

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**  
**ONE HUNDRED AND SEVENTEENTH LEGISLATURE**

**SECOND SPECIAL SESSION**  
**September 5, 1996 to September 7, 1996**

**ONE HUNDRED AND EIGHTEENTH LEGISLATURE**

**FIRST REGULAR SESSION**  
**December 4, 1996 to March 27, 1997**

**FIRST SPECIAL SESSION**  
**March 27, 1997 to June 20, 1997**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**JUNE 26, 1997**

**FIRST SPECIAL SESSION**  
**NON-EMERGENCY LAWS IS**  
**SEPTEMBER 19, 1997**

**PUBLISHED BY THE REVISOR OF STATUTES**  
**IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,**  
**TITLE 3, SECTION 163-A, SUBSECTION 4.**

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**J.S. McCarthy Company**  
**Augusta, Maine**  
**1997**

E. The proceedings and records of the panel are confidential and are not subject to subpoena, discovery or introduction into evidence in a civil or criminal action. The commission shall disclose conclusions of the review panel upon request, but may not disclose information, records or data that are otherwise classified as confidential.

The commission shall submit a report on the panel's activities, conclusions and recommendations to the joint standing committee of the Legislature having jurisdiction over judiciary matters by January 1, 1999 and annually thereafter.

**Sec. 4. Effective date.** Those sections of this Act that repeal the Maine Revised Statutes, Title 19-A, section 652, subsection 7, amend Title 19-A, section 652, subsection 8 and enact Title 19-A, section 4013, subsection 4 take effect October 1, 1997.

See title page for effective date, unless otherwise indicated.

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## CHAPTER 508

H.P. 1116 - L.D. 1559

### An Act to Establish the Uniform Unclaimed Property Act

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

#### PART A

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 A-1. 33 MRSA c. 37**, as amended, is repealed.

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

#### CHAPTER 41

#### UNIFORM UNCLAIMED PROPERTY ACT

##### **§1951. Short title**

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

##### **§1952. Definitions**

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

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

**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.

**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.

**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.

**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.

**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.

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

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

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

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

B. For the extraction, production or sale of minerals, including net revenue interests, royalties,

overriding royalties, extraction payments and production payments; and

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

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

**11. Owner.** "Owner" means a person who has a legal or equitable interest in property subject to this Act or the person's legal representative. "Owner" includes a depositor in 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 in the case of other property.

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

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

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

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

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

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

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

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

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

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

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

**16. Utility.** "Utility" has the same meaning as set forth for public utility in Title 35-A, section 102, subsection 13.

### **§1953. Presumptions of abandonment**

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

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

B. A money order, 7 years after issuance;

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

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

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

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

E. A demand, savings or time deposit, including a deposit that is automatically renewable, 5 years after the earlier of maturity or the date of the last indication by the owner of interest in the property; but a deposit that is automatically renewable is deemed matured for purposes of this section upon its initial date of maturity, unless the owner has consented to a renewal at or about

the time of the renewal and the consent is in writing or is evidenced by a memorandum or other record on file with the holder;

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

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

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

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

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

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

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

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

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

O. All other property, 5 years after the owner's right to demand the property or after the obligation to pay or distribute the property arises, whichever first occurs.

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

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

**4. Indication of interest.** An indication of an owner's interest in property includes:

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

B. Owner-directed activity in the account in which the property is held, including a direction by the owner to increase, decrease or change the amount or type of property held in the account;

C. The making of a deposit to or withdrawal from a bank account; and

D. The payment of a premium with respect to a property interest in an insurance policy; but the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent a policy from maturing or terminating if the insured has died or the insured or the beneficiary of the policy has otherwise become entitled to the proceeds before the depletion of the cash surrender value of a policy by the application of those provisions.

**5. Payable or distributable.** Property is payable or distributable for purposes of this Act notwithstanding the owner's failure to make demand or present an instrument or document otherwise required to obtain payment.

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

Tangible property held in a safe deposit box or other safekeeping depository in this State in the ordinary course of the holder's business and proceeds resulting from the sale of the property permitted by other law are presumed abandoned if the property and proceeds remain unclaimed by the owner for more than 5 years after expiration of the lease or rental period on the box or other depository.

#### **§1955. Rules for taking custody**

Except as otherwise provided in this Act or by other statute of this State, property that is presumed abandoned, whether located in this or another state, is subject to the custody of this State if:

**1. Apparent owner in this State.** The last known address of the apparent owner, as shown on the records of the holder, is in this State;

**2. Person entitled to property in this State.** The records of the holder do not reflect the identity of the person entitled to the property, and it is established that the last known address of the person entitled to the property is in this State;

**3. Person entitled or holder in this State.** The records of the holder do not reflect the last known address of the apparent owner, and it is established that:

A. The last known address of the person entitled to the property is in this State; or

B. The holder is domiciled in this State or is a government or governmental subdivision, agency or instrumentality of this State and has not previously paid or delivered the property to the State of the last known address of the apparent owner or other person entitled to the property;

**4. Apparent owner in another state.** The last known address of the apparent owner, as shown on the records of the holder, is in a state that does not provide for the escheat or custodial taking of the property and the holder is domiciled in this State or is a government or governmental subdivision, agency or instrumentality of this State or when the holder has failed to report or remit the property to the state of the last known address of the apparent owner, in which case the State may take custody of that property temporarily on behalf of the state of the last known address of the apparent owner;

**5. Apparent owner in foreign country.** The last known address of the apparent owner, as shown on the records of the holder, is in a foreign country and the holder is domiciled in this State or is a government or governmental subdivision, agency or instrumentality of this State;

**6. Transaction in this State.** The transaction out of which the property arose occurred in this State, the holder is domiciled in a state that does not provide for the escheat or custodial taking of the property and the last known address of the apparent owner or other person entitled to the property is unknown or is in a state that does not provide for the escheat or custodial taking of the property; or

**7. Traveler's check.** The property is a traveler's check or money order purchased in this State, or the issuer of the traveler's check or money order has its principal place of business in this State and the issuer's records show that the instrument was purchased in a state that does not provide for the escheat or custodial taking of the property or do not show the state in which the instrument was purchased.

#### **§1956. Dormancy charge**

A holder may deduct from property presumed abandoned a charge imposed by reason of the owner's 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 regularly reversed or otherwise canceled. The amount of the deduction is limited to an amount that is not unconscionable.

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

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

#### **§1958. Report of abandoned property**

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

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

A. A description of the property;

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

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

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

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

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

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

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

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

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

A. The holder has in its records an address for the apparent owner that the holder's records do not disclose to be inaccurate;

B. The claim of the apparent owner is not barred by a statute of limitations; and

C. The value of the property is \$50 or more.

**6. Extension; termination of accrual.** Before the date for filing the report, the holder of property presumed abandoned may request the administrator to extend the time for filing the report. The administrator may grant the extension for good cause. The holder, upon receipt of the extension, may make an interim payment on the amount the holder estimates

will ultimately be due, which terminates the accrual of additional interest on the amount paid.

**7. Affidavit of compliance.** The holder of property presumed abandoned shall file with the report an affidavit stating that the holder has complied with subsection 5.

### **§1959. Payment or delivery of abandoned property**

**1. Payment or delivery.** Except for property held in a safe deposit box or other safekeeping depository, upon filing the report required by section 1958, the holder of property presumed abandoned shall pay, deliver or cause to be paid or delivered to the administrator the property described in the report as 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.

**2. Security or security entitlement.** If the property reported to the administrator is a security or security entitlement under Title 11, Article 8, the administrator is an appropriate person to make an indorsement, instruction or 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.

**3. Certificated security.** If the holder of property reported to the administrator is the issuer of a certificated 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.

**4. Liability and indemnification.** An issuer, the holder and any transfer agent or other person acting pursuant to the 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.

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

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

likely to attract the attention of the apparent owner of the unclaimed property. The form must contain:

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

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

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

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

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

**§1961. Custody by state; recovery by holder; defense of holder**

**1. Good faith.** In this section, payment or delivery is made in "good faith" if:

A. Payment or delivery was made in a reasonable attempt to comply with this Act;

B. The holder was not then in breach of a fiduciary obligation with respect to the property and had a reasonable basis for believing, based on the facts then known, that the property was presumed abandoned; and

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

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

**3. Reimbursement.** A holder who has paid money to the administrator pursuant to this Act may subsequently make payment to a person reasonably appearing to the holder to be entitled to payment. Upon a filing by the holder of proof of payment and proof that the payee was entitled to the payment, the

administrator shall promptly reimburse the holder for the payment without imposing a fee or other charge. If reimbursement is sought for a payment made on a negotiable instrument, including a traveler's check or money order, the holder must be reimbursed upon filing proof that the instrument was duly presented and that payment was made to a person who reasonably appeared to be entitled to payment. The holder must be reimbursed for payment made even if the payment was made to a person whose claim was barred under section 1970, subsection 1.

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

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

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

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

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

If property other than money is delivered to the administrator under this Act, the owner is entitled to receive from the administrator any income or gain realized or accruing on the property at or before liquidation or conversion of the property into money. If the property was an interest bearing demand, savings or time deposit, including a deposit that is automatically renewable, the administrator shall pay interest at the current rate or any lesser rate the property earned while in the possession of the holder. Interest begins to accrue when the property is



delivered to the administrator and ceases on the earlier of the expiration of 10 years after delivery or the date on which payment is made to the owner. Interest on interest bearing property is not payable for any period before January 1, 1998, unless authorized by law superseded by this Act.

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

**1. Highest bidder.** Except as otherwise provided in this section, the administrator, within 3 years after the receipt of abandoned property, shall sell it to the highest bidder at public sale at a location in the State, that in the judgment of the administrator, affords the most favorable market for the property. The administrator may decline the highest bid and 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.

**2. Securities.** Securities listed on an established stock exchange must be sold at prices prevailing on the exchange at the time of sale. Other securities may be sold over the counter at prices prevailing at the time of sale or by any reasonable method selected by the administrator. If securities are sold by the administrator before the expiration of 3 years after their delivery to the administrator, a person making a claim under this Act before the end of the 3-year period is entitled to the proceeds of the sale of the securities or the market value of the 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.

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

### **§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.

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

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

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

- A. The property was paid or delivered to the custody of this State because the records of the holder did not reflect a last known location of the apparent owner within the borders of the other state and the other state establishes that the apparent owner or other person entitled to the property was last known to be located within the borders of that state and under the laws of that state the property has escheated or become subject to a claim of abandonment by that state;
- B. The property was paid or delivered to the custody of this State because the laws of the other state did not provide for the escheat or custodial taking of the property and, under the laws of that state subsequently enacted, the property has escheated or become subject to a claim of abandonment by that state;
- C. The records of the holder were erroneous in that they did not accurately identify the owner of

the property and the last known location of the owner within the borders of another state and under the laws of that state the property has escheated or become subject to a claim of abandonment by that state;

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

E. The property is a sum payable on a traveler's check, money order or similar instrument that was purchased in the 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.

**2. Prescribed form.** A claim of another state to recover escheated or abandoned property must be presented in a form 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.

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

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

**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 claimant.

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

**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 the claimant, together with any dividend, interest or other increment to which the claimant is entitled under sections 1962 and 1963.

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

**§1967. Action to establish claim**

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

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

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

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

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

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

**§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.

**§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.** Information derived from annual reports from holders or otherwise communicated to the administrator or the administrator's agents concerning abandoned property is confidential and not available for public inspection to the extent the administrator finds necessary to protect the interests of the holder, the owner, this State 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 any other governmental subdivision, agency, or instrumentality;

C. Produced pursuant to subpoena or court order; or

D. Disclosed to the abandoned property office of another state for that state's use in circumstances equivalent to those described in this subsection, if the other state is bound to keep the documents and papers confidential.

**5. Cost.** If an examination of the records of a person results in the disclosure of property reportable under this Act, the administrator may assess the cost of the examination against the holder at the rate of \$200 a day for each examiner, or a greater amount that is reasonable and was incurred, but the assessment may not exceed the value of the property found to be reportable. The cost of an examination made pursuant to subsection 3 may be assessed only against the business association or financial organization.

**6. Insufficient records.** If, after January 1, 1998, a holder does not maintain the records required by section 1972 and the records of the holder available for the periods subject to this Act are insufficient to permit the preparation of a report, the administrator may require the holder to report and pay to the administrator the amount the administrator reasonably estimates, on the basis of any available records of the holder or by any other reasonable method of estimation, should have been but was not reported.

**§1972. Retention of records**

**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.

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

**§1973. Enforcement**

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

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

**1. Agreements with other states.** The administrator may enter into an agreement with another state to exchange information relating to abandoned property or its possible existence. The agreement may permit the other state, or another person acting on behalf of a state, to examine records as authorized in section 1971. The administrator by rule may require the reporting of information needed to enable compliance with an agreement made under this section and prescribe the form.

**2. Enforcement.** The administrator may join with another state to seek enforcement of this Act against any person who is or may be holding property reportable under this Act.

**3. Actions.** At the request of another state, the Attorney General of this State may maintain an action on behalf of the other state to enforce, in this State, the unclaimed property laws of the other state against a holder of property subject to escheat or a claim of abandonment by the other state, if the other state has agreed to pay expenses incurred by the Attorney General in maintaining the action.

**4. Actions in other states.** The administrator may request that the attorney general of another state or another attorney commence an action in the other state on behalf of the administrator. With the approval of the Attorney General of this State, the administrator may retain any other attorney to commence an action in this State on behalf of the administrator. This State shall pay all expenses, including attorney's fees, in maintaining an action under this subsection. With the administrator's approval, the expenses and attorney's fees may be paid from money received under this Act. The administrator may agree to pay expenses and attorney's fees based in whole or in part on a percentage of the value of any property recovered in the action. Any expenses or attorney's fees paid under this subsection may not be deducted from the amount that is subject to the claim by the owner under this Act.

**§1975. Interest and penalties**

**1. Interest; penalty.** A holder who fails to report, pay or deliver property within the time prescribed by this Act shall pay to the administrator interest at the annual rate of 18% or 10% above the annual rate of discount in effect on the date the property should have been paid or delivered for the most recent issue of 52-week United States Treasury bills on the property or value thereof from the date the property should have been reported, paid or delivered.

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

**3. Willful failure to perform duties.** A holder who willfully fails to report, pay or deliver property within the time prescribed by this Act, or willfully fails to perform other duties imposed by this Act, shall pay to the administrator, in addition to interest as provided in subsection 1, a civil penalty of \$1,000 for each day the report, payment or delivery is withheld or the duty is not performed, up to a maximum of \$25,000, plus 25% of the value of any property that should have been but was not reported.

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

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

**§1976. Agreements to locate property**

**1. Agreements within 24 months.** An agreement by an owner, the primary purpose of which is to locate, deliver, recover or assist in the recovery of property that is presumed abandoned is void and unenforceable if it was entered into during the period 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 not apply to an owner's agreement with an attorney to file a claim as to identified property or contest the administrator's denial of a claim.

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

**3. Mineral proceeds.** If an agreement covered by this section applies to mineral proceeds and the

agreement contains a provision to pay compensation that includes a portion of the underlying minerals or any mineral proceeds not then presumed abandoned, the provision is void and unenforceable.

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

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

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

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

#### **§1977. Foreign transactions**

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

#### **§1978. Transitional provisions**

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

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

#### **§1979. Rules**

The administrator may adopt rules pursuant to the Maine Administrative Procedure Act necessary to

carry out this Act. Rules adopted under this section are routine technical rules under Title 5, chapter 375, subchapter II-A.

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

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

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

### **PART B**

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

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

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

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

Notwithstanding the provisions of Title 33, chapter 37 41, a landowner on whose property an ice-fishing shack is left in 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.

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

Any property with a total value of \$500 or more that is 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.

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

#### **§6324. Proceeds of sale**

After first deducting the expenses incurred in making the sale, the mortgagee shall disburse the remaining proceeds in accordance with the provisions of the judgment. The mortgagee shall file a report of the sale and the disbursement of the proceeds therefrom with the court and shall mail a copy to the mortgagor at his the mortgagor's last known address. This report need not be accepted or approved by the court, provided that the mortgagor or any other party

in interest may contest the accounting by motion filed within 30 days of receipt of the report, but any such challenge ~~shall~~ may be for money only and ~~shall~~ does not affect the title to the real estate purchased by the highest bidder at the public sale. Any deficiency ~~shall~~ must be assessed against the mortgagor and an execution ~~shall~~ must be issued by the court therefor. In the event the mortgagee has been the purchaser at the public sale, any deficiency ~~shall be~~ is limited to the difference between the fair market value of the premises at the time of the public sale, as established by an independent appraisal, and the sum due the mortgagee as established by the court with interest plus the expenses incurred in making the sale. Any surplus ~~shall~~ must be paid to the mortgagor, ~~his~~ the ~~mortgagor's~~ successors, heirs or assigns in the proceeding. If the mortgagor has not appeared personally or 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 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 credited to the General Fund until it becomes abandoned under the Uniform Unclaimed Property Act, and report and pay it to the State in accordance with that Act.

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

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

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

**§3504. Deposit of proceeds**

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

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

B. After expiration of the 30-day notice period, the Secretary of State may dispose of the vehicle

at public auction or report the vehicle as abandoned under Title 33, chapter ~~37~~ 41.

See title page for effective date, unless otherwise indicated.

**CHAPTER 509**

**H.P. 626 - L.D. 851**

**An Act to Provide Reimbursement to Spouses Serving as Personal Care Attendants**

**Emergency preamble.** Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas**, federal rules do not permit recipients of personal care services to employ their spouses in that capacity and be reimbursed through the Medicaid program; and

**Whereas**, the Department of Human Services needs to apply for a waiver as soon as possible to correct this problem; and

**Whereas**, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

**Sec. 1. 26 MRSA §1421-C** is enacted to read:

**§1421-C. Reimbursement**

The Department of Human Services shall reimburse providers who are spouses of individuals who are eligible for personal care assistance services for severely physically disabled adults authorized by section 1421.

**Sec. 2. Appropriation.** The following funds are appropriated from the General Fund to carry out the purposes of this Act.

|  | 1997-98   | 1998-99   |
|--|-----------|-----------|
| <b>HUMAN SERVICES,<br/>DEPARTMENT OF</b> |           |           |
| <b>Long Term Care - Human Services</b>   |           |           |
| All Other                                | \$201,178 | \$209,225 |