

# MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
118TH LEGISLATURE
FIRST SPECIAL SESSION

COMMITTEE AMENDMENT "A" to H.P. 1116, L.D. 1559, Bill, "An Act to Establish the Uniform Unclaimed Property Act"

Amend the bill in Part A in section 2 in that part designated "§1953." in subsection 1 by striking out all of paragraph I and inserting in its place the following:

'I. Property distributable by a business association or financial organization in a course of dissolution, one year after the property becomes distributable.'

Further amend the bill in Part A in section 2 in that part designated "§1953." by inserting after subsection 1 the following:

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

Further amend the bill in Part A in section 2 in that part designated "§1953." by renumbering subsections to read consecutively.

Further amend the bill in Part A in section 2 in that part designated "§1953." in the UNIFORM COMMENT in the first paragraph in the last line (page 11, line 10 in L.D.) by inserting after the following: "repetition." the following: 'One exception is that whereas the 1981 Act exempted from the presumption of abandonment certain property held by a bank if the bank held other property of the depositor not presumptively abandoned, the

COMMITTEE AMENDMENT

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2 present Act does not. It was the conclusion of the Commissioners  
4 that an owner's knowledge of some property does not necessarily  
6 imply knowledge of all of his or her property held by the bank,  
8 and that the owner is entitled to the protection of this Act as  
10 to all the owner's property.'

12 Further amend the bill in Part A in section 2 in that part  
14 designated "§1955." in the **UNIFORM COMMENT** in the 5th paragraph  
16 in the last 2 lines (page 17, lines 23 and 24 in L.D.) by  
18 striking out the following: "Also, this clarifies Maine's  
20 affirmative role in interstate cooperation and reciprocity."

22 Further amend the bill in Part A in section 2 in that part  
24 designated "§1955." by inserting after the **UNIFORM COMMENT** the  
26 following:

**'MAINE COMMENT**

28 Subsection 4 is amended to authorize the State to take  
30 custody temporarily of property that is presumed abandoned when  
32 the holder has failed to report or remit the property to the  
34 state of the last known address of the apparent owner. This  
36 clarifies Maine's affirmative role in interstate cooperation and  
38 reciprocity.'

40 Further amend the bill in Part A in section 2 by striking  
42 out all of that part designated "§1956." (page 18, lines 28 to 38  
44 in L.D.) and inserting in its place the following:

**'§1956. Dormancy charge**

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

Further amend the bill in Part A in section 2 in that part  
designated "§1956." by striking out all of the **UNIFORM COMMENT**  
(page 18, lines 41 to 47 in L.D.) and inserting in its place the  
following:

**'UNIFORM COMMENT**

This section is consistent with those cases which have ruled  
on the issue of service charges under the 1966 Act and the 1981  
Act. Section 5 [Me. cite section 1956] is a limitation on the

2 deduction of charges based solely on dormancy and is applicable  
3 to all intangible property presumed abandoned. This section,  
4 which applies to all unclaimed property, replaces similar  
5 limitations that were specifically focused on various types of  
6 property in the 1981 Act. The limitation of a service charge to  
7 an amount that is not unconscionable is new and is drawn from  
8 Article 2, Section 302, of the Uniform Commercial Code.'

9  
10 Further amend the bill in Part A in section 2 in that part  
11 designated "§1967." by inserting after the **UNIFORM COMMENT** the  
12 following:

13  
14 **'MAINE COMMENT**

15 Although the Uniform Act authorizes the court to award  
16 attorney's fees to an aggrieved person who establishes a claim  
17 against the administrator, the Maine enactment does not allow the  
18 award of attorney's fees against the State.'

19 Further amend the bill in Part A in section 2 in that part  
20 designated "§1971." in subsection 4 by striking out all of the  
21 first paragraph (page 36, lines 35 to 43 in L.D.) and inserting  
22 in its place the following:

23  
24 **'4. Confidentiality and use of documents and working  
25 papers.** Information derived from annual reports from holders or  
26 otherwise communicated to the administrator or the  
27 administrator's agents concerning abandoned property is  
28 confidential and not available for public inspection to the  
29 extent the administrator finds necessary to protect the interests  
30 of the holder, the owner, this State and the public welfare.  
31 Documents and working papers obtained or compiled by the  
32 administrator or the administrator's agents, employees or  
33 designated representatives in the course of conducting an  
34 examination are confidential and are not public records, but the  
35 documents and papers may be.'

36  
37 Further amend the bill in Part A in section 2 in that part  
38 designated "§1971." by inserting after the **UNIFORM COMMENT** the  
39 following:

40  
41 **'MAINE COMMENT**

42  
43 Information collected by the administrator or the  
44 administrator's agents through annual reports or otherwise is  
45 confidential and is not available for public inspection, although  
46 the administrator has the discretion to make the information  
47 available to the extent the interests of the holder, the owner,  
48 the State and the public are protected.'

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2 Further amend the bill in Part A in section 2 in that part  
designated "§1973." by inserting after the **UNIFORM COMMENT** the  
following:

4  
6 **'MAINE COMMENT'**

8 Although the Uniform Act authorizes the court to award  
attorney's fees to the prevailing party, the Maine enactment does  
not authorize the award of attorney's fees.'

10 Further amend the bill in Part A in section 2 in that part  
12 designated "§1976." by striking out all of subsection 2 and  
inserting in its place the following:

14  
16 '2. Agreement requirements. An agreement by an owner, the  
primary purpose of which is to locate, deliver, recover or assist  
in the recovery of property is enforceable only if the agreement  
is in writing, clearly sets forth the nature of the property and  
the services to be rendered, is signed by the apparent owner and  
states the value of the property before and after the fee or  
other compensation has been deducted.'

22 Further amend the bill in Part A in section 2 in that part  
24 designated "§1976." by inserting after subsection 5 the following:

26 '6. Limitation on fees or compensation. Fees or  
compensation under agreements made more than 24 months but less  
than 36 months after the date the property is paid or delivered  
to the administrator may not exceed 15%.'

30 Further amend the bill in Part A in section 2 in that part  
32 designated "§1976." by renumbering the subsections to read  
consecutively.

34 Further amend the bill in Part A in section 2 in that part  
36 designated "§1976." by striking out all of the **MAINE COMMENT**  
(page 45, lines 9 to 15 in L.D.) and inserting in its place the  
38 following:

40 **'MAINE COMMENT'**

42 The Maine enactment in subsection 6 includes a limitation on  
fees or compensation under agreements to locate property. This  
44 language is based on former section 1869, subsections 2 and 3,  
enacted in 1987. Agreements entered into after 24 months and  
46 before 36 months after the property was paid or delivered to the  
administrator may not provide for compensation of more than 15%.

48 Subsection 7 is based on former section 1869, subsection 6,  
50 enacted in 1995 to further protect owners from persons demanding

compensation that they were not owed. It provides that a person who makes a claim for compensation in violation of this section commits an unfair trade practice.'

Further amend the bill by inserting at the end before the summary the following:

**FISCAL NOTE**

**1998-99**

**REVENUES**

General Fund (\$5,000)

The imposition of a dormancy charge will reduce General Fund revenue collected by the Office of the Treasurer of State's Abandoned Property Division by \$5,000 in fiscal year 1998-99, increasing to approximately \$50,000 annually beginning in fiscal year 2000-01. This estimate assumes that the dormancy charge requirements will be applied prospectively beginning January 1, 1998. The shortening of the dormancy period for certain property may result in minor increases in General Fund revenue.

The bill may result in minor savings to the Office of the Treasurer of State from reduced mailing and advertising requirements.

The additional workload and administrative costs associated with the minimal number of new cases filed in the court system can be absorbed within the budgeted resources of the Judicial Department. The collection of additional fines may increase General Fund revenue by minor amounts.'

**SUMMARY**

This amendment makes several changes to the bill and amends the Uniform Comments printed in the bill to be consistent with the Uniform Comments adopted by the National Conference of Commissioners on Uniform State Laws. Where the Maine enactment deviates from the Uniform Act, Maine Comments are added to explain the change.

The specific amendments made in this amendment are as follows.

- 1. The Uniform Act language establishing the period in which property that is distributable when a business association

2 or financial institution is dissolved is presumed abandoned is  
reinstated. The bill made the one-year period conditional upon  
4 the provision of the records to the administrator before the  
dissolution.

6 2. The Uniform Act language pertaining to the presumption  
of abandonment of property rights accrued or accruing as a result  
8 of an interest that is presumed abandoned is reinstated.

10 3. The Uniform Act language pertaining to dormancy charges  
is reinstated.

12 4. This amendment clarifies the language making  
14 information collected by the administrator confidential and not  
subject to public inspection except when the administrator  
16 determines appropriate.

18 5. The Uniform Act language pertaining to agreements to  
locate property is reinstated with one exception. This amendment  
20 retains the 15% cap on fees for agreements entered into between  
24 months and 36 months after the property is paid or delivered  
22 to the administrator. This amendment renumbers the subsection on  
the provision making a claim for compensation in violation of the  
24 law an unfair trade practice, which is also in the current law.

26 The amendment also adds a fiscal note to the bill.