

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST REGULAR SESSION-1997

Legislative Document

No. 1559

H.P. 1116

House of Representatives, March 18, 1997

An Act to Establish the Uniform Unclaimed Property Act.

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative TAYLOR of Cumberland.
Cosponsored by Senator CAREY of Kennebec and
Representatives: MADORE of Augusta, MAYO of Bath, THOMPSON of Naples.

Be it enacted by the People of the State of Maine as follows:

UNIFORM COMMENT

PREFATORY NOTE

Statement of the History of the Act

This Act is preceded by the 1954 Uniform Disposition of Unclaimed Property Act (1954), which was revised in 1966, and the Uniform Unclaimed Property Act (1981). The 1954 Act was drafted during a period of conflicting legislation among the various States and several Supreme Court decisions in the late 1940's and early 1950's. In 1965, these conflicts were resolved by the decision in Texas v. New Jersey, 379 U.S. 674 (1965), which established a set of priorities for claimant States. These rules of priority were then adopted in the 1981 Act. They were re-examined and reaffirmed in Delaware v. New York, _____ U.S. _____, 113 S.Ct. 1550, 123 L.Ed.2d 211 (1993). Although the Delaware Court made no change in the rules of priority, it clarified the issue of how to determine the identity of the "debtor" -- the "holder" under this Act -- when payments by intermediaries are at stake. The "debtor" will be defined by reference to the state law that creates the property interest; an intermediary which holds property in its own name will generally be the debtor, and not the original obligor which has satisfied its obligation by transmitting payment to the intermediary. Delaware v. New York also makes it clear that no State may supersede the Court's priority rules by seeking to establish different priorities under state law. See Comments to Section 1 [Me. cite section 1952] and Section 4 [Me. cite section 1955] for further discussion of these rules.

This Act retains the custodial features of the 1954 Act and the 1981 Act. Thus, the State does not take title to unclaimed property, but takes custody only, and holds the property in perpetuity for the owner.

A State may enforce its claim of custody in the courts of other jurisdictions, see Commonwealth of Pennsylvania v. Kervick, 60 N.J. 289, 288 A.2d 289 (1972), or in its own courts. Even if a holder does not do business in the State, that State should be able to require the holder to report and deliver unclaimed property in the State, under the Texas v. New Jersey rationale, based on the common law rule of *mobilia sequuntur personam*: the right of succession to personal property is governed by the law of the owner's domicile. See also Connecticut Mutual Life Insurance Co. v. Moore, 333 U.S. 541, 546-47 (1947), where the Supreme Court described the State as a "conservator" when claiming property under a custodial unclaimed property law. The

2 Court in Standard Oil Co. v. New Jersey, 347 U.S. 428, 437
(1951), characterized the Moore case as involving a "conservation
4 statute." See generally Epstein, McThenia and Forslund,
"Unclaimed Property Law and Reporting Forms," sections 2.01,
3.02, 4.01 (Matt. Bend. 1984).

6
8 **PART A**

10 **Sec. A-1. 33 MRSA c. 37**, as amended is repealed.

12 **Sec. A-2. 33 MRSA c. 41** is enacted to read:

14 **CHAPTER 41**

16 **UNIFORM UNCLAIMED PROPERTY ACT**

18 **§1951. Short title**

20 This Act may be known and cited as the "Uniform Unclaimed
Property Act."

22 **§1952. Definitions**

24 As used in this Act, unless the context otherwise indicates,
the following terms have the following meanings.

26
28 **1. Administrator.** "Administrator" means the Treasurer of
State.

30
32 **2. Apparent owner.** "Apparent owner" means a person whose
name appears on the records of a holder as the person entitled to
property held, issued or owing by the holder.

34
36
38
40 **3. Business association.** "Business association" means a
corporation, joint stock company, investment company,
partnership, unincorporated association, joint venture, limited
liability company, business trust, trust company, land bank, safe
deposit company, safekeeping depository, financial organization,
insurance company, mutual fund, utility or other business entity
consisting of one or more persons, whether or not for profit.

42
44 **4. Domicile.** "Domicile" means the state of incorporation
of a corporation and the state of the principal place of business
of a holder other than a corporation.

46
48
50 **5. Financial organization.** "Financial organization" means
a savings and loan association, building and loan association,
savings bank, industrial bank, bank, banking organization or
credit union.

2 6. Holder. "Holder" means a person obligated to hold for
the account of, or deliver or pay to, the owner property that is
subject to this Act.

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

14 8. Mineral. "Mineral" means gas, oil, coal, other gaseous,
liquid and solid hydrocarbons, oil shale, cement material, sand
16 and gravel, road material, building stone, chemical raw material,
gemstone, fissionable and nonfissionable ores, colloidal and
18 other clay, steam and other geothermal resources or any other
substance defined as a mineral by the laws of this State.

20 9. Mineral proceeds. "Mineral proceeds" means amounts
22 payable for the extraction, production or sale of minerals, or,
upon the abandonment of those payments, all payments that become
24 payable after abandonment. "Mineral proceeds" include amounts
payable:

26 A. For the acquisition and retention of a mineral lease,
28 including bonuses, royalties, compensatory royalties,
shut-in royalties, minimum royalties and delay rentals;

30 B. For the extraction, production or sale of minerals,
32 including net revenue interests, royalties, overriding
royalties, extraction payments and production payments; and

34 C. Under an agreement or option, including a joint
36 operating agreement, unit agreement, pooling agreement and
farm-out agreement.

38 10. Money order. "Money order" includes an express money
40 order and a personal money order on which the remitter is the
purchaser. "Money order" does not include a bank money order or
42 any other instrument sold by a financial organization if the
seller has obtained the name and address of the payee.

44 11. Owner. "Owner" means a person who has a legal or
46 equitable interest in property subject to this Act or the
person's legal representative. "Owner" includes a depositor in
48 the case of a deposit, a beneficiary in the case of a trust,
other than a deposit in trust, and a creditor, claimant or payee
50 in the case of other property.

2 **12. Person.** "Person" means an individual, business
3 association, financial organization, estate, trust, government,
4 governmental subdivision, agency or instrumentality or any other
5 legal or commercial entity.

6
7 **13. Property.** "Property" means tangible property described
8 in section 1954 or a fixed and certain interest in intangible
9 property that is held, issued or owed in the course of a holder's
10 business or by a government, governmental subdivision, agency or
11 instrumentality and all income or increments therefrom.
12 "Property" includes property that is referred to as or evidenced
13 by:

14 A. Money, a check, draft, deposit, interest or dividend;

15 B. Credit balance, customer's overpayment, gift
16 certificate, security deposit, refund, credit memorandum,
17 unpaid wage, unused ticket, mineral proceeds or unidentified
18 remittance;

19 C. Stock or other evidence of ownership of an interest in a
20 business association or financial organization;

21 D. a bond, debenture, note or other evidence of
22 indebtedness;

23 E. Money deposited to redeem stocks, bonds, coupons or
24 other securities or to make distributions;

25 F. An amount due and payable under the terms of an annuity
26 or insurance policy, including policies providing life
27 insurance, property and casualty insurance, workers'
28 compensation insurance or health and disability insurance;
29 and

30 G. An amount distributable from a trust or custodial fund
31 established under a plan to provide health, welfare,
32 pension, vacation, severance, retirement, death, stock
33 purchase, profit sharing, employee savings, supplemental
34 unemployment insurance or similar benefits.

35
36 **14. Record.** "Record" means information that is inscribed
37 on a tangible medium or that is stored in an electronic or other
38 medium and is retrievable in perceivable form.

39
40 **15. State.** "State" means a state of the United States, the
41 District of Columbia, the Commonwealth of Puerto Rico or any
42 territory or insular possession subject to the jurisdiction of
43 the United States.

2 Delaware v. New York, the holder is the person indebted under the
4 applicable state law. Thus, if the original debtor, the
6 dividend-paying corporation, has satisfied its debt under its
8 share contract and under state law by transmitting payment to an
intermediary, which has undertaken to make the payment, the
intermediary becomes the debtor. The holder thus is "a person
obligated," i.e., a person who could be sued successfully by the
owner for refusing to make payment.

10 Although the 1981 Act defined "last known address" as "a
12 description of the location of the apparent owner sufficient for
the purpose of the delivery of mail," that Act indicated some
14 uncertainty over whether this was an accurate interpretation of
Texas v. New Jersey, since this definition was accompanied by a
16 Commissioners' Comment that appeared to be at odds with the
definition itself. Thus, the Comment stated that "Where a holder
18 originally had the address of the owner and it has been
subsequently destroyed, a computer code may be one way of
20 establishing an address within the state." "Last known address"
is no longer defined in the Act; instead, the sections dealing
22 with the jurisdictional rules (Sections 4 and 14) [Me. cite
sections 1955 and 1965] are rewritten so that they define,
individually, the rules of the States' priorities of taking.

24 The touchstone of those rules of priority is Texas v. New
26 Jersey, 379 U.S. 674, 85 S.Ct. 626, 13 L.Ed. 2d 596 (1965), in
which the Court established as a primary rule that unclaimed
28 property goes to "the State of the last known address of the
creditor, as shown by the debtor's books and records." *Id.* at
30 681-82, 85 S.Ct. at 631, 13 L.Ed. 2d at 601. Where the debtor
has "no record of any address at all," the state of corporate
32 domicile could take, *id.* at 682, 85 S.Ct. at 631, 13 L.Ed. 2d at
601, subject to proof by another State "that the last known
34 address of the creditor was within its borders." *Id.*, 13 L.Ed.
2d at 602. See also Pennsylvania v. New York, 407 U.S. 206, 32
36 L.Ed. 2d 693, 92 S.Ct. 2075 (1972).

38 In Delaware v. New York, the Court reaffirmed the rules of
Texas v. New Jersey: Delaware, as the State of corporate
40 domicile, would take the property initially where the holder's
records did not contain a last known address. That delivery of
42 the property to Delaware, however, would not cut off the rights
of another State to later claim the property from Delaware. For
44 instance:

46 On remand, if New York can establish by reference to
debtors' records that the creditors who were owed particular
48 securities distributions had last known addresses in New
York, New York's right to escheat under the primary rule
50 will supersede Delaware's right under the secondary rule.

2 As we noted in Texas, "the State of corporate domicile
3 should be allowed to . . . retain the property for itself
4 only until some other State comes forward with proof that it
5 has a superior right to escheat." 379 U.S., at 682.
6 Accord, Pennsylvania, 407 U.S., at 210-211. If New York or
7 any other claimant State fails to offer such proof on a
8 transaction-by-transaction basis or to provide some other
9 proper mechanism for ascertaining creditors' last known
10 addresses, the creditor's State will not prevail under the
11 primary rule, and the secondary rule will control.

12 Id. at ____, 113 S.Ct. at 1561-62, 123 L.Ed. 2d at 227-28.
13 (Deletions in original.)

14 In sum, Delaware v. New York requires that some "proper
15 mechanism" show that the owner had an address within the State
16 that asserts a primary claim. A computer code would appear to be
17 such a means of proof. On the other hand, showing that the
18 transaction took place in the State would not be sufficient proof
19 of an owner's address. Pennsylvania v. New York, 407 U.S. 206,
20 92 S.Ct. 2075, 32 L.Ed. 2d 693 (1972).

21 For purposes other than these jurisdictional rules -- i.e.,
22 the holder's duties of reporting and maintenance of records and
23 the States' duties of publication -- the "last known address"
24 will depend on the nature and extent of the holder's records.
25 Thus, the holder will include in its report the best address it
26 has, which may or may not include a street address, or, for
27 example, an "E mail" address.

28 The definition of "money order" in paragraph (10) [Me. cite
29 subsection 10] is designed to distinguish between personal money
30 orders issued by business entities which are not financial
31 organizations, which have a seven year holding period, and those
32 issued by financial organizations, which have a five year holding
33 period.

34 The Act provides exclusively for the disposition of
35 unclaimed intangible property and does not apply to tangible
36 property, with one exception: Section 3 [Me. cite section 1954]
37 applies to tangible property contained in safe deposit boxes.
38 Paragraph (13) [Me. cite subsection 13], defining property, is
39 not intended as a substantive addition to the coverage of the
40 1981 Act. It is, however, intended to be all-inclusive; the
41 descriptions of property interests that are set forth as examples
42 are not limiting, but are stated to help holders identify kinds
43 of property interests which otherwise may be overlooked. Thus,
44 "property" is not the check, note, certificate or other document
45 that evidences the property interest, but the underlying right or
46 obligation. See Blue Cross of Northern California v. Cory, 120
47

2 Cal. App. 3d 723, 174 Cal. Rptr. 901 (1981) ("right to be paid"
3 is the "'intangible personal property' (or 'choses in action') . .
4 . which is recognized in the UPL"). The requirement that the
5 right be "fixed and certain" excludes unliquidated claims from
6 the coverage of the Act, such as disputed tort claims.

7 Many States already have laws that define utilities.
8 Paragraph (16) [Me. cite subsection 16] gives a State the option
9 to adopt the Act's definition of a utility, or another definition
10 contained in existing law. The term is intended to be broadly
11 applied.

12 **§1953. Presumptions of abandonment**

13 **1. Presumptive abandonment periods.** Property is presumed
14 abandoned if it is unclaimed by the apparent owner during the
15 times, as follows for the particular property:

16 A. A traveler's check, 15 years after issuance;

17 B. A money order, 7 years after issuance;

18 C. Stock or other equity interest in a business association
19 or financial organization, including a security entitlement
20 under Title 11, Article 8, 5 years after the earlier of:

21 (1) The date of the most recent dividend, stock split
22 or other distribution unclaimed by the apparent owner;
23 or

24 (2) The date of the 2nd mailing of a statement of
25 account or other notification or communication that was
26 returned as undeliverable or after the holder
27 discontinued mailings, notifications or communications
28 to the apparent owner;

29 D. A debt of a business association or financial
30 organization, other than a bearer bond or an original issue
31 discount bond, 5 years after the date of the most recent
32 interest payment unclaimed by the apparent owner;

33 E. A demand, savings or time deposit, including a deposit
34 that is automatically renewable, 5 years after the earlier
35 of maturity or the date of the last indication by the owner
36 of interest in the property; but a deposit that is
37 automatically renewable is deemed matured for purposes of
38 this section upon its initial date of maturity, unless the
39 owner has consented to a renewal at or about the time of the
40 renewal and the consent is in writing or is evidenced by a
41 memorandum or other record on file with the holder;

2 F. Money or credits owed to a customer as a result of a
3 retail business transaction, 3 years after the obligation
4 accrued;

6 G. A gift certificate, 3 years after December 31st of the
7 year in which the certificate was sold; the amount abandoned
8 is the price paid by the purchaser for the gift certificate;

10 H. The amount owed by an insurer on a life or endowment
11 insurance policy or an annuity that has matured or
12 terminated, 3 years after the obligation to pay arose or, in
13 the case of a policy or annuity payable upon proof of death,
14 3 years after the insured has attained, or would have
15 attained if living, the limiting age under the mortality
16 table on which the reserve is based;

18 I. Property distributable by a business association or
19 financial organization in a course of dissolution, one year
20 after the property becomes distributable as long as the
21 records of a business association or financial organization
22 that is in a course of dissolution are provided to the
23 treasurer or the treasurer's agents on or before the date of
24 final dissolution;

26 J. Property received by a court as proceeds of a class
27 action, and not distributed pursuant to the judgment, one
28 year after the distribution date;

30 K. Property held by a court, government, governmental
31 subdivision, agency or instrumentality, one year after the
32 property becomes distributable;

34 L. Wages or other compensation for personal services, one
35 year after the compensation becomes payable;

36 M. A deposit or refund owed to a subscriber by a utility,
37 one year after the deposit or refund becomes payable;

38 N. Property in an individual retirement account, defined
39 benefit plan or other account or plan that is qualified for
40 tax deferral under the income tax laws of the United States,
41 3 years after the earliest of the date of the distribution
42 or attempted distribution of the property, the date of the
43 required distribution as stated in the plan or trust
44 agreement governing the plan or the date, if determinable by
45 the holder, specified in the income tax laws of the United
46 States by which distribution of the property must begin in
47 order to avoid a tax penalty; and
48

50

2 Section 2 [Me. cite section 1953] continues the general
4 proposition that all intangible property is within the coverage
6 of this Act. It provides in a single section for all the various
8 periods of abandonment that were separately stated in several
10 sections of the 1981 Act. With limited exceptions this
reorganization does not alter the bases for presuming abandonment
of the property from that established in the 1981 Act, but merely
restates those standards in a unified section, more easily
applied, with less repetition.

12 This section treats underlying bond obligations the same as
14 underlying stock, except as to bearer bonds and original issue
discount bonds. Thus, registered interest paying bonds will be
16 presumed abandoned five years after the date of an unrepresented
instrument issued to pay interest. In the case of bearer bonds,
18 however, although interest held on deposit for more than five
years that has not been paid out as a result of failure to
20 present a coupon for payment will be considered abandoned, the
underlying principal represented by the bearer certificate,
22 provided such certificate is not held by an agent due to a mail
return or other similar circumstance, will not be considered
24 abandoned even if the coupons that were attached to that
certificate at the time of original issuance have not been
26 presented for payment. Where interest is accrued but not paid
until the return of principal at the time the obligation matures
28 or is called, and there is no making of periodic interest
payments, there is not the same motivation for bond holders to
30 communicate with the trustee or paying agent as in the case of
interest paying bonds, and a lack of communication should not
32 give rise to a presumption of abandonment. Therefore, bearer
bonds and original issue discount bonds are excluded from
34 paragraph (3) [Me. cite subsection 1, paragraph C] of this
section, and will fall instead under paragraph (14) [Me. cite
36 subsection 1, paragraph N]. Those bonds will be presumed
abandoned five years after the issuer's obligation to pay arises,
i.e., five years after call or maturity.

38 The 1981 Act shortened the general dormancy period from 7
40 years to 5 years. Certain exceptions continue to be
appropriate. For instance, statistical evidence indicates that a
42 period of 15 years continues to be appropriate in the case of
travelers checks, and seven years in the case of personal money
44 orders and money orders issued by express companies. Also, in
certain instances shorter periods are appropriate. For instance,
46 the likelihood of finding the owner of a payroll check is
materially decreased after one year. Hence, there is a one year
48 dormancy period for unclaimed wages. Coverage of consumer
credits is specifically provided, which is a clarification of the
50 1981 Act. The term covers credits owed on consumer transactions

2 such as returns of merchandise, cancellation of layaways, and
various kinds of deposits. The existence and amounts of such
4 credits will of course be dependent on the terms of the contract
between the holder and the consumer.

6 The dormancy period for unpaid distributions from retirement
accounts and plans has been modified to shorten the period of
8 presumed abandonment from five to three years, since an earlier
date of presumed abandonment should be of assistance in assuring
10 that the assets of the plan are ultimately claimed by their owner.

12 Because the unclaimed property laws are matters of
traditional state powers, are laws of general application, and
14 have only a tenuous, remote and peripheral impact on ERISA plans,
it has been held that they are not pre-empted by federal law.
16 Aetna Life Ins. Co. v. Borges, 869 F.2d 142 (2nd Cir. 1989);
Attorney General v. Blue Cross and Blue Shield of Michigan, 168
18 Mich. App. 372, 424 N.W.2d 54 (Ct. App. 1988), appeal denied, No.
83788 (March 31, 1989). These cases declined to follow two
20 advisory opinions to the contrary, issued by the Department of
Labor (Opinions 78-32A, December 22, 1978, and 79-30A, May 14,
22 1979). Thereafter, notwithstanding the Second Circuit and
Michigan decisions, the Department continued to adhere to its
24 position that unclaimed property laws "relate to" ERISA, and are
thus pre-empted, in a letter opinion issued March 3, 1995. 22
26 BNA Pension & Benefits Reporter 743 (1995). That opinion relied
on Ingersoll-Rand Co. v. McClendon, 498 U.S. 133 (1990), as
28 holding that pre-emption extended to state laws that had only an
indirect economic affect on ERISA plans. Subsequently, the
30 Supreme Court in New York State Conference of Blue Cross & Blue
Shield Plans v. Travelers Ins. Co., ____ U.S. ____ (63 Law Week
32 4372, April 26, 1995), expounded a much narrower meaning of
Ingersoll-Rand. The case held that ERISA does not pre-empt the
34 imposition of statutorily-mandated surcharges on bills of
hospital patients whose commercial insurance coverage is
36 purchased by an ERISA plan, or on HMOs insofar as their
membership fees are paid by an ERISA plan. The Court emphasized
38 that even though such state statutes would affect choices made by
plan administrators, the ERISA pre-emption was not so broad as to
40 nullify those state laws. The Court emphasized the basic
presumption that "Congress does not intend to supplant state law"
42 (63 LW at 4374). The Court said that Ingersoll-Rand does not
hold that "merely economic influence" on administrative decisions
44 will trigger pre-emption. (63 LW at 4376.) Ingersoll-Rand was
explained to hold only that pre-emption would be found where
46 state law produced "such acute, albeit indirect, economic
effects" as to force a certain substantive scheme of coverage or
48 effectively restrict insurance choices. (Id. at 4375.) Thus,
"the basic thrust of the [ERISA] pre-emption clause, then, was to
50 avoid a multiplicity of regulation in order to permit the

2 nationally uniform administration of employee benefit plans."
(Id. at 4375.) See also Mackey v. Lanier Collection Agency &
4 Service, Inc., 486 U.S. 825 (1988), holding that ERISA does not
reach plan participants' benefits. A state claim under its
6 unclaimed property law would appear to be no more intrusive to
the federal regulatory scheme than its garnishment laws.
8 Accordingly, with one exception, the final distribution of assets
of a terminated plan, which is governed by 29 U.S.C. sec. 1350,
10 this Act presumes that it is not pre-empted by ERISA.

12 Intangible property held by a utility other than
subscribers' deposits and refunds are subject to the five year
14 rule of subsection (a)(14) [Me. cite subsection 1, paragraph N].

16 Subsection (e) [Me. cite subsection 5] is intended to make
clear that property is reportable notwithstanding that the owner,
18 who has lost or otherwise forgotten his or her entitlement to
property, fails to present to the holder evidence of ownership or
to make a demand for payment. See Connecticut Mutual Life
20 Insurance Co. v. Moore, 333 U.S. 541 (1948), in which the Court
stated: "When the state undertakes the protection of abandoned
22 claims, it would be beyond a reasonable requirement to compel the
state to comply with conditions that may be quite proper as
24 between the contracting parties." See also Provident Institution
26 for Savings v. Malone, 221 U.S. 660 (1911), involving savings
account; Insurance Co. of North America v. Knight, 8 Ill. App. 3d
28 871, 291 N.E.2d 40 (1972), involving negotiable instruments, and
People v. Marshall Field & Co., 83 Ill. App. 3d 811, 404 N.E.2d
30 368 (1980), involving gift certificates. With respect to gift
certificates, see also Section 19(a) [Me. cite section 1970,
32 subsection 1], which invalidates private periods of limitation.
Thus, gift certificates will be reportable notwithstanding
34 language on the certificate purporting to avoid escheat by
creating an expiration date prior to the time of presumed
36 abandonment. Section (c) [Me. cite subsection 3] also obviates
the result reached in Oregon Racing Comm. v. Multonamah Kennel
38 Club, 242 Or. 572, 411 P.2d 63 (1963), involving unrepresented
winning parimutuel tickets.

40 Since the holder is indemnified against any loss resulting
42 from the delivery of the property to the administrator, no
possible harm can result in requiring that holders turn over the
44 property, even though the owner has not presented proof of death
or surrendered the insurance policy, savings account passbook,
46 the gift certificate, winning racing ticket, or other memorandum
of ownership.

48 **§1954. Contents of safe deposit box or other safekeeping**
50 **depository**

2 domicile and residence the court established the priority on the
3 basis of information contained in the holder's records. Where
4 the holder's records do not show that the owner had an address
5 within the State, the second priority claimant, the State of
6 domicile of the holder, is entitled to claim the property.
7 Another State can later assume custody from the State of the
8 holder's domicile by showing that the last known address of the
9 owner was within its borders. Likewise, if the State of last
10 known address does not have an unclaimed property law which
11 applies to the property, the State of the holder's domicile can
12 take the property, again subject to the right of the State of
13 last known address to recover the property if and when it enacts
14 an unclaimed property or escheat law.

15 Paragraph (1) [Me. cite subsection 1] restates the factual
16 situation in Texas v. New Jersey. As the court there said ". . .
17 the address on the records of a debtor, which in most cases will
18 be the only one available, should be the only relevant last known
19 address."

20 Paragraph (2) [Me. cite subsection 2] covers the situation
21 in which, on the basis of the holder's records, the identity of
22 the person entitled to the property is unknown, and the holder
23 therefore reports to the State of its domicile, but it is later
24 established by another State that the property was owned by or
25 payable to a person whose last known address was within the
26 claiming State. This is a rational extension of Texas v. New
27 Jersey. Reunification of the owner with his or her property in
28 this circumstance is impossible, and insofar as that issue is
29 concerned, it makes no difference whether the property is
30 delivered to the State of the holder's domicile or the State of
31 the owner's last known address. However, following the equitable
32 concept of distributing unclaimed property among creditor States
33 articulated by the Supreme Court in Texas v. New Jersey, and
34 reaffirmed in Delaware v. New York, the subsection directs that
35 where there is no record of a name but there is a record that the
36 last known address was within the State, that State where the
37 owner had an address can claim the property.

38 Paragraph (3) [Me. cite subsection 3] is the secondary rule
39 of Texas v. New Jersey. The Supreme Court ruled that when
40 property is owed to persons for whom there are no addresses, the
41 property will be subject to escheat by the State of the holder's
42 domicile, provided that another State may later claim upon proof
43 that the last known address of the person entitled to the
44 property was within its borders.

45 Paragraph (4) [Me. cite subsection 4] provides that if the
46 law of the State of the owner's last known address does not
47 provide for escheat or taking custody of the unclaimed property
48

2 or if that State's escheat or unclaimed property law is not
3 applicable to the property in question, the property is subject
4 to claim by the State in which the holder is domiciled. In that
5 instance, the State of the owner's last known address may
6 thereafter claim the property if it enacts an applicable
7 unclaimed property law. The holder State will act as custodian
8 and pay or deliver the property to the owner or the State which
9 has priority under Texas v. New Jersey upon request. As held in
10 State v. Liquidating Trustees of Republic Petroleum Co., 510
11 S.W.2d 311 (Texas 1974), Texas v. New Jersey dealt only with
12 conflicting claims of two or more States, and provides no basis
13 for a holder to object to the claim of its State of domicile by
14 asserting that another State has a superior claim, if the holder
15 has not already reported the property to that other State.
16 Therefore a State which claims custody on the ground that it is
17 the holder's domicile is not required to prove that the laws of
18 some or all of the other 49 States do not "provide" for the
19 taking of the property; if the holder has not reported and paid
20 the property to another State, as between the domiciliary State
21 and the holder, it will be presumed that such other State's laws
22 do not apply. If another State does claim the property, it may
23 of course proceed under Section 14 [Me. cite section 1966].
24 Also, this clarifies Maine's affirmative role in interstate
cooperation and reciprocity.

26 Paragraph (5) [Me. cite subsection 5] provides that when the
27 last known address of the apparent owner is in a foreign nation
28 the State in which the holder is domiciled may claim the
29 property. This issue was not dealt with by the Supreme Court in
30 Texas v. New Jersey, but is a rational extension of that ruling.

32 Paragraph (6) [Me. cite subsection 6] provides for a
33 situation in which neither of the priority claims discussed in
34 Texas v. New Jersey can be made, but the State has a genuine and
35 important contact with the property. An example of the type of
36 claim which might be made under paragraph (6) [Me. cite
37 subsection 6] arose in O'Connor v. Sperry & Hutchinson Co., 412
38 A.2d 539 (Pa.1980). There Pennsylvania sought to escheat
39 unredeemed trading stamps sold by a corporation domiciled in New
40 Jersey to retailers located in Pennsylvania. Pennsylvania took
41 the position that Texas v. New Jersey did not create a
42 jurisdictional bar to escheat by other States when the States
43 granted priority were unable to take. There was no first
44 priority claim since there were no addresses of the trading stamp
45 purchasers. The second priority claimant, the State of corporate
46 domicile (New Jersey), was not permitted under its law to escheat
47 trading stamps (see New Jersey v. Sperry & Hutchinson Co., 56
48 N.J.Super. 589, 153 A.2d 691 (1959), affirmed per curiam, 31 N.J.
49 385, 157 A.2d 505 (1960)) and hence Pennsylvania urged that in
50 order to prohibit a corporate windfall it should be allowed to

2 claim this property. The Pennsylvania Supreme Court affirmed a
lower court decision which overruled Sperry & Hutchinson's motion
to dismiss but did not reach the Texas v. New Jersey issue.

4
6 Gift certificates, unused airline tickets, and other
property for which there is no last known address may be claimed
8 by the State where the purchase was made if the State of
corporate domicile does not have an abandoned property law
10 covering the property in question under paragraph (6) [Me. cite
subsection 6].

12 Travelers checks and money orders are covered under
paragraph (7) [Me. cite subsection 7], which states the rule
14 adopted by Congress in 12 U.S.C. sections 2501 et seq. The
congressional action was in response to the Supreme Court
16 decision in Pennsylvania v. New York, 407 U.S. 206 (1972), which
held that the State of corporate domicile was entitled to escheat
18 money orders when there was no last known address of the
purchaser although the property had been purchased in other
20 States. Paragraph (7) [Me. cite subsection 7], pursuant to the
congressional mandate, substitutes as the test for asserting a
22 claim to travelers checks and money orders the place of purchase
rather than the State of incorporation of the issuer.

24
26 Wholly foreign transactions are excluded from the coverage
of the Act. See Section 26 [Me. cite section 1977].

28 **§1956. Dormancy charge**

30 A holder may deduct from property presumed abandoned at a
32 financial institution a charge imposed by reason of the owner's
34 failure to claim the property within a specified time only if
there is a valid and enforceable written contract between the
holder and the owner under which the holder may impose the charge
and the holder regularly imposes the charge, which is not
36 regularly reversed or otherwise canceled. The charge must be
consistent with regulations of the Bureau of Banking in effect at
38 the time the charge was levied.

40 **UNIFORM COMMENT**

42
44 This section is consistent with those cases which have ruled
on the issue of service charges under the 1966 Act and the 1981
46 Act. Section 5 [Me. cite section 1956] is a limitation on the
deduction of charges based solely on dormancy. The limitation of
48 a service charge is consistent with Bureau of Banking regulations.

50 **§1957. Burden of proof as to property evidenced by record of
check or draft**

2 A record of the issuance of a check, draft or similar
4 instrument is prima facie evidence of an obligation. In claiming
6 property from a holder who is also the issuer, the
8 administrator's burden of proof as to the existence and amount of
10 the property and its abandonment is satisfied by showing issuance
12 of the instrument and passage of the requisite period of
14 abandonment. Defenses of payment, satisfaction, discharge and
16 want of consideration are affirmative defenses that must be
18 established by the holder.

UNIFORM COMMENT

16 This provision clarifies the burden of proof in situations
18 where the obligation evidenced by a negotiable instrument is
20 disputed by the holder, and is consistent with cases which have
22 ruled on the matter. See Insurance Co. of North America v.
24 Knight, 8 Ill.App.3d 871, 291 N.E.2d 40 (1972), app. dismissed
26 414 U.S. 804, 38 L.Ed.2d 40, 94 S.Ct. 165 (1973), Blue Cross of
28 Northern Cal. v. Cory, 120 Cal. App.3d 723, 174 Cal. Rptr. 901
30 (1981), and Revenue Cabinet v. Blue Cross & Blue Shield, 702
32 S.W.2d 433, 435 (Ky. 1986). See also Riggs Nat'l Bank v.
34 District of Columbia, 581 A.2d 1229 (D.C. App. 1990). It is also
36 consistent with the cases holding that when claiming abandoned
38 property the State steps into the shoes of the owner (see
40 Epstein, McThenia and Forslund, "Unclaimed Property and Reporting
42 Forms," sec. 3.02 (Matt. Bend. 1984), and Article 3-308 of the
44 Uniform Commercial Code. Under U.C.C. Section 3-308(2), "When
signatures are admitted or established, production of the
instrument entitles a holder to recover on it unless the
defendant establishes a defense." The reason for requiring a
plaintiff to produce the instrument is "to show that the
plaintiff is in fact the holder, and in order to protect the
defendant from double liability." 6 Anderson, Uniform Commercial
Code, sec. 3-307:4, p. 158 (3rd ed., 1993). The administrator,
by proving issuance of the instrument, succeeds to all rights of
the payee. Because the issuer is relieved of all liability on
the instrument by paying the obligation to the State as unclaimed
property, and is indemnified by the State, there is no chance
that the issuer would be held liable twice, and therefore the
administrator is not required to produce the instrument in order
to possess the same rights as a holder in due course.

§1958. Report of abandoned property

46 1. Holder shall report. A holder of property presumed
48 abandoned shall make a report to the administrator concerning the
50 property.

2 2. Report contents. The report must be verified and must
3 contain:

4 A. A description of the property;

6 B. Except with respect to a traveler's check or money
7 order, the name, if known, and last known address, if any,
8 and the social security number or taxpayer identification
9 number, if readily ascertainable, of the apparent owner of
10 property of the value of \$50 or more;

12 C. An aggregated amount of items valued under \$50 each;

14 D. In the case of an amount of \$50 or more held or owing
15 under an annuity or a life or endowment insurance policy,
16 the full name and last known address of the annuitant or
17 insured and of the beneficiary;

18 E. In the case of property held in a safe deposit box or
19 other safekeeping depository, an indication of the place
20 where it is held and where it may be inspected by the
21 administrator and any amounts owing to the holder;

24 F. The date, if any, on which the property became payable,
25 demandable or returnable and the date of the last
26 transaction with the apparent owner with respect to the
27 property; and

28 G. Other information that the administrator by rule
29 prescribes as necessary for the administration of this Act.

32 3. Former names. If a holder of property presumed
33 abandoned is a successor to another person who previously held
34 the property for the apparent owner or the holder has changed its
35 name while holding the property, the holder shall file with the
36 report its former names, if any, and the known names and
37 addresses of all previous holders of the property.

38 4. Filing period. The report must be filed before November
39 1st of each year and cover the 12 months next preceding July 1st
40 of that year, but a report with respect to a life insurance
41 company must be filed before May 1st of each year for the
42 calendar year next preceding.

44 5. Written notice to apparent owner. The holder of
45 property presumed abandoned shall send written notice to the
46 apparent owner, not more than 120 days or less than 60 days
47 before filing the report, stating that the holder is in
48 possession of property subject to this Act, if:

50

2 1. Payment or delivery. Except for property held in a safe
4 deposit box or other safekeeping depository, upon filing the
6 report required by section 1958, the holder of property presumed
8 abandoned shall pay, deliver or cause to be paid or delivered to
10 the administrator the property described in the report as
12 unclaimed, but if the property is an automatically renewable
deposit and a penalty or forfeiture in the payment of interest
would result, the time for compliance is extended until a penalty
or forfeiture would no longer result. Tangible property held in
a safe deposit box or other safekeeping depository may not be
delivered to the administrator until 120 days after filing the
report required by section 1958.

14 2. Security or security entitlement. If the property
16 reported to the administrator is a security or security
18 entitlement under Title 11, Article 8, the administrator is an
20 appropriate person to make an indorsement, instruction or
22 entitlement order on behalf of the apparent owner to invoke the
duty of the issuer or its transfer agent or the securities
intermediary to transfer or dispose of the security or the
security entitlement in accordance with Title 11, Article 8.

24 3. Certificated security. If the holder of property
26 reported to the administrator is the issuer of a certificated
28 security, the administrator has the right to obtain a replacement
certificate pursuant to Title 11, section 8-405, but an indemnity
bond is not required.

30 4. Liability and indemnification. An issuer, the holder
32 and any transfer agent or other person acting pursuant to the
34 instructions of and on behalf of the issuer or holder in
accordance with this section is not liable to the apparent owner
and must be indemnified against claims of any person in
accordance with section 1961.

36
38 **UNIFORM COMMENT**

40 Subsections (b) and (c) [Me. cite subsections 2 and 3]
42 particularize the general duty stated in subsection (a) [Me. cite
44 subsection 1] with respect to investment securities, including
46 securities positions held directly and securities positions held
48 through accounts with brokers or other intermediaries (referred
50 to as security entitlements" under revised Article 8 of the
Uniform Commercial Code). UCC Article 8 provides that the issuer
of a security, or intermediary with respect to a security
entitlement, has a duty to act at the direction of the
"appropriate person." Subsection (b) [Me. cite subsection 2]
provides that with respect to securities and security
entitlements that have been reported as abandoned property

2 pursuant to Section 7 [Me. cite section 1958], the administrator
is an "appropriate person." Accordingly, the administrator has
4 the same rights under UCC Article 8 as other persons who succeed
by operation of law to securities or security entitlements, such
6 as the executor or administrator of a decedent. Subsection (c)
[Me. cite subsection 3] deals with situations where the holder
8 reporting abandoned property is itself the issuer of a
certificated security, and hence does not have the original
10 certificate to turn over to the administrator. Accordingly,
subsection (b) [Me. cite subsection 2] provides that the
12 administrator can invoke the provisions of UCC Article 8
governing replacement certificates, without an indemnity bond.

14 Subsection (d) [Me. cite subsection 4] indemnifies a person
causing a replacement certificate to be issued to the
16 administrator from any claims that the person acted wrongfully in
so doing. This indemnification is desirable in that it
18 eliminates any duty of the transferring authority to make an
independent investigation into whether the listed owner of the
20 security is in fact missing, or into other factors which might
affect the administrator's right to obtain custody of the
22 property.

24 **§1960. Notice and publication of lists of abandoned property**

26 **1. Publication.** The administrator shall publish a notice
no later than November 30th of the year next following the year
28 in which abandoned property has been paid or delivered to the
administrator. The notice must be published in a newspaper of
30 general circulation in this State. The advertisement must be in
a form that, in the judgment of the administrator, is likely to
32 attract the attention of the apparent owner of the unclaimed
property. The form must contain:

34 A. The name of each person appearing to be the owner of the
36 property, as set forth in the report filed by the holder;

38 B. The last known address or location of each person
appearing to be the owner of the property, if an address or
40 location is set forth in the report filed by the holder;

42 C. A statement explaining that property of the owner is
presumed to be abandoned and has been taken into the
44 protective custody of the administrator; and

46 D. A statement that information about the property and its
return to the owner is available to a person having a legal
48 or beneficial interest in the property, upon request to the
administrator.

50

2 basis for believing, based on the facts then known, that the
3 property was presumed abandoned; and

4 C. There is no showing that the records under which the
5 payment or delivery was made did not meet reasonable
6 commercial standards of practice.

8 2. Custody of property. Upon payment or delivery of
9 property to the administrator, the State assumes custody and
10 responsibility for the safekeeping of the property. A holder who
11 pays or delivers property to the administrator in good faith is
12 relieved of all liability arising thereafter with respect to the
13 property.

14 3. Reimbursement. A holder who has paid money to the
15 administrator pursuant to this Act may subsequently make payment
16 to a person reasonably appearing to the holder to be entitled to
17 payment. Upon a filing by the holder of proof of payment and
18 proof that the payee was entitled to the payment, the
19 administrator shall promptly reimburse the holder for the payment
20 without imposing a fee or other charge. If reimbursement is
21 sought for a payment made on a negotiable instrument, including a
22 traveler's check or money order, the holder must be reimbursed
23 upon filing proof that the instrument was duly presented and that
24 payment was made to a person who reasonably appeared to be
25 entitled to payment. The holder must be reimbursed for payment
26 made even if the payment was made to a person whose claim was
27 barred under section 1970, subsection 1.

30 4. Reclaim of property. A holder who has delivered
31 property other than money to the administrator pursuant to this
32 Act may reclaim the property if it is still in the possession of
33 the administrator without paying any fee or other charge upon
34 filing proof that the apparent owner has claimed the property
35 from the holder.

36 5. Proof. The administrator may accept a holder's
37 affidavit as sufficient proof of the holder's right to recover
38 money and property under this section.

40 6. Liability on competing claims. If a holder pays or
41 delivers property to the administrator in good faith and
42 thereafter another person claims the property from the holder or
43 another State claims the money or property under its laws
44 relating to escheat or abandoned or unclaimed property, the
45 administrator, upon written notice of the claim, shall defend the
46 holder against the claim and indemnify the holder against any
47 liability on the claim resulting from payment or delivery of the
48 property to the administrator.

50

2 7. Reimbursement of costs. Property removed from a safe
3 deposit box or other safekeeping depository is received by the
4 administrator subject to the holder's right to be reimbursed for
5 the cost of the opening and to any valid lien or contract
6 providing for the holder to be reimbursed for unpaid rent or
7 storage charges. The administrator shall reimburse the holder
8 out of the proceeds remaining after deducting the expense
9 incurred by the administrator in selling the property.

10
11 **UNIFORM COMMENT**

12
13 When property is turned over to the State, the holder is
14 relieved of all liability for any turnover made in good faith.
15 Subsection (a) [Me. cite subsection 1] sets forth a definition of
16 good faith which inter alia allows the holder to rely on its
17 records if they meet reasonable commercial standards of practice
18 in the industry.

19 The section also permits the holder to obtain reimbursement
20 for claims it elected to pay to owners who appeared after the
21 property was turned over. If a State in enacting Section 12(b)
22 [Me. cite section 1963, subsection 2] provides for the payment of
23 interest on property delivered to the administrator, then the
24 holder will add such interest when paying the claim.

25 If after turnover, any person or another State makes a claim
26 on the holder, the State, upon request, is required to defend the
27 holder and provide indemnification against any liability.

28
29 **§1962. Crediting of dividends, interest and increments to**
30 **owner's account**

31
32 If property other than money is delivered to the
33 administrator under this Act, the owner is entitled to receive
34 from the administrator any income or gain realized or accruing on
35 the property at or before liquidation or conversion of the
36 property into money. If the property was an interest bearing
37 demand, savings or time deposit, including a deposit that is
38 automatically renewable, the administrator shall pay interest at
39 the current rate or any lesser rate the property earned while in
40 the possession of the holder. Interest begins to accrue when the
41 property is delivered to the administrator and ceases on the
42 earlier of the expiration of 10 years after delivery or the date
43 on which payment is made to the owner. Interest on interest
44 bearing property is not payable for any period before January 1,
45 1998, unless authorized by law superseded by this Act.

46
47
48
49 **UNIFORM COMMENT**

2 Under this section the owner of interest earning bonds or
4 bank deposits, or dividend paying stock, will generally receive
interest or income which the property earned while in the State's
6 custody.

8 **§1963. Public sale of abandoned property**

10 **1. Highest bidder.** Except as otherwise provided in this
12 section, the administrator, within 3 years after the receipt of
14 abandoned property, shall sell it to the highest bidder at public
16 sale at a location in the State, that in the judgment of the
18 administrator, affords the most favorable market for the
20 property. The administrator may decline the highest bid and
22 reoffer the property for sale if the administrator considers the
bid to be insufficient. The administrator need not offer the
property for sale if the administrator considers that the
probable cost of sale will exceed the proceeds of the sale. A
sale held under this section must be preceded by a single
publication of notice, at least 3 weeks before sale, in a
newspaper of general circulation in the county in which the
property is to be sold.

24 **2. Securities.** Securities listed on an established stock
26 exchange must be sold at prices prevailing on the exchange at the
28 time of sale. Other securities may be sold over the counter at
30 prices prevailing at the time of sale or by any reasonable method
32 selected by the administrator. If securities are sold by the
34 administrator before the expiration of 3 years after their
36 delivery to the administrator, a person making a claim under this
38 Act before the end of the 3-year period is entitled to the
40 proceeds of the sale of the securities or the market value of the
42 securities at the time the claim is made, whichever is greater,
plus dividends, interest and other increments thereon up to the
time the claim is made, less any deduction for expenses of sale.
A person making a claim under this Act after the expiration of
the 3-year period is entitled to receive the securities delivered
to the administrator by the holder, if they still remain in the
custody of the administrator, or the net proceeds received from
sale and is not entitled to receive any appreciation in the value
of the property occurring after delivery to the administrator,
except in a case of intentional misconduct or malfeasance by the
administrator.

44 **3. Property free of claims.** A purchaser of property at a
46 sale conducted by the administrator pursuant to this Act takes
48 the property free of all claims of the owner or previous holder
and of all persons claiming through or under them. The
50 administrator shall execute all documents necessary to complete
the transfer of ownership.

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UNIFORM COMMENT

If the security is stock or other intangible interest in a business association, the administrator is permitted to sell the security, but if the missing owner appears and makes claim for the security within three years after the administrator has sold it, the missing owner is entitled to receive the proceeds of the sale or the market value of the securities at the time the claim is made. Thus there is a genuine incentive for an administrator to hold this property for the requisite three-year period.

Subsection (b) [Me. cite subsection 2] permits an administrator to sell securities at prevailing prices directly to the issuing companies.

This section is not intended as a direction to the administrator to sell "money," although money is included in the definition of property, unless it is a collector's specie having value greater than the face value of the money as cash.

§1964. Deposit of funds

1. Deposit of funds; Abandoned Property Fund; records. The administrator shall promptly deposit in the Abandoned Property Fund of this State all funds received under this Act, including the proceeds from the sale of abandoned property under section 1963. The Abandoned Property Fund is a permanent account and may not lapse, but must be carried forward. The administrator shall record the name and last known address of each person appearing from the holders' reports to be entitled to the property and the name and last known address of each insured person or annuitant and beneficiary and with respect to each policy or annuity listed in the report of an insurance company, its number, the name of the company and the amount due.

2. Authorized expenditures; transfer of funds. The administrator may deduct:

A. Expenses of sale of abandoned property;

B. Costs of mailing and publication in connection with abandoned property;

C. Reasonable service charges; and

D. Expenses incurred in examining records of holders of property and in collecting the property from those holders.

2 At the end of each year or more often, the administrator shall
3 transfer to the General Fund all money in the Abandoned Property
4 Fund that is in excess of \$150,000.

6 **UNIFORM COMMENT**

8 This section increases from \$25,000 to \$100,000 the sum
9 which is recommended to be retained in a trust account for
10 payment of claims. It is contemplated that the amount of the
11 trust fund which is ultimately established will reflect a State's
12 experience in paying owners' claims.

14 **MAINE COMMENT**

16 The Abandoned Property Fund is an existing permanent
17 nonlapsing account. The administrator retains \$150,000 in the
18 account to pay claims. At least once a year, the administrator
19 transfers the excess to the General Fund.

22 **§1965. Claim of another state to recover property**

24 **1. Requirements.** After property has been paid or delivered
25 to the administrator under this Act, another state may recover
26 the property if:

28 A. The property was paid or delivered to the custody of
29 this State because the records of the holder did not reflect
30 a last known location of the apparent owner within the
31 borders of the other state and the other state establishes
32 that the apparent owner or other person entitled to the
33 property was last known to be located within the borders of
34 that state and under the laws of that state the property has
35 escheated or become subject to a claim of abandonment by
36 that state;

38 B. The property was paid or delivered to the custody of
39 this State because the laws of the other state did not
40 provide for the escheat or custodial taking of the property
41 and, under the laws of that state subsequently enacted, the
42 property has escheated or become subject to a claim of
43 abandonment by that state;

44 C. The records of the holder were erroneous in that they
45 did not accurately identify the owner of the property and
46 the last known location of the owner within the borders of
47 another state and under the laws of that state the property
48 has escheated or become subject to a claim of abandonment by
49 that state;
50

2 D. The property was subjected to custody by this State
4 under section 1955, subsection 6 and under the laws of the
6 state of domicile of the holder the property has escheated
 or become subject to a claim of abandonment by that state; or

8 E. The property is a sum payable on a traveler's check,
10 money order or similar instrument that was purchased in the
12 other state and delivered into the custody of this State
 under section 1955, subsection 7 and under the laws of the
 other state the property has escheated or become subject to
 a claim of abandonment by that state.

14 2. Prescribed form. A claim of another state to recover
16 escheated or abandoned property must be presented in a form
18 prescribed by the administrator who shall decide the claim within
 90 days after it is presented. The administrator shall allow the
 claim upon determining that the other state is entitled to the
 abandoned property under subsection 1.

20 3. Liability. The administrator shall require another
22 state, before recovering property under this section, to agree to
24 indemnify this State and its officers and employees against any
 liability on a claim to the property.

26

UNIFORM COMMENT

28

30 Section 14 [Me. cite section 1965] should be read together
32 with Section 4 [Me. cite section 1955]. Sections 4 and 14 [Me.
34 cite sections 1955 and 1965] are designed to carry out the
36 priority scheme enunciated in Texas v. New Jersey, 379 U.S. 674
 (1965). In general the State in which the owner had his or her
 last known address is entitled to claim abandoned property.
 Where there is insufficient information to permit this assertion
 of custody, the State of the holder's domicile takes the property
 subject to a later claim by the State of the last known address.

38

40 Paragraph (1) [Me. cite paragraph A] of subsection (a) [Me.
42 cite subsection 1] provides that if property was paid to the
44 State of the holder's domicile because the last known address of
 the owner was unknown and it is later established by another
 State that the last known address of the person entitled to the
 property was in the other State, the State of domicile should pay
 the property over to the other State.

46

48 Paragraph (2) [Me. cite paragraph B] parallels Section 4,
 paragraph (4) [Me. cite section 1955, subsection 4], which
50 permits the State of corporate domicile to take if the State of
 the last known address does not provide for the escheat or

2 custodial taking of the property. If the State of the last known
address subsequently enacts an unclaimed property law which
covers the property, the taking State must turn it over.

4
6 Paragraph (3) [Me. cite paragraph C] addresses the problem
of Nellius v. Tampax, Inc., 394 A.2d 333 (Del. Ch. Ct. 1978) in
8 which the holder's records did not reflect the fact that the
record owner had sold the property to another. The court
10 concluded, under Texas v. New Jersey, that the holder's records
were controlling and that it could properly report and deliver
12 the property to the State in which its records showed the owner
to be resident. However, as provided in Texas v. New Jersey and
14 in paragraph 4 [Me. cite paragraph D], the State of the owner's
actual residence could then claim the property from the State to
which it was initially reported.

16
18 Paragraph (4) [Me. cite paragraph D], paralleling Section
4(6) [Me. cite section 1955, subsection 6], provides that
20 property initially claimed under a "contacts" test because there
was no last known address and the State of domicile had no
22 applicable unclaimed property law may be reclaimed by the State
of corporate domicile if it enacts an applicable unclaimed
property law.

24
26 Subsection (c) [Me. cite subsection 3] provides that the
State that initially receives property later claimed by another
28 State may require an indemnification agreement from the claiming
State.

30 **§1966. Filing claim with administrator; handling of claims by**
32 **administrator**

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

38 **2. Notice.** Within 90 days after a claim is filed, the
administrator shall allow or deny the claim and give written
40 notice of the decision to the claimant. If the claim is denied,
the administrator shall inform the claimant of the reasons for
42 the denial and specify the additional evidence that is required
before the claim will be allowed. The claimant may then file a
44 new claim with the administrator or maintain an action under
section 1967.

46
48 **3. Amount payable to claimant.** Within 30 days after a
claim is allowed, the property or the net proceeds of a sale of
the property must be delivered or paid by the administrator to
50 the claimant, together with any dividend, interest or other

2 increment to which the claimant is entitled under sections 1962
3 and 1963.

4 4. Increments. A holder who pays the owner for property
5 that has been delivered to the State and, which, if claimed from
6 the administrator by the owner would be subject to an increment
7 under sections 1962 and 1963, may recover from the administrator
8 the amount of the increment.

10 **UNIFORM COMMENT**

12
13 A person claiming property from the administrator is not
14 limited to the number of times the claim may be filed or refiled
15 prior to commencing an action under Section 16 [Me. cite section
16 1967]. The administrator's decision on a claim does not operate
17 as collateral estoppel or res judicata. A person who has
18 commenced an action under Section 16 [Me. cite section 1967] may
19 also reassert a claim before the administrator if the action has
20 been dismissed without prejudice. A claim which has become the
21 subject of a final judgment may not thereafter by refiled with
22 the administrator.

24 **§1967. Action to establish claim**

26 A person aggrieved by a decision of the administrator or
27 whose claim has not been acted upon within 90 days after its
28 filing may maintain an original action to establish the claim in
29 the Superior Court of Kennebec County naming the administrator as
30 a defendant.

32 **UNIFORM COMMENT**

34
35 After property is presumed abandoned and reported to the
36 administrator the administrator must attempt to locate the
37 missing owner. Thereafter, if the property has been delivered to
38 the administrator and the owner or his representative appears,
39 the administrator must pay the claim. The owner's rights are
40 never cut off; under this Act, the owner's rights exist in
41 perpetuity. Although some state administrators have urged
42 legislation that would terminate an owner's right to the property
43 merely by the passage of time, such enactments may be
44 unconstitutional. In Hamilton v. Brown, 161 U.S. 256, 275, 16 S.
45 Ct. 585, 592, 40 L. Ed. 691, 699, (1896), the Supreme Court held
46 that any procedure by which the State seeks to cut off the
47 owner's title through escheat must include "actual notice by
48 service of summons to all known claimants, and constructive
49 notice by publication to all possible claimants who are unknown .
50 . . ." Any lesser procedure appears to fall short of due

2 process. The history of escheat, as compared with modern
3 unclaimed property legislation, is discussed in "Unclaimed
4 Property and Reporting Forms," Epstein, McThenia & Forslund, ch.
1 (Matt. Bend. 1984).

6 In any judicial action commenced to recover the property
7 from the administrator, the claimant may proceed *de novo*, and the
8 court will not be limited to a mere review of the administrator's
9 decision.

10 **§1968. Election to take payment or delivery**

12 **1. Value.** The administrator may decline to receive
14 property reported under this Act that the administrator considers
15 to have a value less than the expenses of notice and sale.

16 **2. Delivery before property presumed abandoned.** A holder,
18 with the written consent of the administrator and upon conditions
19 and terms prescribed by the administrator, may report and deliver
20 property before the property is presumed abandoned. Property so
21 delivered must be held by the administrator and is not presumed
22 abandoned until it otherwise is presumed abandoned under this Act.

24 **UNIFORM COMMENT**

26 Subsection 17(b) [Me. cite section 1968, subsection 2]
28 authorizes the administrator to assume custody of property prior
29 to the time for presuming abandonment. Administrators have
30 expressed a need for this authority to enable them to take
31 possession of property, such as the contents of a safe deposit
32 box repository, when the holder is terminating business but the
33 property is not yet reportable. Additionally, other holders
34 which have conducted business in the State and are ceasing
35 operations might use the provisions of this section. The
36 property must be held by the administrator until the abandonment
37 period runs and then the property will be subject to the other
38 provisions of the Act.

40 **§1969. Destruction or disposition of property having no
41 substantial commercial value; immunity from liability**

42 **If the administrator determines after investigation that
43 property delivered under this Act has no substantial commercial
44 value, the administrator may destroy or otherwise dispose of the
45 property at any time. An action or proceeding may not be
46 maintained against the State or any officer or against the holder
47 for, or on account of, an act of the administrator under this
48 section except for intentional misconduct or malfeasance.**

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UNIFORM COMMENT

This section provides for the disposition of property which has no commercial value. As an example, the contents of safety deposit boxes often include such items as rent receipts, personal correspondence and lapsed insurance policies. In such cases, these contents might have some personal significance to the owner, which the administrator would take into consideration in determining for what period of time he will hold the property awaiting a claim by the owner. However, in the usual situation there will be no interest to be preserved by maintaining this property under state custody.

Under this section the administrator would be free to retain property having no commercial value. Further, the administrator could transfer it to other agencies or institutions which might have an interest in the property because of its historical value or other independent significance.

§1970. Periods of limitation

1. Effect of time periods. The expiration, before or after January 1, 1998, of a period of limitation on the owner's right to receive or recover property, whether specified by contract, statute or court order, does not preclude the property from being presumed abandoned or affect a duty to file a report or to pay or deliver or transfer property to the administrator as required by this Act.

2. Ten-year limitation. An action or proceeding may not be maintained by the administrator to enforce this Act in regard to the reporting, delivery or payment of property more than 10 years after the holder specifically identified the property in a report filed with the administrator or gave express notice to the administrator of a dispute regarding the property. In the absence of such a report or other express notice, the period of limitation is tolled. The period of limitation is also tolled by the filing of a report that is fraudulent.

UNIFORM COMMENT

Subsection (a) [Me. cite subsection 1] is consistent with cases such as People v. Marshall Field & Co., 83 Ill. App. 3d 811, 404 N.E.2d 368 (1980), Screen Actors Guild, Inc. v. Cory, 91 Cal.App.3d 111, 154 Cal.Rptr. 77 (1979), and State v. Jefferson Lake Sulphur Co., 36 N.J. 577, 178 A.2d 329 (1962). It also abrogates another contractual condition often asserted as a

2 defense to reporting property otherwise presumed abandoned, the
3 failure to present the evidence of indebtedness.

4 Subsection (a) [Me. cite subsection 1] is written to insure
5 also that although the owner's claim against the holder may be
6 barred by the statute of limitations prior to the effective date
7 of the Act, the holder is not relieved of his obligation to pay
8 abandoned property to the administrator. The Comment to Section
9 16 of the 1966 Act noted that local law must be consulted in
10 order to ascertain whether legislation constitutionally may be
11 enacted reviving a cause of action barred by the statute of
12 limitations. This issue has been litigated in several States,
13 e.g., Country Mutual Insurance Co. v. Knight, 40 Ill.2d 523, 240
14 N.E.2d 612 (1968); Douglas Aircraft Co. v. Cranston, 24 Cal.Rptr.
15 851, 374 P.2d 819 (1962); cf. Standard Oil v. New Jersey, 5 N.J.
16 281, 74 A.2d 565 (1950). Even though the statute of limitations
17 has run before the effective date of the Act, the holder may be
18 required to report and deliver the property to the State if the
19 holder does not regularly enforce the statute. See South
20 Carolina Tax Commission v. Metropolitan Life Insurance Co., 266
21 S.C. 34, 221 S.E.2d 522 (1975). But see State of Washington v.
22 Puget Sound Power & Light Co., 103 Wash.2d 501, 694 P.2d 7, 10
23 (1985).

24 Subsection (b) [Me. cite subsection 2] provides that an
25 administrator must commence an action against a holder within 10
26 years after the time the property was first reported or
27 specifically placed in issue. The 1995 amendment clarifies
28 existing law and codifies the holdings of abandoned property
29 cases that have ruled on issues of limitations. See Blue Cross
30 of Northern California v. Cory, 174 Cal. Rptr. 901, 913, 120 Cal.
31 App.3d 743 (App., 1981) (no statute of limitations will commence
32 to run against the State until after the holder duly reports in
33 compliance with the unclaimed property act); Travelers Express
34 Co., Inc. v. Cony, 664 F.2d 763 (9th Cir. 1981) (statute of
35 limitations commences to run only after filing of report which
36 contains written explanation of why property is not subject to
37 the act); Employers Insurance of Wausau v. Smith, 453 N.W.2d 856
38 (Wis. 1990) (filing of report essential to running of statute of
39 limitations, since unclaimed property act depends on
40 self-reporting); Sennet v. Insurance Co. of North America, 432
41 Pa. 5215, 247 A.2d 774, 777-78 (1968) (same; "INA simply has to
42 take its stand: if it reports the holding [of funds in issue] (as
43 a precautionary measure), the statute will run; if it does not,
44 the Commonwealth is not precluded . . ."); State of New Jersey
45 v. U.S. Steel Corporation, 22 N.J. 341, 126 A.2d 168 (1956)
46 (same); Treasurer and Rec. Gen. v. John Hancock Mut. Life Ins.
47 Co., 388 Mass. 410, 446 N.E.2d 1376 (1983) (same). The provision
48 also parallels the Internal Revenue Code, 26 U.S.C. sec.
49 6501(c). Since the Unclaimed Property Act is based on a theory

of truthful self-reporting, a holder which conceals property, wilfully or otherwise, cannot expect the protection of the stated limitations period.

§1971. Requests for reports and examination of records

1. Report. The administrator may require a person who has not filed a report or a person who the administrator believes has filed an inaccurate, incomplete or false report to file a verified report in a form specified by the administrator. The report must state whether the person is holding property reportable under this Act, describe property not previously reported or as to which the administrator has made inquiry, and specifically identify and state the amounts of property that may be in issue.

2. Examination of records. The administrator, at reasonable times and upon reasonable notice, may examine the records of any person to determine whether the person has complied with this Act. The administrator may conduct the examination even if the person believes it is not in possession of any property that must be reported, paid or delivered under this Act. The administrator may contract with any other person to conduct the examination on behalf of the administrator.

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

4. Confidentiality and use of documents and working papers. Notwithstanding Title 1, section 402, information derived by annual reports from holders or otherwise communicated to the administrator or the administrator's agents concerning abandoned property and the public welfare. Documents and working papers obtained or compiled by the administrator or the administrator's agents, employees or designated representatives in the course of conducting an examination are confidential and are not public records, but the documents and papers may be:

A. Used by the administrator in the course of an action to collect unclaimed property or otherwise enforce this Act;

B. Used in joint examinations conducted with or pursuant to an agreement with another state, the Federal Government or

2 that standard. Also, since one of the dual purposes of this Act
is the collection of revenue, reference may be made to the cases
4 holding that it is not an unreasonable search to require
taxpayers to produce their books and records. See Annot.,
6 "Constitutionality of statutory provisions for examination of
records, books, or documents for taxation purposes," 103 ALR 522.

8 Subsection (c) [Me. cite subsection 3] is intended to
provide a useful method whereby the administrator can conduct a
10 single examination of a dividend disbursing agent or transfer
agent serving in such capacity for numerous business associations.
12

14 Subsection (f) [Me. cite subsection 6] permits the use of
estimates in instances where the holder has failed to report and
deliver property that is abandoned and no longer has reasonably
16 accessible records sufficient to prepare a specific report.
Additionally, if the holder fails to maintain records of the last
18 known address, States can assert claims based on any other
records which might exist. Resort may be had to computer codes.
20 While the holding in Texas v. New Jersey is intended to prevent
multiple liability of holders, this subsection, viewed as a
22 penalty for failure to maintain records of names and last known
address, is not inconsistent with that decision. That part of
24 subsection (f) [Me. cite subsection 6] which permits the State to
make estimates was prospective only from the date of adoption of
26 the 1981 Act. This Act expressly states the bases on which
estimates may be made. Thus, the State may use estimating
28 techniques -- where a holder has not maintained records as
required by statute -- based on industry averages, and may rely
30 on inferences that may be based on statistics drawn from a
broader basis than that of the holder in question who has failed
32 to keep records. This section, together with Section 23 [Me.
cite section 1974], also clarifies the administrator's authority
34 to enter into agreements to enforce the State's custodial powers
in all States.
36

38 §1972. Retention of records

40 1. Holder of property. Except as otherwise provided in
subsection 2, a holder required to file a report under section
1958 shall maintain the records containing the information
required to be included in the report for 10 years after the
holder files the report, unless a shorter period is provided by
rule of the administrator.
44

46 2. Business association or financial organization. A
business association or financial organization that sells, issues
or provides to others for sale or issue in this State traveler's
checks, money orders or similar instruments other than 3rd-party
bank checks, on which the business association or financial
50

2 organization is directly liable, shall maintain a record of the
3 instruments while they remain outstanding, indicating the state
4 and date of issue, for 3 years after the holder files the report.

6 **UNIFORM COMMENT**

8 This section does not require that the holder in the first
9 instance obtain the address of the owner. For example, a record
10 of the address of the purchaser or recipient of a gift
11 certificate customarily is not obtained.

12 Initially, the period for which records of address must be
13 obtained is established at 10 years from the date the property
14 was first reportable as abandoned property. However, this
15 section permits a State to shorten this period by rule. Because
16 the reporting practices of holders vary, an administrator will
17 want to consider such factors as the burden imposed on the holder
18 in maintaining such records, the opportunity of returning the
19 property, and the type of business of the holder. For example,
20 in the case of property that would be reportable in the aggregate
21 without the name and address of the apparent owner under Section
22 7 [Me. cite section 1958], a State might adopt a rule providing
23 for a relatively short record retention period on condition that
24 the holder maintain a record sufficient to satisfy the
25 requirements of Texas v. New Jersey that there be a last known
26 address or that the State can prove that the last known address
27 of the creditor was within its borders.

30 Subsection (b) [Me. cite subsection 2] is designed to assure
31 that the information required for asserting a claim to travelers
32 checks and money orders is retained by the issuers of travelers
33 checks and money orders.

34 **§1973. Enforcement**

36 The administrator may maintain an action in this State or
37 another state to enforce this Act.

40 **UNIFORM COMMENT**

42 Although generally an action would be brought in an
43 administrator's own State, action to enforce the Act may also be
44 brought in the courts of another State. See Section 23 [Me. cite
45 section 1974]. See also, Commonwealth of Pennsylvania v.
46 Kervick, 60 N.J. 289, 288 A.2d 289 (1972).

48 **§1974. Interstate agreements and cooperation; joint and**
50 **reciprocal actions with other states**

2 Cooperation among States is essential if abandoned property
3 programs are to be efficiently administered. In recent years
4 several States have joined together to audit major holders.
5 Additionally, several States have entered into agreements to act
6 as collection agents for each other. Interstate cooperation and
7 the development of uniform reporting forms and uniform
8 regulations will be of assistance to holders as well as program
9 administrators. This section encourages joint agreements and
10 cooperation among the States. An agreement among the States
11 might expressly relieve holders from reporting piecemeal to
12 separate States. Instead, they might be able to file a single
13 report of all abandoned property, wherever located, and
14 regardless of the address of the owner.

15
16 Reciprocal agreements envisioned under subsection (c) [Me.
17 cite subsection 3] do not require the consent of Congress under
18 the Compact Clause of the Constitution, Art. I, § 10, cl. 3. The
19 Supreme Court has held that the restriction of the Compact Clause
20 is limited to combinations or agreements that tend to increase
21 the political power of the States to such an extent that it
22 interferes with the supremacy of the United States. United
23 States Steel v. Multi-State Tax Commission, 434 U.S. 452 (1978).
24 In Multi-State Tax Commission the Court upheld a tax compact,
25 that had not been approved by Congress creating a permanent
26 administrative body to perform audits of multi-state taxpayer
27 operations, and at the request of a member State, to sue to
28 enforce the audits in the courts of the member States.

29
30 This section simply authorizes an economical approach to
31 enforcing a State's claim under Texas v. New Jersey. Each State
32 retains discretion to bring suit or to decide against such
33 action, remaining free to adopt its own abandoned property
34 policies. The position of the States will not be politically
35 improved at the expense of the federal government although the
36 process for claiming abandoned property will be more efficient.

37
38 Action by one State for another is expressly permitted by
39 this section. In some cases the administrator of a State may
40 deem it wise to seek counsel in a foreign jurisdiction. There
41 may be small claims which would not justify individual action by
42 the claimant State in a foreign forum, but if several States join
43 forces and retain counsel in the holder State to sue for all of
44 them, it might be administratively justified. This section
45 expressly permits such joint action.

46 **§1975. Interest and penalties**

47
48 **1. Interest; penalty.** A holder who fails to report, pay or
49 deliver property within the time prescribed by this Act shall pay
50 to the administrator interest at the annual rate of 18% or 10%

2 above the annual rate of discount in effect on the date the
3 property should have been paid or delivered for the most recent
4 issue of 52-week United States Treasury bills on the property or
5 value thereof from the date the property should have been
6 reported, paid or delivered.

7 2. Failure to perform duties. Except as otherwise provided
8 in subsection 3, a holder who fails to report, pay or deliver
9 property within the time prescribed by this Act, or fails to
10 perform other duties imposed by this Act, shall pay to the
11 administrator, in addition to interest as provided in subsection
12 1, a civil penalty of \$200 for each day the report, payment or
13 delivery is withheld or the duty is not performed, up to a
14 maximum of \$5,000.

15 3. Willful failure to perform duties. A holder who
16 willfully fails to report, pay or deliver property within the
17 time prescribed by this Act, or willfully fails to perform other
18 duties imposed by this Act, shall pay to the administrator, in
19 addition to interest as provided in subsection 1, a civil penalty
20 of \$1,000 for each day the report, payment or delivery is
21 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
23 been but was not reported.

24 4. Fraudulent report. A holder who makes a fraudulent
25 report shall pay to the administrator, in addition to interest as
26 provided in subsection 1, a civil penalty of \$1,000 for each day
27 from the date a report under this Act was due, up to a maximum of
28 \$25,000, plus 25% of the value of any property that should have
29 been but was not reported.

30 5. Waiver. The administrator for good cause may waive, in
31 whole or in part, interest under subsection 1 and penalties under
32 subsections 2 and 3 and shall waive penalties if the holder acted
33 in good faith and without negligence.

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UNIFORM COMMENT

A major weakness of the 1966 Act was its ineffective penalty provision. Although the 1981 Act increased penalties for non-compliance, voluntary compliance with the Act continued to be a problem. In this Act, compliance failures not accompanied by willfulness are dealt with by moderate increases in the applicable penalties, and the administrator simultaneously is given authority to waive both interest and penalties where the holder has attempted in good faith to comply, or where the failure has been due to excusable neglect. Where the holder's

2 failure is willful or fraudulent, and not in good faith,
penalties are increased more substantially.

4 Criminal penalties, which were the sole enforcement
mechanism of the 1954 Act and which were retained in the 1981 Act
6 have been eliminated, as they were not effective and rarely, if
ever, pursued.

8
10 The provision for the discretionary waiver of interest upon
a showing of good cause is intended to apply to situations in
12 which the holder has attempted to comply with the Act.
Establishment of "good cause" is likely to be difficult where the
holder has failed to file a report.

14 **§1976. Agreements to locate property**

16
18 **1. Agreements within 24 months.** An agreement by an owner,
the primary purpose of which is to locate, deliver, recover or
20 assist in the recovery of property that is presumed abandoned is
void and unenforceable if it was entered into during the period
22 commencing on the date the property was presumed abandoned and
extending to a time that is 24 months after the date the property
is paid or delivered to the administrator. This subsection does
24 not apply to an owner's agreement with an attorney to file a
claim as to identified property or contest the administrator's
26 denial of a claim.

28 **2. Agreements after 24 months.** An agreement by an owner,
the primary purpose of which is to locate, deliver, recover or
30 assist in the recovery of property that is presumed abandoned is
unenforceable only if:

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34 **A. The property was delivered to the administrator more
than 24 months but less than 36 months prior to the
agreement, and the agreement is in writing, clearly setting
36 forth the nature of the property and the services to be
rendered and is signed by the apparent owner and states the
38 value of the property before and after the fee or other
compensation has been deducted; or**

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42 **B. The property was delivered to the administrator 36 or
more months prior to the agreement and the agreement is in
writing, clearly setting forth the nature of the property
44 and the services to be rendered and is signed by the
apparent owner, states the value of the property before and
46 after the fee or other compensation has been deducted and
discloses the names and addresses of the holder and
48 administrator.**

50 The fee for agreements under paragraph A may not exceed 15%.

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

12 4. Unconscionable compensation. An agreement covered by
14 this section that provides for compensation that is
16 unconscionable is unenforceable except by the owner. An owner
18 who has agreed to pay compensation that is unconscionable, or the
20 administrator on behalf of the owner, may maintain an action to
22 reduce the compensation to a conscionable amount. The court may
24 award reasonable attorney's fees to an owner who prevails in the
26 action.

28 5. Other grounds not precluded. This section does not
30 preclude an owner from asserting that an agreement covered by
32 this section is invalid on grounds other than unconscionable
34 compensation.

36 6. Unfair trade practice. A person who makes a claim for
38 compensation in violation of this section commits an unfair trade
40 practice in violation of Title 5, section 207.

UNIFORM COMMENT

42 This section is intended to enhance the likelihood that the
44 owner of the abandoned property will be located by the efforts of
46 the State, and will receive a return of the property without
48 payment of a "finder's fee." In the past, it appears to have
50 been the practice in many States for unclaimed property locators
or heir finders to utilize the State's lists of names and
addresses of missing owners to contact them and propose to find
their property for them for a fee, before the State has had an
opportunity to locate the missing owners. Some States have
enacted legislation that prohibits examination of these lists by
anyone except an apparent owner or other person having a legal
interest in the property, but in many States that kind of
provision may be in conflict with the State's public records laws.

Subsections (b) and (d) [Me. cite subsections 2 and 4] apply
to agreements entered into at any time. These subsections apply
to all finders' and locators' contracts, regardless of when the
contract is made, including agreements with an owner as a result
of a holder providing to private parties, the holder's
information regarding an inactive account.

This section is not intended to apply to situations such as
the probating of an estate, which may incidentally include a

2 necessity of locating unclaimed property. Agreements in such
3 cases do not have as their principal purpose, the rendition of
4 services to locate, deliver or recover unclaimed property. This
5 section also does not apply to agreements for legal
6 representation of an owner who is claiming property the identity
7 of which is already known to the owner.

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10 **MAINE COMMENT**

11 (Comment on section 1976, subsection 6) This section is
12 from the preexisting section 1869, subsection 5, here repealed.
13 It was passed into law in 1995 as a means of protecting owners
14 from persons attempting to demand compensation for which they
15 were not owed.

16 **§1977. Foreign transactions**

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

19
20
21 **§1978. Transitional provisions**

22 **1. Property not covered by prior laws.** An initial report
23 filed under this Act for property that was not required to be
24 reported before January 1, 1998, but which is subject to this
25 Act, must include all items of property that would have been
26 presumed abandoned during the 10-year period next preceding the
27 effective date of this Act as if this Act had been in effect
28 during that period.

29 **2. Applicable provisions.** This Act does not relieve a
30 holder of a duty that arose before January 1, 1998 to report,
31 pay, or deliver property. Except as otherwise provided in
32 section 1970, subsection 2, a holder who did not comply with the
33 law in effect before the effective date of this Act is subject to
34 the applicable provisions for enforcement and penalties which
35 then existed, which are continued in effect for the purpose of
36 this section.

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41 **UNIFORM COMMENT**

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43 Paragraph (a) [Me. cite subsection 1] is retained from the
44 1981 Act and deals with the problem of how far back a holder must
45 check its records to determine what property not subject to the
46 prior Act must be paid to the State under this Act. Thus,
47 property which was not covered by any unclaimed property law
48 prior to adoption of the 1981 Act, but was covered by that Act,
49 continues to be covered by this Act if the obligation was
50

2 incurred not more than 10 years prior to adoption of the 1981 Act
and the statute of limitations is not tolled under Section 19(b)
4 [Me. cite section 1970, subsection 2]. For example, if a State
enacts this Act effective January 1, 1996 for property not
6 previously presumed abandoned, the holder must report it if, as
of January 1, 1986, it had been unclaimed for the abandonment
8 period. A similar provision is found in Section 11(g) of the
1966 Act.

10 Paragraph (b) [Me. cite subsection 2] provides that if a
State had an unclaimed property law prior to the adoption of this
12 Act, a holder is not relieved of his duty to report and pay over
the property abandoned under the Act then existing. Except as
14 otherwise provided in Section 19(b) [Me. cite section 1970,
subsection 2], a holder who did not comply with the law in effect
16 before the effective date of this Act is subject to the
applicable provisions for enforcement and penalties which then
18 existed and which are continued in effect for the purpose of this
section.

20 **§1979. Rules**

22 The administrator may adopt rules pursuant to the Maine
24 Administrative Procedure Act necessary to carry out this Act.
Rules adopted under this section are routine technical rules
26 under Title 5, chapter 375, subchapter II-A.

28 **§1980. Uniformity of application and construction**

30 This Act must be applied and construed to effectuate its
32 general purpose to make uniform the law with respect to the
subject of this Act among states enacting it.

34 **Sec. A-3. Effective date.** This Act takes effect January 1, 1998.

36 **PART B**

38 **Sec. B-1. 9-B MRSA §161, sub-§2, ¶K,** as enacted by PL 1989, c.
40 368, §3, is amended to read:

42 K. The examination or furnishing of any financial records
44 by a fiduciary institution to any officer, employee or agent
of the Treasurer of State for use solely in the exercise of
46 that officer's, employee's or agent's duties under the
Uniform Unclaimed Property Act, Title 33, chapter 37 41.

48 **Sec. B-2. 12 MRSA §7627-B,** as enacted by PL 1993, c. 144, §2,
is amended to read:

2 **§7627-B. Removal of abandoned ice-fishing shacks**

4 Notwithstanding the provisions of Title 33, chapter 37 ~~41~~, a
6 landowner on whose property an ice-fishing shack is left in
8 violation of Title 17, section 2264 may remove or destroy the
 shack. The landowner may recover any costs of removing or
 destroying the shack from the owner of the shack in a civil
 action.

10 **Sec. B-3. 14 MRSA §6013, first ¶**, as amended by PL 1991, c.
12 265, §1, is further amended to read:

14 Any property with a total value of \$500 or more that is
16 abandoned or unclaimed by a tenant following the tenant's
 vacating the rental unit must be disposed of according to Title
 33, chapter 37 ~~41~~.

18 **Sec. B-4. 14 MRSA §6324**, as amended by PL 1987, c. 691, §2,
20 is further amended to read:

22 **§6324. Proceeds of sale**

24 After first deducting the expenses incurred in making the
26 sale, the mortgagee shall disburse the remaining proceeds in
 accordance with the provisions of the judgment. The mortgagee
28 shall file a report of the sale and the disbursement of the
 proceeds therefrom with the court and shall mail a copy to the
30 mortgagor at ~~his~~ the mortgagor's last known address. This report
32 need not be accepted or approved by the court, provided that the
 mortgagor or any other party in interest may contest the
34 accounting by motion filed within 30 days of receipt of the
 report, but any such challenge shall may be for money only and
36 shall does not affect the title to the real estate purchased by
 the highest bidder at the public sale. Any deficiency shall must
38 be assessed against the mortgagor and an execution shall must
 be issued by the court therefor. In the event the mortgagee has
40 been the purchaser at the public sale, any deficiency shall be is
 limited to the difference between the fair market value of the
42 premises at the time of the public sale, as established by an
 independent appraisal, and the sum due the mortgagee as
44 established by the court with interest plus the expenses incurred
 in making the sale. Any surplus shall must be paid to the
46 mortgagor, ~~his~~ the mortgagor's successors, heirs or assigns in
 the proceeding. If the mortgagor has not appeared personally or
48 by an attorney, the surplus shall must be paid to the clerk of
 courts, who shall hold the surplus in escrow for 6 months for the
50 benefit of the mortgagor, ~~his~~ the mortgagor's successors, heirs
 or assigns and, if the surplus remains unclaimed after 6 months,
 the clerk shall pay the surplus to the Treasurer of State to be

2 credited to the General Fund until it becomes abandoned under the
3 Uniform Unclaimed Property Act, and report and pay it to the
4 State in accordance with that Act.

6 **Sec. B-5. 23 MRSA §156, next to the last ¶,** as amended by PL
7 1991, c. 684, §6, is further amended to read:

8 After the appeal period from the decree of the State Claims
9 Commission or a judgment of any court has expired, any sum of
10 money directed by a decree of the commission or by a judgment of
11 any court to be paid over that remains unclaimed for 60 days must
12 be disposed of consistent with Title 33, chapter 37 41.

14 **Sec. B-6. 25 MRSA §3504,** as amended by PL 1995, c. 625, Pt.
15 A, §30, is further amended to read:

16 **§3504. Deposit of proceeds**

17 Proceeds of the sale of the property at public auction, less
18 reimbursement to the law enforcement agency and others authorized
19 of the reasonable expenses of custody, must be disposed of
20 according to Title 33, chapter 37 41.

22 **Sec. B-7. 29-A MRSA §754, sub-§4, ¶B,** as enacted by PL 1993,
23 c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

24 B. After expiration of the 30-day notice period, the
25 Secretary of State may dispose of the vehicle at public
26 auction or report the vehicle as abandoned under Title 33,
27 chapter 37 41.

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32 **SUMMARY**

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34 Part A of this bill replaces the existing Unclaimed Property
35 Act with the Uniform Unclaimed Property Act, adopted by the
36 National Conference of Commissioners on Uniform State Laws in
37 1995. The bill contains a prefatory note and uniform comments
38 explaining every section.

39 This bill takes effect January 1, 1998.

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41 Part B of this bill makes the necessary cross-references.
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