

21 laws of that state, the property has escheated or become subject to a claim of abandonment by that state;

22 (d) the property was subjected to custody by this state under [section 5(6)], and under the laws

23 of the state of domicile of the holder, the property has escheated or become subject to a claim of

24 abandonment by that state; or

25 (e) the property is a sum payable on a traveler's check, money order, or similar instrument that was

26 purchased in the other state and delivered into the custody of this state under [section 5(7)], and under the

27 laws of the other state, the property has escheated or become subject to a claim of abandonment by that

28 state.

29 (2) A claim of another state to recover escheated or abandoned property must be presented in a

30 form prescribed by the administrator, who shall decide the claim within 90 days after it is presented. The

1 administrator shall allow the claim upon determining that the other state is entitled to the abandoned  
2 property under subsection (1).

3 (3) The administrator shall require another state, before recovering property under this section, to  
4 agree to indemnify this state and its officers and employees against any liability on a claim to the property.  
5

6

**NEW SECTION. Section 15. Filing claim with administrator -- handling of claims by administrator.**

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

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

14 (3) Within 30 days after a claim is allowed, the property or the net proceeds of a sale of the  
15 property must be delivered or paid by the administrator to the claimant, together with any dividend,  
16 interest, or other increment to which the claimant is entitled under [section 12].

17 (4) A holder that pays the owner for property that has been delivered to the state and that, if  
18 claimed from the administrator by the owner, would be subject to an increment under [section 12] may  
19 recover from the administrator the amount of the increment.  
20

21

**NEW SECTION. Section 16. Action to establish claim.** A person aggrieved by a decision of the  
22 administrator or whose claim has not been acted upon within 90 days after its filing may maintain an  
23 original action to establish the claim in the district court, naming the administrator as a defendant. If the  
24 aggrieved person establishes the claim in an action against the administrator, the court may award the  
25 claimant reasonable attorney fees.  
26

27

**NEW SECTION. Section 17. Election to take payment or delivery.** (1) The administrator may  
28 decline to receive property reported under [sections 1 through 29] that the administrator considers to have  
29 a value less than the expenses of notice and sale.

30

(2) A holder, with the written consent of the administrator and upon conditions and terms

1 prescribed by the administrator, may report and deliver property before the property is presumed  
2 abandoned. Property that is delivered must be held by the administrator and is not presumed abandoned  
3 until it otherwise would be presumed abandoned under [sections 1 through 29].  
4

5 **NEW SECTION. Section 18. Destruction or disposition of property having no substantial**  
6 **commercial value -- immunity from liability.** If the administrator determines after investigation that property  
7 delivered under [sections 1 through 29] has no substantial commercial value, the administrator may destroy  
8 or otherwise dispose of the property at any time. An action or proceeding may not be maintained against  
9 the state or any officer or against the holder for or on account of an act of the administrator under this  
10 section except for intentional misconduct or malfeasance.  
11

12 **NEW SECTION. Section 19. Periods of limitation.** (1) The expiration, before or after [the effective  
13 date of this act], of a period of limitation on the owner's right to receive or recover property, whether  
14 specified by contract, statute, or court order, does not preclude the property from being presumed  
15 abandoned or affect a duty to file a report or to pay or deliver or transfer property to the administrator as  
16 required by [sections 1 through 29].

17 (2) An action or proceeding may not be maintained by the administrator to enforce [sections 1  
18 through 29] in regard to the reporting, delivery, or payment of property more than 10 years after the holder  
19 specifically identified the property in a report filed with the administrator or gave express notice to the  
20 administrator of a dispute regarding the property. In the absence of such a report or other express notice  
21 the period of limitation is tolled. The period of limitation is also tolled by the filing of a report that is  
22 fraudulent.  
23

24 **NEW SECTION. Section 20. Requests for reports and examination of records.** (1) The  
25 administrator may require a person that has not filed a report or a person that the administrator believes  
26 has filed an inaccurate, incomplete, or false report to file a verified report in a form specified by the  
27 administrator. The report must state whether the person is holding property reportable under [sections 1  
28 through 29], describe property not previously reported or as to which the administrator has made inquiry,  
29 and specifically identify and state the amounts of property that may be in issue.

30 (2) The administrator, at reasonable times and upon reasonable notice, may examine the records

1 of any person to determine whether the person has complied with [sections 1 through 29]. The  
2 administrator may conduct the examination even if the person believes it is not in possession of any  
3 property that must be reported, paid, or delivered under [sections 1 through 29]. The administrator may  
4 contract with any other person to conduct the examination on behalf of the administrator.

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

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

12 (a) used by the administrator in the course of an action to collect unclaimed property or otherwise  
13 enforce [sections 1 through 29];

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

16 (c) produced pursuant to subpoena or court order; or

17 (d) disclosed to the abandoned property office of another state for that state's use in circumstances  
18 equivalent to those described in this subsection (4) if the other state is bound to keep the documents and  
19 papers confidential.

20 (5) If an examination of the records of a person results in the disclosure of property reportable  
21 under [sections 1 through 29], the administrator may assess the cost of the examination against the holder  
22 at the rate of \$200 a day for each examiner, or a greater amount that is reasonable and was incurred, but  
23 the assessment may not exceed the value of the property found to be reportable. The cost of an  
24 examination made pursuant to subsection (3) may be assessed only against the business association or  
25 financial organization.

26 (6) If, after [the effective date of this act], a holder does not maintain the records required by  
27 [section 21] and the records of the holder available for the periods subject to [sections 1 through 29] are  
28 insufficient to permit the preparation of a report, the administrator may require the holder to report and pay  
29 to the administrator the amount the administrator reasonably estimates, on the basis of any available  
30 records of the holder or by any other reasonable method of estimation, should have been but was not

1 reported.

2

3 **NEW SECTION. Section 21. Retention of records.** (1) Except as otherwise provided in subsection  
4 (2), a holder required to file a report under [section 8] shall maintain the records containing the information  
5 required to be included in the report for 10 years after the holder files the report unless a shorter period is  
6 provided by rule of the administrator.

7 (2) A business association or financial organization that sells, issues, or provides to others for sale  
8 or issue in this state traveler's checks, money orders, or similar instruments other than third-party bank  
9 checks, on which the business association or financial organization is directly liable, shall maintain a record  
10 of the instruments while they remain outstanding, indicating the state and date of issue, for 3 years after  
11 the holder files the report.

12

13 **NEW SECTION. Section 22. Enforcement.** The administrator may maintain an action in this or  
14 another state to enforce [sections 1 through 29]. The court may award reasonable attorney fees to the  
15 prevailing party.

16

17 **NEW SECTION. Section 23. Interstate agreements and cooperation -- joint and reciprocal actions**  
18 **with other states.** (1) The administrator may enter into an agreement with another state to exchange  
19 information relating to abandoned property or its possible existence. The agreement may permit the other  
20 state, or another person acting on behalf of a state, to examine records as authorized in [section 20]. The  
21 administrator by rule may require the reporting of information needed to enable compliance with an  
22 agreement made under this section and prescribe the form.

23 (2) The administrator may join with another state to seek enforcement of [sections 1 through 29]  
24 against any person that is or may be holding property reportable under [sections 1 through 29].

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

29 (4) The administrator may request that the attorney general of another state or another attorney  
30 commence an action in the other state on behalf of the administrator. With the approval of the attorney

1 general of this state, the administrator may retain any other attorney to commence an action in this state  
2 on behalf of the administrator. This state shall pay all expenses, including attorney fees, in maintaining an  
3 action under this subsection. With the administrator's approval, the expenses and attorney fees may be  
4 paid from money received under [sections 1 through 29]. The administrator may agree to pay expenses  
5 and attorney fees based in whole or in part on a percentage of the value of any property recovered in the  
6 action. Any expenses or attorney fees paid under this subsection may not be deducted from the amount  
7 that is subject to the claim by the owner under [sections 1 through 29].

8

9 **NEW SECTION. Section 24. Interest and penalties.** (1) A holder that fails to report, pay, or deliver  
10 property within the time prescribed by [sections 1 through 29] shall pay to the administrator interest at the  
11 annual rate of 12% on the property or value of the property from the date the property should have been  
12 reported, paid, or delivered.

13 (2) Except as otherwise provided in subsection (3), a holder that fails to report, pay, or deliver  
14 property within the time prescribed by [sections 1 through 29], or fails to perform other duties imposed by  
15 [sections 1 through 29], shall pay to the administrator, in addition to interest as provided in subsection (1),  
16 a civil penalty of ~~\$200~~ \$100 for each day the report, payment, or delivery is withheld, or the duty is not  
17 performed, up to a maximum of ~~\$5,000~~ \$2,500.

18 (3) A holder that willfully fails to report, pay, or deliver property within the time prescribed by  
19 [sections 1 through 29], or willfully fails to perform other duties imposed by [sections 1 through 29], shall  
20 pay to the administrator, in addition to interest as provided in subsection (1), a civil penalty of \$1,000 for  
21 each day the report, payment, or delivery is withheld, or the duty is not performed, up to a maximum of  
22 \$25,000, plus 25% of the value of any property that should have been but was not reported.

23 (4) A holder that makes a fraudulent report shall pay to the administrator, in addition to interest  
24 as provided in subsection (1), a civil penalty of \$1,000 for each day from the date a report under [sections  
25 1 through 29] was due, up to a maximum of \$25,000, plus 25% of the value of any property that should  
26 have been but was not reported.

27 (5) The administrator for good cause may waive, in whole or in part, interest under subsection (1)  
28 and penalties under subsections (2) and (3) and shall waive penalties if the holder acted in good faith and  
29 without negligence.

30



1           **NEW SECTION. Section 25. Agreement to locate property.** (1) An agreement by an owner, the  
2 primary purpose of which is to locate, deliver, recover, or assist in the recovery of property that is  
3 presumed abandoned, is void and unenforceable if it was entered into during the period commencing on  
4 the date the property was presumed abandoned and extending to a time that is 24 months after the date  
5 the property is paid or delivered to the administrator. This subsection does not apply to an owner's  
6 agreement with an attorney to file a claim as to identified property or contest the administrator's denial of  
7 a claim.

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

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

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

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

22  
23           **NEW SECTION. Section 26. Foreign transactions.** [Sections 1 through 29] do not apply to  
24 property held, due, and owing in a foreign country and arising out of a foreign transaction.

25  
26           **NEW SECTION. Section 27. Transitional provisions.** (1) An initial report filed under [sections 1  
27 through 29] for property that was not required to be reported before [the effective date of this act] but that  
28 is subject to [sections 1 through 29] must include all items of property that would have been presumed  
29 abandoned during the 10-year period next preceding [the effective date of this act] as if [sections 1 through  
30 29] had been in effect during that period.

1           (2) [Sections 1 through 29] do not relieve a holder of a duty that arose before [the effective date  
2 of this act] to report, pay, or deliver property. Except as otherwise provided in [section 19(2)], a holder  
3 that did not comply with the law in effect before [the effective date of this act] is subject to the applicable  
4 provisions for enforcement and penalties that then existed, which are continued in effect for the purpose  
5 of this section.

6

7           **NEW SECTION. Section 28. Rules.** The administrator may adopt, pursuant to Title 2, chapter 4,  
8 rules necessary to carry out [sections 1 through 29].

9

10           **NEW SECTION. Section 29. Uniformity of application and construction.** [Sections 1 through 29]  
11 must be applied and construed to effectuate its general purpose to make uniform the law with respect to  
12 the subject of [sections 1 through 29] among states enacting it.

13

14           **Section 30.** Section 17-8-303, MCA, is amended to read:

15           **"17-8-303. Warrants -- presentation and cancellation.** (1) State warrants must be presented for  
16 payment within the time limits specified as follows:

17           (a) Except as provided in subsection (1)(b), all warrants drawn by the state treasurer on the state  
18 treasury must be presented for payment within 6 months after the date of issue.

19           (b) Warrants issued for the department of public health and human services that are funded to any  
20 extent with federal money must be presented for payment within 180 days after the date of issue.

21           (2) If the payee or legal holder of any warrant fails to present it for payment within the time  
22 specified in subsection (1), the state treasurer shall record the warrant as canceled and the amount must  
23 be credited to a separate expendable trust fund account administered by the treasurer. If the payee or legal  
24 owner of a canceled warrant presents it for payment or presents a claim for payment within 4 years from  
25 the date of issue, the state treasurer may, upon proper showing by affidavit, issue a new warrant in lieu  
26 of the canceled warrant.

27           (3) Three years and 6 months after cancellation, the warrant must be classed as unclaimed  
28 property subject to the provisions of ~~Title 70, chapter 9, parts 1 through 3~~ [sections 1 through 29]. If the  
29 payee or legal owner of a canceled warrant presents it for payment or presents a claim for payment, the  
30 presentation must be to the department of revenue as provided in ~~70-9-310~~ [section 15]."

1           **Section 31.** Section 72-14-102, MCA, is amended to read:

2           **"72-14-102. When title to escheated property vests in state.** (1) Whenever the title to any  
3 property, either real or personal or mixed, fails for any reason, including want of heirs or next of kin, the  
4 title vests in the state of Montana immediately upon the death of the owner without an inquest or other  
5 similar proceeding and there is no presumption that the owner died leaving heirs or next of kin.

6           (2) This chapter does not apply to any rural electric or telephone cooperative organized under Title  
7 35, chapter 18, if the board of trustees of the cooperative has acted to retain patronage refunds that are  
8 made by the cooperative to a member or former member and that remain unclaimed for 5 years,~~as provided~~  
9 ~~in 70-9-203."~~

10  
11           **NEW SECTION. SECTION 32. COORDINATION INSTRUCTION.** IF HOUSE BILL NO. 284 IS  
12 PASSED AND APPROVED AMENDING 82-4-241, 82-4-311, AND 82-4-424 TO PROVIDE THAT  
13 UNCLAIMED FUNDS OR BONDS ARE TO BE DEPOSITED INTO AN ACCOUNT IN THE STATE SPECIAL  
14 REVENUE FUND, THEN [SECTION 3(1) OF THE FIRST READING COPY OF THIS ACT] IS AMENDED TO  
15 INSERT AFTER "EXCEPT AS PROVIDED IN" THE WORDS "82-4-241, 82-4-311, 82-4-424, AND".

16  
17           **NEW SECTION. Section 33. Severability.** If a part of [this act] is invalid, all valid parts that are  
18 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
19 applications, the part remains in effect in all valid applications that are severable from the invalid  
20 applications.

21  
22           **NEW SECTION. Section 34. Two-thirds vote.** Because [section 18] limits governmental liability,  
23 Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each  
24 house for passage.

25  
26           **NEW SECTION. Section 35. Repealer.** Sections 70-9-101, 70-9-102, 70-9-104, 70-9-105,  
27 70-9-106, 70-9-111, 70-9-121, 70-9-122, 70-9-201, 70-9-202, 70-9-203, 70-9-204, 70-9-205, 70-9-206,  
28 70-9-207, 70-9-208, 70-9-209, 70-9-210, 70-9-301, 70-9-302, 70-9-303, 70-9-304, 70-9-305, 70-9-306,  
29 70-9-307, 70-9-308, 70-9-309, 70-9-310, 70-9-311, 70-9-312, 70-9-314, 70-9-315, and 70-9-316, MCA,  
30 are repealed.

1 **NEW SECTION. Section 36. Effective date.** [This act] is effective July 1, 1997.

2 -END-