

MAINE STATE LEGISLATURE

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OLYMPIA J. SNOWE, ANDROSCOGGIN
ROLAND D. MARTIN, ARDOSTOCK



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STATE OF MAINE

ONE HUNDRED AND EIGHTH LEGISLATURE

COMMITTEE ON STATE GOVERNMENT

January 16, 1978

Rep. John L. Martin, Chairman
Legislative Council
c/o Speakers Office
State House
Augusta, Maine 04333

Dear Representative Martin:

In accordance with H.P. 1802, which ordered a study of the abandoned property and escheat, we enclosed herein the final report of the State Government Committee.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "D. F. Collins", written over a horizontal line.

Donald F. Collins
Senate Chairman

A handwritten signature in cursive script, appearing to read "Peter J. Curran", written over a horizontal line.

Peter J. Curran
House Chairman

enclosures

REPORT OF THE
STATE GOVERNMENT COMMITTEE
ABANDONED PROPERTY AND ESCHEAT

(Pursuant to H.P. 1802)

Senate

Donald F. Collins
Olympia J. Snowe
Roland D. Martin

House

Peter J. Curran
Judy C. Kany
Anne J. Bachrach
G. William Diamond
Stephanie Locke
Barry L. Valentine
Nancy N. Masterton
Eugene L. Churchill
Robert G. Stubbs
James A. Silsby

I. PURPOSES OF STUDY

This study is authorized by H.P. 1802, which directs the State Government Committee to study the present statutes relating to abandoned or unclaimed property and the need for a revision of these statutes. (See Appendix 1 for the text of the study order.)

II. PROCEDURE OF COMMITTEE

Budget limits were placed on all Joint Standing Committees for studies conducted after the end of the First Regular Session of the 108th Legislature. To accommodate these limits, subcommittees were assigned to complete preliminary work on the several studies done by the State Government Committee. The Subcommittee for this Study included Representative Judy Kany, chairperson, and Representatives Bill Diamond and James Silsby. The Subcommittee worked in cooperation with the State Treasurer, Leighton Cooney, in developing this study.

The Subcommittee's findings and recommendations were reviewed at a meeting of the full Committee, at which instructions were given for the preparation of this report. The full Committee voted in favor of publication of the findings and recommendations of the Subcommittee, and for subsequent hearings of the Bill included in this report. The vote did not constitute endorsement by the Committee of either the findings or recommendations.

Representatives of the following were contacted during the study:

- Department of Business Regulation
- Bureau of Banking
- Bureau of Consumer Protection
- Bureau of Insurance
- Secretary of State

- Public Utilities Commission
- Attorney General
- Maine Bar Association
- Maine Bankers Association
- Maine Savings and Loan League
- Maine Savings Bank Association
- Maine Credit Union League
- Chairman of the Probate Study, John Roberts of Sanford

In addition, a member of the Subcommittee attended a conference on abandoned property and escheat laws in other states, and their procedures and policies in administering those laws.

III. FINDINGS AND RECOMMENDATIONS

Abandoned property is property that has been held by a person or organization for another person, and which has been unclaimed or whose true owner is unknown or unlocated. All types of property can become "abandoned"; though in Maine, not all types have established statutory schemes to insure that the property is either returned to the owner or to the State. In Maine, several types of property that are commonly "abandoned", such as utility deposits and refunds and employee wages and benefits, are not covered by the statutory provisions that regulate abandoned property.

There are several state statutory provisions that deal with specific types of property and provide for the location of owners and the disposition of property. These provisions regulate the following types of property:

- bank accounts - 9-B MRSA § 385 & 428;
- safe deposit boxes - 10 MRSA § 3751;
- corporate dividends and assets - 13-A MRSA § 525 & 1121;
- life insurance - 24-A MRSA ch. 61.

However, these provisions provide for differing procedures for reporting and claiming property, administration of the provisions and enforcement. Because of the limited nature of each of these statutes, the efforts to locate the true owners and the enforcement of compliance by holders is weak and diffused. The differing procedures, administration, and enforcement for different types of property also creates confusion and difficulties in compliance by the holders of abandoned property.

The basic principle underlying abandoned property statutes is that the State has a duty to protect the rights and interests of its citizens who have left property in the hands of businesses, but have not exercised control over it for an extended period. A second basic principle is that if the true owner cannot be found to claim the abandoned property, then it should be turned over to the State to be used for the benefit of all citizens rather than remain with the holder for his private benefit. Though these principles underline the present statutes on abandoned property, they are not fully developed or applied.

In order to fully develop and apply them, the Committee makes the following recommendation:

Recommendation #1:

Legislation should be enacted to create a comprehensive and uniform system for regulating abandoned property in this State.

In developing the draft legislation to carry out this recommendation, the Committee considered many problems and issues.

(Some of the basic issues are explained in this commentary included in the draft legislation, which is attached as Appendix B.)

The draft legislation however, was based on two basic premises:

- 1) it should cover all types of property, except real estate, and
- 2) it should establish a uniform procedure for reporting abandoned property and attempting to locate owners. Real property was omitted from the Committee's study because of the scope and complexity of the problem. It should be considered at a later date, by this or another Committee. These two premises insure the comprehensiveness and uniformity of the proposed Act. However, the actual administration of the Act will determine the comprehensiveness and uniformity of its application.

In order to meet this problem, the Committee makes the following recommendation:

Recommendation #2:

The legislation should establish one administrative head of all State activities related to abandoned property, but should also involve the knowledge and capabilities of current departments and bureaus in enforcing the Act.

The draft legislation attached provides for the basic administrative responsibilities of abandoned property to be carried out by the State Treasurer. This consolidates the present scattered authority, which is assigned to the Bureau of Banking, Bureau of Insurance, and other State agencies. By centralizing the administration, the reporting, locating and enforcement activities can be effectively coordinated and implemented. However, because many State agencies have both the experience and expertise in regulating specific activities, the legislation provides for the use of these skills and capabilities in implementing the Act.

This will avoid both the cost of duplicating the skills and capabilities and the confusion and discord created by multiple agency regulations.

Another major problem in this area, is the policy concerning ownership of property that has been abandoned. The Committee makes the following recommendation:

Recommendation #3:

The State should act as a perpetual trustee for the true owner of abandoned property and should not extinguish his title by actually transferring ownership to the State.

This decision is based on the principle that the true owner's rights are superior to the State's and should be preserved. The State has the right and power to extinguish the legal title of the owner who has abandoned the property and to claim full legal title to the property. Many abandoned property statutes do provide for escheat (the extinguishment of the owner's title). It is unclear whether Maine's present statutes do so or not. However, the Committee felt that the potential conflict in any abandoned property statute between finding the true owner and increasing State revenues, should be weighted in the direction of finding owners. By establishing a perpetual trusteeship over abandoned property, this emphasis is created. [Though the State acts as the trustee, it may also assume the legal rights of the owner by a judicial proceeding. This is necessary to allow the State to retrieve certain types of abandoned property, and does not alter this basic principle.]

Though the draft legislation thus provides for perpetual trusteeship, it does not provide for the perpetual segregation of abandoned property funds. The practical reality of most abandoned property acts is that most of the funds are never returned because the true owner cannot be located or identified. Thus, only a part of the funds need to be reserved to meet claims, and the remainder can be turned over to the General Fund. If claims exceed the retained amount then appropriations from the General Fund will have to be required to meet the liability. Thus, this recommendation emphasizes the superiority of the true owner's claim and the importance of locating owners, while not unduly limiting state revenues derived from property that is actually abandoned.

The final recommendation of the Committee is as follows:

Recommendation #4:

The draft legislation should generally follow the scheme of the California Unclaimed Property Law and the Uniform Disposition of Unclaimed Property Act, while also generally adopting a ten year period for abandonment.

This decision is based on a review of the abandoned property laws of over forty states. The Uniform Act has been adopted, in whole or part, in a number of states and thus represents a sound foundation for the draft. The California Act presents several interesting provisions that have proved useful in administering and enforcing the Act. Both of these Acts are not inconsistent with the

principles and recommendations of the Committee.

A detailed commentary follows each section of the draft bill in the Appendix. (See Appendix B.) This commentary describes the effect of each section, its sources, and present provisions in Maine and other states.

APPENDIX A

H.P. 1802

In House

~~Ordered~~, Whereas, billions of dollars are presently being held by the Federal Government; by thousands of companies in Maine and by the other states; and

Whereas, these funds are unclaimed by their rightful owners, many whom are Maine residents; and

Whereas, the State of Maine has an historic and legal responsibility to recover this property for the citizens of Maine and return it to them; and

Whereas, property recovered by the State of Maine, but long unclaimed by the rightful owners escheats to the State; and

Whereas, the value of this recovery to the State and the citizens thereof may amount to tens of millions of dollars in the years to come; and

Whereas, Maine's escheat and unclaimed property laws are out of date and inadequate to serve the present needs of the people of Maine; now, therefore, be it

Ordered, the Senate concurring, that the Committee on State Government, working in cooperation with the Treasurer of State, make a complete study of the question of recovery of unclaimed property and the need for the revision of our present escheat laws; and be it further

Ordered, that the committee shall complete this study no later than December 1, 1977 and submit to the Legislative Council within the same time period its findings and recommendations, including copies of any recommended legislation in final draft form; and be it further

A. O. R.

Ordered, upon passage in concurrence, that a suitable copy of this Order shall be forwarded to members of the committee.

HP1802

HOUSE OF REPRESENTATIVES
READ AND PASSED
JUL 7 1977
SENT UP FOR CONCURRENCE
Edwin S. Peart
ORDERED SENT FORTHWITH CLERK

IN SENATE CHAMBER *Read*
Tabled BY SEN. BEN. SPEERS
OF DE KENNEBEC
JUL 7 1977
PENDING *Passage*
MAY H. ROSS, Secretary.

(Curran)
NAME: *Peter J. Curran*
So.
TOWN: Portland

IN SENATE
TAKEN FROM TABLE ON MOTION
BY SEN. SPEERS
OF KENNEBEC AND ON FURTHER
JUL 11 1977
MOTION BY SEN. SPEERS
OF KENNEBEC
INDEFINITELY POSTPONED
IN NON CONCURRENCE
SENT DOWN FOR CONCURRENCE

HOUSE OF REPRESENTATIVES
UNDER SUSPENSION OF RULES
HOUSE RECEDED & CONCURRED
JUL 11 1977
Edwin S. Peart
CLERK

Ordered sent forthwith

APPENDIX B

DRAFT

AN ACT Relating to Abandoned Property.

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

Sec. 1. 9-B MRSA § 365, sub-§ 9 is repealed and replaced to read:
§366.

9. Unknown depositors. When it appears upon the settlement of the account of the receiver of a financial institution pursuant to this section that there is remaining in his hands funds due depositors who cannot be found and whose heirs or legal representatives are unknown, the unclaimed funds shall be disposed of according to Title 33, chapter 27.

Comment

This section replaces the particular requirements of present law with a cross-reference to the Abandoned Property Act.

The present statute reads:

9. Unknown depositors.

A. When it appears upon the settlement of the account of the receiver of a financial institution pursuant to this section that there is remaining in his hands funds due depositors who cannot be found and whose heirs or legal representatives are unknown, the Superior Court may order such unclaimed funds to be paid into the State Treasury, together with a statement giving the names of such depositors and the amount due each, the same to be held in trust for 20 years thereafter, to be paid to the person or persons having established a lawful right thereto when made to appear upon proper proceedings instituted in the court ordering such disposition of such unclaimed funds.

B. Whenever any such unclaimed fund is in an amount less than \$200, the claimant thereto may make application to the Superior Court which may, after identification satisfactory to it, issue an order under the seal of the Superior Court directing the Treasurer of State to pay said fund to the claimant therein named; and said fund shall be paid as directed.

C. Any income earned on such funds shall be paid into the General Fund as compensation for administration.

Sec. 2. 9-B MRSA § 428, is repealed and replaced to read:

§ 428. Inactive deposits or accounts

All moneys in inactive accounts in each financial institution authorized to do business in this State shall be disposed of according to Title 33, chapter 27.

Comment

This section replaces the particular requirements of present law with a cross-reference to the Abandoned Property Act.

The present statute reads:

§ 428. Inactive deposits or accounts

1. Publication required. The treasurer or designated officer of every financial institution authorized to do business in this State shall annually, on or before the first day of November, cause to be published in a newspaper of general circulation in the county where the institution's principal office is located, or in such other newspaper as the superintendent may designate, a listing of every depositor in said institution who shall not have made a deposit therein or withdrawn therefrom any part of his deposit or account, any part of the dividends thereon, for a period of more than 20 years next preceding. This subsection shall not apply to inactive accounts which, with accumulations thereon, are less than \$50.

2. Contents of notice. The published notice of inactive accounts, shall contain the name of each depositor, a statement containing the name, the amount standing to his credit, the last known place of residence or post office address, and the fact of death, if known. Such notice shall also state that 2 years after the date of publication, all moneys in such inactive deposits or accounts shall be paid into the State Treasury. Said treasurer shall transmit a copy of such statement to the superintendent, to be placed on file in his office for public inspection. Any treasurer willfully neglecting to comply with this section shall be punished by a fine of \$50.

3. Escheat to State. Two years after the date of such publication, all moneys in such inactive deposits or accounts shall be deemed presumptively abandoned and shall be paid into the State Treasury and credited to the General Fund for the use of the State.

4. Inactive accounts less than \$50. All deposits and accounts which are inactive as set forth in this section, and which, with accumulations thereon, are less than \$50, shall be paid into the State Treasury and credited to the General Fund for use of the State at the end of 20 years after the last deposit.

5. **Petition to reclaim abandoned deposit.** After payment into the State Treasury of such deposits or accounts, no civil action shall be maintained in any court in this State by any depositor or his heirs, successors or assigns against any institution making such payments. Thereafter, any lawful claimants may petition the Governor for payment of such moneys to the claimants. In his petition, the claimant shall state fully the facts showing the basis of his right, title and interest in such deposit. The Governor, after hearing, shall determine who are lawful claimants and shall authorize payment by the Treasurer of State from the General Fund to such claimants.

6. **Exceptions.** This section shall not apply to the deposits or accounts of persons known to the treasurer to be living, to a deposit or account the deposit book of which has during such period been brought into the bank to be verified or to have the dividends added. A deposit or account shall not be deemed to be inactive under this section during such period that Bureau of Internal Revenue Form 1099, or its equivalent, is sent to the depositor and is not returned by the post office department.

Sec. 3. 10 MRSA § 3751, last 3 ¶¶ are repealed and replaced to read:

The contents of an opened safe or box, if unclaimed, shall be disposed of according to Title 33, chapter 27.

Comment

This section replaces the particular requirements of present law with a cross-reference to the Abandoned Property Act.

The present statute reads:

10 MRSA § 3751, is amended by adding at the end the following new paragraphs:

At the expiration of 5 years after the opening of the safe or box as herein provided, the bank or company shall then notify the person in whose name the safe or box stands on its books, by a notice in writing in a securely closed, postpaid, certified letter, return receipt by addressee requested, directed to that person or persons at his or their post-office address as recorded upon the books of that bank or company, that if the amount then due for the use of such safe or box is not paid within 60 days from the date of such notice, the aforesaid sealed package of the contents of the safe or box shall be deemed presumptively abandoned and shall be turned over to the State Treasury, which shall issue its receipt to that bank or company. If the certified letter is not delivered to the addressee, the bank or company shall give notice in a newspaper of general circulation in the municipality in which the bank is located. The contents of this notice shall be the same as that provided herein for notice by mail. At the expiration of 5 years after the delivery of

the sealed package to the State Treasury, the State shall cause the package to be opened and its contents sold, except that any article contained within the sealed package deemed by the Treasurer of State to be unsaleable or without value shall be destroyed. From the proceeds of the sale, the bank or company shall be paid the rent due it and costs of notice provided herein, the remainder shall be paid into the State Treasury and credited to the General Fund for the use of the State.

Thereafter, no action shall be maintained in any court in this State by any person in whose name such safe or box stood, or his heirs, successors or assigns for any contents of such safe or box against any bank which delivered the sealed package to the State Treasury in accordance with this section. Thereafter, any lawful claimant may petition the Governor for the return of the sealed package if it has not been destroyed, or for the payment of such sum, and no more, realized by the State from the aforesaid sale. In his petition, the claimant shall state fully the facts showing the basis of his right, title and interest in the safe or box. The Governor, after hearing, shall determine who are lawful claimants and shall authorize payment by the Treasurer of State from the General Fund of such claimants.

Nothing herein shall be construed as preventing any bank or company from enforcing its lien as provided in sections 4001, et seq.

Sec. 4. 13-A MRSA § 525 is repealed and replaced to read:

§ 525. Unclaimed dividends

All unclaimed dividends or other distributions to shareholders declared by a corporation shall be disposed of according to Title 33, chapter 27.

Comment

This section replaces the particular requirements of present law with a cross-reference to the Abandoned Property Act.

The present statute reads:

§ 525. Unclaimed dividends and other distributions to shareholders

1. Whenever a dividend or other distribution to shareholders has been declared by a corporation and the check in payment thereof has not been presented for payment within 20 years from the date of issue thereof, and, in the exercise of due diligence the shareholder entitled thereto cannot be located, then said corporation may stop payment on said check, if it has not theretofore done so, and pay said dividend or dividends or other distribution to the Treasurer of State to be held by him for said shareholder as provided, and cancel on its books the certificate, whether or not in its possession, evidencing the shares in respect of which said dividend or dividends or other distributions were declared, issue a duplicate certificate for said shares in the name of the Treasurer of State and deliver said duplicate certificate to the Treasurer of State.

2. The Treasurer of State shall, prior to January 31st of each year, cause notice, in such form as he shall approve, to be published in the state paper, at least once each week for 2 successive weeks, of all dividends and distributions and shares of stock received by him during the preceding calendar year pursuant to this section, with the name, if known, and the last known address, if any, of each person appearing to be the owner of any such dividend or dividends or distributions and of any such shares of stock. After March 1st and prior to March 31st of each year the Treasurer of State shall sell in the open market or at public sale all shares of stock represented by duplicate certificates delivered to him pursuant to this section during the preceding calendar year, except for such as may be the subject of applications then pending in the Superior Court pursuant to this section. All funds received by the Treasurer of State from the sale of shares of stock for any such shareholder shall be held by him for said shareholder as provided.

3. Any claimant to any dividend or dividends or other distributions paid to the Treasurer of State pursuant to this section and any claimant to any shares of stock, or to the proceeds of the sale of any shares of stock, paid to the Treasurer of State pursuant to this section shall make application therefor, within 20 years after the first publication of the notice in respect thereof provided for in subsection 2, to the treasurer, who shall pay the same upon satisfactory proof that the claimant is entitled thereto. If the treasurer is not satisfied as to the right of any claimant to such funds, the claimant may bring a civil action against the treasurer in the Superior Court for Kennebec County, which, if satisfied as to the claimant's legal right thereto, shall issue an order directing the Treasurer of State to pay the same to the claimant, and the same shall be paid as directed in said order. At the expiration of said 20-year period, any unclaimed funds received by the Treasurer of State pursuant to this section shall escheat to the State. Any income earned on any funds received by the Treasurer of State pursuant to this section during said 20-year period shall be paid into the General Fund of the State as compensation to the State for administration.

Sec. 5. 13-A MRSA § 1121, is repealed and replaced to read:

§ 1121. Undistributed assets

Upon the voluntary or involuntary dissolution of a corporation, the portion of the assets distributable to a creditor or shareholder who:

1. Unknown. Is unknown or cannot be founds;
2. Disability. Is under disability and for whom there is no person legally competent to receive such distributive portion; or
3. Refused distribution. Fails or refuses to accept his distribution,
shall be disposed of according to Title 33, chapter 27.

Comment

This section replaces the particular requirements of present laws with a cross-reference to the Abandoned Property Act.

The present statute reads:

§ 1121. Deposit with State Treasurer of undistributed assets due certain shareholders and creditors

1. Upon the voluntary or involuntary dissolution of a corporation, the portion of the assets distributable to a creditor or shareholder who is unknown or cannot be found, or who is under disability and for whom there is no person legally competent to receive such distributive portion, or who fails or refuses to accept his distribution, shall be reduced to cash and deposited with the Treasurer of State, along with a statement setting forth the name, last known address, amount due to and other pertinent information concerning each such distributee.

2. Such deposit with the Treasurer of State shall, to the extent thereof, absolutely discharge the persons having control and supervision over the distribution of the corporation's assets from liability to such unknown, unlocated, legally disabled or nonaccepting creditors or shareholders. If the dissolution is under the supervision of the Superior Court pursuant to section 1115, no such deposit shall be made with the Treasurer of State, except pursuant to order of the court, on such terms as the court may order.

3. The Treasurer of State shall pay over such sums deposited with him to the creditor or shareholder or to his legal representative, upon proof satisfactory to the Treasurer of State of his right thereto.

4. If the Treasurer of State is not satisfied as to the right of any claimant to such funds, the claimant may bring a civil action in the Superior Court against the treasurer; if the court is satisfied as to the claimant's right to the funds, it shall issue an order directing the treasurer to pay the same to such claimant. Such action may not be brought after the expiration of 20 years from the time of deposit of such funds with the Treasurer of State. At the end of such 20-year period, any such funds remaining in the State Treasury shall escheat to the State. Any income earned on such funds shall be paid into the General Fund as compensation for administration.

Sec. 6. 18 MRSA § 851, 1st ¶, 2nd sentence is amended to read:

The residue shall be distributed or shall ~~escheat-by-the-rules-provided-for-the-distribution-of-real-estate,~~ be disposed of according to Title 33, chapter 27, except that in intestate estates and it having been determined by the probate court that the deceased and the surviving widow were living together at the time of his decease and that he left no issue, there shall be distributed to the widow.

Comment

This amendment replaces the present immediate escheat of personal property that is not distributable with the provisions of the Abandoned Property Act.

Sec. 7. 24-A MRSA ch. 61 is repealed and replaced to read:

CHAPTER 61

UNCLAIMED FUNDS OF LIFE INSURANCE

§ 4551. Disposition of unclaimed funds

All unclaimed moneys held and owing by any life insurer doing business in this State shall be disposed of according to Title 33, chapter 27.

Comment

This section replaces the particular requirements of present law with a cross-reference to the Abandoned Property Act.

The present statute reads:

CHAPTER 61

UNCLAIMED FUNDS OF LIFE INSURERS

Sec.

- 4551. Short title.
- 4552. Scope.
- 4553. Definitions.
- 4554. Reports.
- 4555. Notice of unclaimed funds; publication.
- 4556. Payment to superintendent.
- 4557. Custody of unclaimed funds in State; insurers indemnified.
- 4558. Reimbursement for claims paid by insurers.
- 4559. Special trust fund; administration.
- 4560. Determination and review of claims.
- 4561. Payment of allowed claims.
- 4562. Records required.
- 4563. Inapplicability of other statutes.

§ 4551. Short title

This chapter shall be known as the Unclaimed Funds Act of Life Insurers.

§ 4552. Scope

This chapter shall apply to unclaimed funds, as defined in section 4553, of any life insurer doing business in this State where the last known address, according to the records of the insurer, of the person entitled to the funds is within this State; but if a person other than the insured or annuitant is entitled to the funds and no address of such person is known to the insurer, or if it is not definite and certain from the records of the insurer what person is entitled to the funds, then in either event it shall be presumed for the purposes of this chapter that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the insurer.

§ 4553. Definitions

1. As used in this chapter:

A. "Life insurer" means any association or corporation, including a fraternal benefit society as defined by section 4101, transacting within this State the business of insurance on the lives of persons or insurance appertaining thereto, including, but not by way of limitation, endowments and annuities.

B. "Unclaimed funds" means all moneys held and owing by any life insurer doing business in this State which shall have remained unclaimed and unpaid for 7 years or more after it is established from the records of the insurer that such moneys became due and payable under any life or endowment insurance policy or annuity contract which has matured or terminated.

2. A life insurance policy not matured by actual proof of the prior death of the insured shall be deemed to be matured and the proceeds thereof shall be "due and payable" within the meaning of this chapter, if the policy is in force when the insured shall have attained the limiting age under the mortality table on which the reserve is based.

3. Moneys otherwise admittedly due and payable shall be deemed to be "held and owing" within the meaning of this chapter although the policy or contract shall not have been surrendered as required.

§ 4554. Reports

1. Every life insurer shall on or before May 1st of each year make to the superintendent a written report of all unclaimed funds, as defined in section 4553, held and owing by it on December 31st next preceding, but the report shall not be required to include amounts of less than \$5, or amounts which have been paid to another state or jurisdiction prior to January 1, 1970, or amounts representing claims which have been barred by the statute of limitations prior to such effective date.

2. The report shall be signed and sworn to by an officer of the insurer and shall set forth:

A. In alphabetical order, the full name of the insured or annuitant, his last-known address according to the insurer's records, and the policy or contract number;

B. The amount appearing from the insurer's records to be due on the policy or contract;

C. The date the unclaimed funds became payable;

D. The name and last-known address of each beneficiary or other person who, according to the insurer's records, may have an interest in the unclaimed funds;

E. Items of value under \$25 each may be reported in the aggregate;

F. Such other identifying information as the superintendent may require.

§ 4555. Notice of unclaimed funds; publication

1. On or before September 1st following the making of the reports under section 4554, the superintendent shall cause to be published notices based on the information contained in the reports and entitled "notice of certain unclaimed funds held and owing by life insurance companies." Such a notice shall be published once a week for 2 successive weeks in a newspaper published or having a general circulation in each county of this State in which is located the last known address of a person appearing to be entitled to such funds.

2. Each notice shall set forth in alphabetical order the names of the insureds or annuitants under policies or contracts where the last known address of the person appearing to be entitled to such funds is in the county of publication or general circulation, together with:

A. The amount reported due and the date it became payable;

B. The name and last known address of each beneficiary or other person who, according to the insurer's reports, may have an interest in the unclaimed funds;

C. The name and address of the insurer.

3. The notice shall also state that the unclaimed funds will be paid by the insurer to persons establishing to its satisfaction before the following December 1st their right to receive the same, and that not later than the following December 20th such unclaimed funds still remaining will be paid to the superintendent who shall thereafter be liable for the payment thereof.

4. It shall not be obligatory upon the superintendent to publish any item of less than \$50 in such notice, unless the superintendent deems such publication to be in the public interest.

5. The expenses of publication shall be charged against the special trust fund provided for in section 4559.

§ 4556. Payment to superintendent

1. All unclaimed funds contained in the report required to be filed by section 4554, excepting those which have ceased to be unclaimed funds, shall be paid over to the superintendent on or before the following December 20th.

2. The superintendent shall have the power, for cause shown, to extend for a period of not more than one year the time within which a life insurer shall file any report and in such event the time for publication and payment required by this chapter shall be extended for a like period.

§ 4557. Custody of unclaimed funds in State; insurers indemnified

Upon the payment of unclaimed funds to the superintendent, the State shall assume, for the benefit of those entitled to receive the same and for the safety of the money so paid, the custody of the unclaimed funds, and the life insurer making such payment shall immediately and thereafter be relieved of and held harmless by the State from any and all liability for any claim or claims which exist at such time with reference to the unclaimed funds or which thereafter may be made or may come into existence on account of or in respect to any such unclaimed funds.

§ 4558. Reimbursement for claims paid by insurers

Any life insurer which has paid moneys to the superintendent pursuant to this chapter may make payment to any person appearing to such insurer to be entitled thereto, and upon proof of such payment, the superintendent shall forthwith reimburse such insurer for such payment out of the special trust fund in his custody or, if the special trust fund shall be insufficient, out of the General Fund of the State.

§ 4559. Special trust fund; administration

Upon receipt of any unclaimed funds from life insurers by the superintendent, he shall pay forthwith three-fourths of the amount thereof into the State Treasury for credit to the General Fund of the State for the use of the State. The remaining one-fourth shall be administered by him as a special trust fund for the purposes of this chapter, and deposited in the manner provided by law for the deposit of such funds. At the end of each calendar year, any unclaimed funds which shall have been a part of such special trust fund for a period of 7 years or more shall be paid into the General Fund of the State for the use of the State, but the special trust fund shall never be so reduced to less than \$1,000.

§ 4560. Determination and review of claims

Any person claiming to be entitled to unclaimed funds paid to the superintendent may file a claim at any time with the superintendent. The superintendent shall possess full authority to accept or reject any such claim. If he rejects a claim or fails to act thereon within 90 days after receipt of the claim, the claimant may make application to the Superior Court of Kennebec County, upon not less than 30 days' notice to the superintendent, for an order to show cause why he should not accept and pay the claim.

§ 4561. Payment of allowed claims

Any claim which is accepted by the superintendent or ordered to be paid by him by a court of competent jurisdiction shall be paid out of the special trust fund in his custody or, if such special trust fund shall be insufficient, it shall be paid out of the General Fund of the State.

§ 4562. Records required

The superintendent shall keep in his office a public record of each payment of unclaimed funds received by him from any life insurer. The record shall show in alphabetical order the name and last-known address of each insured or annuitant, and of each beneficiary or other person who, according to the insurer's reports, may have an interest in such unclaimed funds, and with respect to each policy or contract, its number, the name of the insurer and the amount due.

§ 4563. Inapplicability of other statutes

No other statute of this State relating to escheat or unclaimed funds in force on January 1, 1970 shall apply to life insurers nor shall any such statute enacted after January 1, 1970 so apply unless specifically made applicable by its terms.

Sec. 8. 33 MRSA ch. 27 is enacted to read:

CHAPTER 27
ABANDONED PROPERTY
SUB-CHAPTER I
General Provisions and Terms for Abandonment

Sec.

- 1301. Purpose
- 1302. Definitions
- 1303. Property subject to custody and control of the State
- 1304. Property held by financial institutions
- 1305. Property held by life insurers
- 1306. Property held by other insurers
- 1307. Property held by utilities
- 1308. Property held by business associations
- 1309. Property held in the course of dissolution
- 1310. Property held by fiduciary
- 1311. Property held by governmental agents
- 1312. Property held in the ordinary course of business

§ 1301. Purpose

The purpose of this chapter is to provide for the disposition of all personal property that is being held for another person and has been unclaimed or abandoned for a substantial period. This chapter is intended to protect the interests of the owner of the property while also relieving the holder from the annoyance, expense and potential liability of an unlimited responsibility. The State's interest is to insure the protection of the rights and in-

terests of its citizens and persons doing business in the State, and, until the abandoned property is claimed, to use the considerable sums of money for the benefit of Maine's citizens, that would otherwise become windfalls to the holders. The policy of this chapter is first, to actively seek the owners of the property and then to make use of funds temporarily in the State's hands.

Comment

This section does not appear in any other Act. Its purpose is to state the general legislative intent of the Act. This language is adopted from the language of the drafters of the Uniform Act.

§ 1302. Definitions

For the purposes of this chapter, the following words shall have the following meanings, unless a different meaning is required by the context.

1. Business association. "Business association" shall mean any private corporation, joint stock company, business trust, partnership or association, 2 or more individuals having joint or common interest, or any other legal or commercial entity engaged in business.

2. Financial institution. "Financial institution" shall mean any federal or state trust company, savings bank, industrial bank, savings and loan association, building and loan association, commercial bank, credit union, federal association, investment company, or other business association that solicits, receives or accepts money or its equivalent on deposit and loans money as a regular business.

3. Holder. "Holder" shall mean any person in possession of property subject to this chapter belonging to another, or who is trustee in case of a trust, or is indebted to another on an obligation subject to this chapter.

4. Life insurer. "Life insurer" shall mean any business association transacting insurance business in this State, or any business defined as insurance under 24-A MRSA § 3.

5. Owner. "Owner" shall mean a depositor in case of a deposit, a beneficiary in case of a trust, a creditor, claimant or payee in case of other choses in action, or any person having a legal or equitable interest in property subject to this chapter, or his legal representative.

6. Person. "Person" shall mean any individual, business association, government or political subdivision, public corporation, public authority, estate, trust, 2 or more persons having a joint or common interest, or any other legal or commercial entity.

7. Terminate. "Terminate" shall mean to end in any manner, including lapse, expire or cease under its terms or otherwise.

8. Utility. "Utility" shall mean any person who owns or operates, for public use, any plant, equipment, property, franchise or license, for transportation of the public, the transmission of communications or the production, storage, transmission, sale, delivery or furnishing of electricity, water, steam or gas.

9. Written instrument. "Written instrument" shall mean a document in writing that evidences a legal right, obligation or interest.

Comment

The definitions used in Titles 9-B and 13-B were considered in drafting these definitions. Also considered were the definitions in various abandoned property acts.

§ 1303. Property subject to custody and control of the State

A property that is deemed unclaimed or abandoned under this chapter is subject to the custody and control of the State if it is:

1. Tangible. Tangible and physically located within the State; or

2. Intangible. Intangible, and

A. The last known address of the owner, as shown by the records of the holder, is within the State; or

B. The last known address of the owner as shown by the records of the holder is within a jurisdiction, the laws of which do not provide for the escheat or custodial taking of the property, and the domicile of the holder is within the State; or

C. No address of the owner appears on the records of the holder and the domicile of the holder is within the State; or

D. No address of the owner appears on the records of the holder and the domicile of the holder is not within the State, but it is proved that the last known address of the owner is in the State.

Comment

This section establishes the authority of the State over abandoned property. The authority is limited to property physically located in the State or property which the State can in some way legally control. This is a simplified version of the California provisions and is based on a Pennsylvanian proposed code. There is no specific counterpart in the Uniform Disposition of Unclaimed Property Act (UDUPA), though similar provisions are established in each section that establishes an abandonment period. The principles of this section are based on the decision of the U.S. Supreme

Court in Texas vs. New Jersey 379 U.S. 678 (1965). The specific provision that treats "Travelers checks" differently in the California code, has not been included.

§ 1304. Property held by financial institutions

1. Deposits and funds. Any demand, savings or matured time deposit in a financial institution, or any funds paid toward the purchase of shares or other interest in a financial institution shall be presumed abandoned if, within the preceding ten years the owner has not:

A. Increased or decreased the amount of the deposit, shares or claim, or presented to the holder the passbook, evidence of deposit or other appropriate record for the crediting of interest or dividends;

B. Corresponded in writing with the holder concerning the deposit, shares or claim; or

C. Otherwise indicated an interest in the deposit, shares or claim as evidenced by a writing on file with the holder. A record of the sending of a Bureau of Internal Revenue Form 1099 or its equivalent, to the owner and of its not being returned by the post office department shall be an indication of interest.

2. Written instruments. Any sum payable on a check certified in the State or on any written instrument issued in the State on which a financial institution or other business association is directly liable shall be presumed abandoned if, within 10 years from the date payable, or from the date of issuance, if payable on demand, the owner has not:

A. Negotiated the instrument;

B. Corresponded in writing with the financial institution concerning it; nor

C. Otherwise indicated an interest as indicated by a writing on file with the financial institution.

3. Safe deposit box. Any funds or other personal property, tangible or intangible, contained in or removed from a safe deposit box or other safekeeping repository shall be presumed abandoned if the owner has not claimed the property within 10 years of the expiration of the lease, rental, or other agreement.

4. Charges, interest or dividends on abandoned property.

A. Reasonable service charges may be levied against deposits or accounts presumed to be abandoned, provided those charges may not exceed the charges levied against similar active deposits or accounts or the actual cost of administering the account or deposit.

B. Interest or dividends due on any deposits, accounts, funds or shares presumed to be abandoned shall not be discontinued or diverted because of the inactivity or during the period prior to abandonment.

Comment

This section establishes the time for abandonment for all money or instruments held by financial institutions (i.e., banks, savings and loan associations, credit unions, trust companies, etc.). The draft is a simplified version of the California provisions and the UDUPA, and is based on the Rhode Island and Pennsylvania codes.

Present Maine law sets an abandonment period only for inactive deposits or accounts (22 years). No period is set for negotiable instruments (i.e., checks etc.) nor for funds paid toward the purchase of shares. The abandonment period for safe deposit boxes is changed from the present 5 years to 10 years by this draft.

The authority to open boxes (10 MRSA § 3751) is not altered by this draft.

This draft also includes provisions to prevent abuses in charging service charges or crediting interest or dividends to inactive or abandoned accounts or shares. This is a simplified version of the California provisions and is presented with alternatives.

§ 1305. Property held by life insurers

1. Funds owed under a policy or contract. Any funds held or owing by a life insurer that are due and payable under any life or endowment insurance policy or annuity contract which has matured or terminated shall be presumed abandoned if they have not been claimed or paid within 10 years after becoming due or payable as established from the insurer's records. Funds payable according to the insurer's records are deemed due and payable although the policy or contract has not been surrendered as required.

2. Presumption of address of beneficiary. If a person other than the insured or annuitant is entitled to the funds and no address of the person is known to the insurer or if it is not definite and certain from the records of the insurer what person is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the insurer.

3. Presumption of maturity. A life insurance policy not matured by actual proof of the death of the insured is deemed to be matured and the proceeds are deemed to be due and payable if the policy was in force when the insured attained the limiting age under the mortality table on which the reserve is based; unless the person appearing entitled thereto has within the preceding 10 years, assigned, readjusted or paid premiums on the policy, made payments

on a loan, or corresponded in writing with the life insurer concerning the policy.

Comment

This section establishes the time for abandonment for all money owed under life insurance policies. The draft is a simplified version of the UDUPA, and is also similar to the California code.

This section is also nearly identical with the present statutes. The present statutes establish an abandonment period of seven years and a basic "abandoned property" system in the office of the Superintendent of Insurance. This section shifts the administrative responsibility to the Treasurer, and lengthens the period to 10 years. The two presumptions in this section are more comprehensive than their statement in the present statutes (24 MRSA § 4553).

§ 1306. Property held by other insurers

1. Funds owed under a policy or contract. Any funds held or owing by a fire, casualty, or surety or any other insurer that are due and payable, as established from the records of the insurer, either to an insured, a principal, or other claimant under any insurance policy or contract shall be presumed abandoned if they have not been claimed or paid within 10 years after becoming due or payable. Funds payable according to the insurer's records are deemed due and payable although the policy or contract has not been surrendered as required.

2. Presumption of address of beneficiary. If a person other than the insured, the principal or the claimant is entitled to the funds and no address of the person is known to the insurer or if it is not definite and certain from the records of the insurer what person is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured, the principal or the claimant according to the records of the insurer.

Comment

This section establishes the time for abandonment for all money owed under fire, casualty, surety or other insurance policies. This draft is based on the Maryland and Florida Acts, and does not specifically appear in the California Act or the UDUPA.

This section would cover not only casualty claims, but also any premiums or deposits returnable or dividends payable to policy holders. There is no comparable provision in present Maine statutes.

§ 1307. Property held by utilities

1. Deposits. Any deposit, advance, toll, collateral, security or other property held by a utility to secure payment or for furnishing services shall be presumed abandoned if it has not been claimed or returned within 10 years after:

A. It was due to or demandable by the owner under the terms of the agreement; or

B. The termination of services to the owner.

2. Refunds. Any funds which a utility has been ordered to refund shall be presumed abandoned if it has not been claimed or paid within 10 years after the date it became payable in accordance with the final determination or order providing for the refund.

Comment

This section establishes the time for abandonment of utility deposits or refunds. This draft is based on the UDUPA and the Pennsylvania code. California does not have a provision specifically relating to utilities. There is no similar provision in the present Maine statutes.

§ 1308. Property held by business associations

1. Dividends. Any dividend, profit, distribution, interest, payment on principal or other funds held or owing by a business association for or to its share holder, certificate holder, member, bondholder or other security holder, or a participating patron of a cooperative shall be presumed abandoned if within 10 years after the date prescribed for delivery or payment, it has not been claimed or the owner has not corresponded in writing with the holder concerning it.

2. Stocks. Any intangible interest in a business association, as evidence by stock records or membership records of the association shall be presumed abandoned if, for 10 years:

A. The owner of the interest has not claimed a dividend or other sum referred to in subsection 1; or

B. The owner of the interest has not corresponded in writing with the association or otherwise indicated an interest as evidenced by a memorandum or other record on file with the association.

3. Dividends on abandoned stocks. Any dividends or other distributions held for or owing to a person and attached to a stock or security deemed abandoned shall also be presumed abandoned, and shall not be diverted or discontinued during the period prior to the abandonment.

Comment

This section establishes the time for abandonment of stocks and dividends. This draft is based on the California code and the UDUPA. There is no comparable section in present Maine statutes.

§ 1309. Property held in the course of dissolution

All property distributable in the course of a voluntary or involuntary dissolution of a business association, financial institution, insurer or utility shall be presumed abandoned if it is unclaimed within 10 years of the date of final dissolution.

Comment

This section establishes the time for abandonment on property distributed after a business is dissolved. This section is based on the Pennsylvania code and is broader than either California or the UDUPA. Other abandoned property acts have established a shorter abandonment period for this type of property, because of the unusual circumstances concerning dissolutions. The UDUPA uses 2 years (while usually using 15), California uses 6 months (while usually using 7-15 years); and Maryland only requires 60 days (while usually using 7-15 years).

The present statutes (13-A MRSA § 1121) establishes immediate State trusteeship over such property, but establishes a 20-year abandonment period prior to escheat to the State. The "escheat" provision is removed by this Act.

§ 1310. Property held by fiduciary

1. Property. All property held in a fiduciary capacity for the benefit of another person shall be presumed abandoned if, within 10 years of it becoming payable or distributable, the owner has not:

- A. Increased or decreased the principal;
- B. Accepted payment of principal or income;
- C. Corresponded in writing with the fiduciary concerning the property; or
- D. Otherwise indicated an interest as evidenced by a memorandum or other record on file with the fiduciary.

2. Income. Any income or increment due on property deemed abandoned under sub-section 1, shall also be presumed abandoned, and shall not be discontinued or diverted during the period prior to the abandonment.

Comment

This section establishes the time for abandonment on property held in trust for another. This section is a general catch-all section for property held in trust. It is based on the California and Pennsylvania Acts, and is broader than the UDUPA. There is no comparable provision in Maine statutes.

§ 1311. Property held by governmental agents

All property held for the owner by a court, public corporation or authority, or agent or instrumentality of the United States, this state or any other state, or by a public officer or political subdivision thereof, shall be presumed abandoned if it is not claimed within 10 years of becoming payable or distributable.

Comment

This section establishes the time for abandonment of property held by any federal, state or local government, officer or agent. This follows the California and UDUPA sections; but it is expressly extended to include property held by the federal government and other states, as is done in the Pennsylvania, Wisconsin and Indiana Acts. There is no comparable section in present Maine statutes.

§ 1312. Property held in the ordinary course of business

1. Property. All property, not otherwise covered in this section, that is held or owing in the ordinary course of the holder's business shall be presumed abandoned if it has not been claimed within 10 years after becoming payable or distributable.

2. Income and charges. Any income or increment due on property deemed abandoned under sub-section 1 shall also be presumed abandoned, and shall not be discontinued or diverted during the period prior to abandonment. Lawful charges may be deducted from property that is presumed to be abandoned, provided the lawful charges are specifically authorized by statute or by a valid enforceable contract.

Comment

This section establishes the time of abandonment for miscellaneous property and is the general "catch-all". It follows the UDUPA, with the additional provisions relating to income and charges that are in the California Act. There is no comparable section in present Maine statutes.

SUB-CHAPTER II
Administration of Abandoned Property

Sec.

- 1351. Report of abandoned property
- 1352. Notice and publication by Treasurer
- 1353. Payment or delivery of abandoned property
- 1354. Relief from liability by payment or delivery
- 1355. Income accruing after payment or delivery
- 1356. Periods of limitations not a bar
- 1357. Sale retention or disposal of abandoned property
- 1358. Deposit of fund
- 1359. Claim for abandoned property paid or delivered
- 1360. Examination of records
- 1361. Proceeding to allow examination or compel delivery
- 1362. Penalties
- 1363. Regulations
- 1364. Restriction on agreement to locate reported property
- 1365. Effect of laws of other states
- 1366. Severability

§ 1351. Report of abandoned property

1. Report. Every person holding funds or other property, tangible or intangible, presumed abandoned under this chapter shall report to the State Treasurer with respect to that property.

2. Contents. The report shall be verified and shall include:

A. The name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of the value of \$25 or more;

B. In case of unclaimed funds of a life insurer, the full name of the insured or annuitant and his last known address according to the life insurer's records;

C. The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, except that items of value under \$25 each may be reported in aggregate;

D. The date when the property became payable, demandable or returnable, and the date of the last transaction with the owner with respect to the property; and

E. Other information which the Treasurer prescribes by rule.

3. Names of prior holders. If the person holding property presumed abandoned is a successor to other persons who previously held the property for the owner, or if the holder has changed his name while holding the property, he shall file with his report all prior known names and address of each holder of the property.

4. Time of filing. The report shall be filed before November 1st of each year as of the prior June 30th, but the report of life insurer's shall be filed before May 1st of each year as of the prior December 31st. The Treasurer may postpone the reporting date upon written request by any person required to file a report.

5. If owner known. If the holder of property presumed abandoned under this chapter knows the whereabouts of the owner and if the owner's claim has not been barred by the statute of limitations, the holder shall, before filing the annual report, communicate with the owner and take necessary steps to prevent abandonment from being presumed. The holder shall exercise due diligence to ascertain the whereabouts of the owner.

6. Verification. Verification, if made by a partnership, shall be executed by a partner; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer.

Comment

This section establishes the reporting dates and contents of the annual report of the holder of abandoned property. It is essentially identical to almost every state's requirement and to the UDUPA. The \$25 minimum for individual reporting is the same as the California Act. The UDUPA uses \$3, and other states range as high as \$50 (Wisconsin and Indiana). The report required by this section allows the Treasurer to identify the status of property that has been abandoned and puts the holder on record as to his actions. This report is required on all abandoned property, and is the critical element in the State's control and enforcement. Some of the present Maine statutes require a similar report and others require no report at all.

§ 1352. Notice and publication by Treasurer

1. Publication. Within 120 days of the filing of the report required by section 1351, the State Treasurer shall cause to be published in two newspapers of general circulation in the State, at least once a week for two consecutive weeks, a notice and listing of all abandoned property reported to him.

2. Contents. The published notice shall be entitled "Notice of Names of Persons Appearing to be Owners of Abandoned Property", and shall contain:

A. The names in alphabetical order and last known addresses, if any, of owners of abandoned property.

B. The amount or description of the property and the name and address of the holder.

C. A statement for property to be delivered to the Treasurer, that if proof of claim is not presented by the owner to the holder and if the owner's right to receive the property is not established to the holder's satisfaction within 65 days from the date of the 2nd published notice, the abandoned property will be placed not later than 85 days after such publication date in the custody of the Treasurer to whom all further claims must thereafter be directed.

3. Notice not required. Treasurer is not required to publish in the notice any item of less than \$25 unless he deems publication to be in the public interest.

4. Mailed notice. Within 120 days from the receipt of the report required by section 1351, the Treasurer shall mail a notice to each person having an address listed therein who appears to be entitled to property of the value of \$25 or more.

5. Contents. The mailed notice shall contain:

A. A statement that, according to a report filed with the Treasurer property is being held to which the addressee appears entitled and the amount or description of the property.

B. The name and address of the person holding the property and any necessary information regarding changes of name and address of the holder.

C. A statement that, if satisfactory proof of claim is not presented by the owner to the holder by the date specified in the published notice, the property will be placed in the custody of the Treasurer to whom all further claims shall be directed.

Comment

This section establishes the publication and notice requirements to be met by the State Treasurer. It follows the UDUPA and the California Act; except the requirements on the choice of newspapers have been simplified, and the amount of the property is to be published. This section establishes the foundation of the State's role in locating the true owner of the property. Other states, such as New York, place the burden of locating the owner on the holder. However, this did not seem either efficient or appropriate in Maine. Most other states do not publish the amount of money in each "account", because of the problem of professional "finders" abusing that information. But, publishing the amount is also more

likely to result in a proper claim as well, and this was considered more important.

This draft requires the holder to process and validate any claims during this advertising period. Because the holder has the records of the property and the means to identify valid claims, and because the work of processing claims will be distributed among many holders; it seemed appropriate to require holders to process them. However, the property is to be turned over to the Treasurer at the end of the "claiming" period. The time and monetary amounts here are in both the UDUPA and California Act.

§ 1353. Payment or delivery of abandoned property

1. Payment or delivery. Every person holding funds or other property, tangible or intangible, presumed abandoned under this chapter, shall pay or deliver to the State Treasurer all of that property within 85 days of publication of notice as required under section 1352.

2. Exception for claimed property. If the owner establishes his right to receive the abandoned property to the satisfaction of the holder, or if it appears that for some other reason the presumption of abandonment is erroneous, the holder need not pay or deliver the property, which will no longer be presumed abandoned, to the Treasurer, but in lieu thereof shall file a verified written explanation of the proof of claim or of the error in the presumption of abandonment.

3. Tangible personal property. The Treasurer may determine that notice and delivery of specific personal property is not in the best interest of the State, either because the sum or value is too small or for other good reason. If the Treasurer notifies the holder of that property of that determination within 120 days of receipt of the report required under section 1351, he may ex-

clude the property from the notices under section 1352 and may refuse to accept delivery and custody of that property.

Comment

This section establishes the requirements for delivery of abandoned property to the Treasurer. It is based on the UDUPA. Sub-section 2 of the draft contains a general provision that allows the holder to show that the presumption of abandonment is incorrect. This adds important flexibility to the statute, by allowing for unforeseen problems. Sub-section 3 of the draft is an adaptation of a California provision, that is intended to protect the State from being forced to take custody over highly unusual or dangerous property. A similar provision for property of little value is in the UDUPA.

§ 1354. Relief from liability by payment or delivery

Upon the payment or delivery of abandoned property to the Treasurer, the State shall assume custody of the property and shall be responsible for its safekeeping. Any person who pays or delivers abandoned property to the Treasurer under this chapter is relieved of all liability to the extent of the value of the property so paid or delivered for any claim which then exists or which thereafter may arise or be made in respect to the property.

Comment

This section relieves the holder from any liability after he has delivered the property to the Treasurer. The relief here is limited to the value of the property, as is done in most states, including California, and the UDUPA. Some states (e.g., Indiana and Wisconsin) relieve the holder from all liability related to the property.

California and several other states have a provision requiring the return to the holder of the personal property if the holder finds the owner. This provision reflects a policy decision that the holder should continue to seek the owner even after the property is delivered to the State. This draft, however, has adopted the policy that the State should have the responsibility for locating the owner. Thus, no similar provision is included, though the return of the property is not prohibited either.

§ 1355. Income accruing after payment or delivery

When property is paid or delivered to the Treasurer under this chapter, the owner shall only be entitled to receive income or other increments actually received by the Treasurer.

Comment

This section removes the duty to pay income on property that becomes abandoned. It does not change the obligation to pay income during the inactive period prior to abandonment, but only when the presumption of abandonment occurs. The language is based on the Pennsylvania and Indiana Acts and allows the owner to receive income after abandonment if the Treasurer has actually received it. The UDUPA places an absolute cut-off on the right to income once the property is delivered to the Treasurer.

§ 1356. Periods of limitation not a bar

The expiration of any period of time specified by statutes or court order, during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property, shall not prevent the money or property from being presumed abandoned property, nor affect any duty to file a report required by this chapter or to pay or deliver abandoned property to the Treasurer.

Comment

This section prevents any other statute or court order from eliminating the effect of abandonment under this chapter. It is the same as the California Act and the UDUPA.

§ 1357. Sale retention or disposal of abandoned property

1. Sale by auction. All abandoned property, other than money or securities or other property sold under sub-section 2 or tangible property retained under sub-section 3, delivered to the Treasurer under this chapter shall, within one year after delivery, be sold by him to the highest bidder at public sale in whatever city in the State affords in his judgment the most favorable market for the property involved. The Treasurer may decline the highest bid and reoffer the property for sale if he considers the price bid insufficient. He need not offer any property for sale, if in his opinion the probable cost of sale exceeds the value of the property.

Each sale shall be preceded by a single publication of notice of the sale at least 3 weeks in advance in two newspapers of general circulation in the State.

2. Securities and other property.

A. Securities listed on an established stock exchange may be sold at the prevailing prices on such exchange. Other securities may be sold over the counter at prevailing prices or, by such other method as the Treasurer may determine to be advisable. United States Government Savings Bonds and United States War Bonds shall be presented to the United States for payment.

B. If the property is of a type customarily sold on a recognized market or of a type which is subject to widely distributed standard price quotations, the Treasurer may sell the property without notice by publication or otherwise.

3. Retention of tangible property with historic value.

The State Treasurer may retain any tangible property delivered to him, if the property has exceptional historic significance. The historic significance shall be certified by the State Treasurer, with the advice of the State Historian, State Archivist and the Director of the Maine State Museum; and a statement of the appraised value of the property shall be filed with the certification. Historic property retained under this subsection may be stored and displayed at the Maine State Museum, State Library or other suitable locations.

4. Destruction of valueless property. The State Treasurer may destroy or otherwise dispose of any property delivered to him, if the property has no apparent commercial or historic value. The lack of apparent commercial or historic value shall be certified by the State Treasurer, and a description of the property shall be filed with the certification.

5. Title. The purchaser at any sale conducted by the Treasurer pursuant to this chapter shall receive title to the property purchased, free from all claims of the owner or prior holder thereof and of all persons claiming through or under them. The Treasurer shall execute all documents necessary to complete the transfer of title.

Comment

This section establishes the manner of selling or disposing of abandoned property. The basic method of sale is by auction as provided under most state acts and the UDUPA. The provision on securities is based on a provision in the California Act and the provision on property with a recognized market is based on the Pennsylvania Act. Both of these provisions are optional methods of disposing of property that eliminate the burdens of an auction when it is not necessary to ensure that a fair value is received. The provision on the title given from these sales is generally used in all states. Sub-section 3 contains a provision allowing the retention of property that has a demonstrable historic value. There is no counterpart to this provision in other states' Acts. Sub-section 4 allows the Treasurer to destroy valueless property, and is based on the California Act.

§ 1358. Deposit of funds

1. Deposit of funds; Abandoned Property Fund. The Treasurer shall immediately deposit all funds received under this chapter, including the proceeds from the sale of property under section 1358, into the Abandoned Property Fund. The Abandoned Property Fund shall be a permanent account and shall not lapse.

2. Authorized expenditures.

A. The Treasurer may expend the funds in the Abandoned Property Fund for the payment of claims or refunds to holders as authorized under this chapter, and for the payment of taxes, costs of maintenance and upkeep of abandoned property, costs of required notice and publication, and costs of auction or sale under this chapter.

B. At the end of each year or oftener, the Treasurer shall transfer to the General Fund all money in the Abandoned Property Fund that is in excess of \$50,000 (fifty-thousand dollars).

3. Records. Before making a deposit to the Abandoned Property Fund, or retaining or destroying property the Treasurer shall record the name and address of the holder, the name and last known address of each person appearing from the holders' reports to be entitled to the abandoned property, the name and last known address of each insured person or annuitant, the amount or description of the property, and, with respect to each policy or contract listed in the report of an insurer, its number and the name of the corporation. The record shall be available for public inspection at all reasonable business hours. All other records, documents or information relating to the abandoned property shall be confidential and not available for public inspection to the extent the Treasurer finds necessary to protect the interests of the owner, the State and the public welfare.

Comment:

This section establishes how to handle the money received as abandoned property. It requires that it be desposited in a dedicated fund from which claims and certain expenses may be paid. Annually all money in excess of \$50,000 will be transfered to the General Fund.

This section is based on the California Act. The UDUPA and the present Maine statutes employ a different method, a direct payment to the General Fund of a set portion of the abandoned property (e.g., 24-a MRSA § 4559) with the other portion retained in a special Trust Fund for an established period. The California Act allows for clearer identification of money paid into the General Fund and for greater accountability. The minimum level for the Abandoned Property Fund is based on the California Act and the UDUPA. Other states have different amounts, ranging from \$25,000 to \$500,000 (Indiana). Other states also allow different expenses to be removed from the Fund, most commonly the "costs of administration", including salaries. The draft limits the expenses that may be removed to direct costs required under the Act. The other major variation that occurs in this section is that some states dedicate the "income" from this Fund with Maryland giving it to counties, Indiana to the Common School Fund and Wisconsin to the Employee Trust Funds. There is no such dedication in this draft.

This section also provides for the confidentiality of certain records to prevent abuse by professional "finders".

§ 1359. Claim for abandoned property paid or delivered

1. Filing. Any person claiming an interest in any property delivered to the State under this chapter may file a claim to the property or to the proceeds from its sale. The claim shall be on a form prescribed by the Treasurer and shall be signed or otherwise verified by the claimant. The claim shall be made to the person originally holding the property, or to his successor or successors. If such person is satisfied that the claim is valid and that the claimant is the actual and true owner of the property, he shall so certify to the Treasurer by written statement attested by him under oath, or in case of a corporation, by two principal officers, or one principal officer and an authorized employee thereof. The determination of the holder that the claimant is the actual and true owner shall, in the absence of fraud, be binding upon the Treasurer and upon receipt of the certificate of the holder to this effect, the Treasurer shall forthwith authorize and make payment of the claim or return of the property, or if the property has been sold, the amount received from such sale to the owner, or to the holder in the event the owner has assigned the claim to the holder and the certificate of the holder is accompanied by such assignment. In the event the person originally holding the property rejects the claim made against him, the claimant may appeal to the Treasurer.

2. Determination. The Treasurer shall consider each claim and make a determination on it within 90 days after it is filed. He may hold a hearing, which shall be an adjudicatory proceeding and held in the manner required by the Administrative Procedure Act, Title 5, chapter 25. Each determination shall be in writing, shall state the reasons for the decision and shall be given or sent to the claimant. Each determination may be appealed as provided under Title 5, chapter 25.

3. Payment. If the claim is allowed, the Treasurer shall make payment forthwith. The claim shall be paid without deduction for costs of notices or sale or for service charges. Payment shall include interest at 5% from the date of receipt by the State to the date of payment, if interest was paid by the holder prior to delivery of the State under this chapter. If no interest was paid prior to delivery, then the State shall pay no interest. Interest payments under this section shall only be paid for a maximum of ten years after receipt of the property by the State.

4. Payment by holder. Any holder who has paid moneys to the Treasurer pursuant to this chapter may make payment to any person appearing to such holder to be entitled thereto, and upon proof of such payment and proof that the payee was entitled thereto, the Treasurer shall forthwith reimburse the holder for the payment.

Comment

This section establishes the method of making claims for abandoned property. This draft establishes the holder as the primary person responsible for processing claims. The UDUPA, California and most other states have the claims primarily processed by the State. Washington and South Carolina provide the basis for the provision, with processing primarily by the holder.

Sub-section 2 establishes the procedure to be used by the Treasurer in deciding if the claim is valid. The procedures of the Administrative Procedure Act are incorporated into the draft. The hearing is optional. Sub-section 3 is based on the UDUPA, but includes a California provision to require the payment of interest. However, as there is no time limit on State custody, a limit on interest has been included to avoid an unlikely but fiscally damaging drain of money.

§ 1360. Examination of records

1. Treasurer. The Treasurer may at reasonable times and upon reasonable notice cause to be examined the records of any person if he has reason to believe that such person has failed to report property that should have been reported pursuant to this chapter.

2. Other examiner. When requested by the Treasurer, an examination shall be conducted by any licensing or regulating agency otherwise empowered to examine the records of a holder. For the purpose of this section, the Superintendent of Banking is vested with full authority to examine the records of any financial institution doing business within the State, including those not organized under the laws or created in this State.

3. Confidentiality of records. Information derived by any examination of records or otherwise communicated to the Treasurer or his representative concerning abandoned property shall be confidential and not available for public inspection to the extent the Treasurer finds necessary to protect the interests of the holder, the owner, the State and the public welfare.

Comment

This section establishes the authority of the Treasurer to require examination of records to insure compliance with this Act. It is based on the UDUPA. The second sub-section is based on the California Act, and extends the examining authority to all regulatory agencies. These agencies are required to examine at the request of the Treasurer. This section also extends the power of the Superintendent of Banking to authorize examination of nationally chartered banks. A provision on confidentiality of records is added to protect the examination process.

§ 1361. Proceeding to allow examination or compel delivery

1. Proceeding. If any person refuses to allow examination of records or to deliver property to the Treasurer as required under this chapter, the Treasurer may bring an action in a court of appropriate jurisdiction to enforce the examination or delivery.

2. Trustee proceedings. The Attorney General, at the request of the Treasurer, may bring an action to secure a judgment for the descent and devolution of property to the State as an escheat. Property and funds escheated to the State under this sub-section shall be received and held as provided in this chapter, but the State shall act as a trustee and not a custodian, of the property, and shall have all the rights and remedies vested in a fiduciary of a decedent estate by the general laws of the State. The duties or rights of any other persons shall be governed by this chapter as though the State has become custodian of the property.

Comment

This section establishes the authority to seek court enforcement of this chapter. The court enforcement is to require delivery of property (UDUPA) and to allow examination of records (California Act). The second sub-section gives the State the power to act as the "true owner" rather than simply as a custodian. This authority may be very important in dealing with the federal government, its chartered institutions and with other states.

§ 1362. Penalties

1. Failure to perform duties. Willful failure to render reports or perform other duties required under this chapter shall be a Class E crime for each day the report is withheld.
2. Refusal to deliver property. Willful refusal to pay or deliver abandoned property to the Treasurer as required under this chapter shall be a Class D crime.
3. Interest penalty. In addition to any other damages, penalties or fines, any person who willfully fails to render reports, refuses to pay or deliver abandoned property to the Treasurer or perform any other duties required under this chapter shall be charged interest at the rate of 12 percent per annum on the property or its value from the date the property should have been reported, paid or delivered.

Comment

This section establishes the penalties for violating the chapter. The penalties are based on the UDUPA and have been converted into the standard Criminal Code classes. Class E equals a penalty of \$250 for a person or \$5,000 for an organization or twice the pecuniary value derived, or imprisonment for not more than 6 months. Class D is \$500, \$5,000 or less than 1 year. The penalties of other states vary considerably, but are generally in this area.

§ 1363. Regulations

The Treasurer may adopt or amend the regulations necessary to carry out the provisions of this chapter. These regulations shall be adopted or amended under the procedures of the Administrative Procedures Act, Title 5, chapter 25.

Comment

This section authorizes the Treasurer to make regulations to carry out this chapter. The Administrative Procedure Act is adopted.

§ 1364. Restriction on agreement to locate reported property

1. Limit on fees. No agreement entered into within one year after a report is filed under section 1351 is valid if any person thereby undertakes to locate property included in that report for a fee or compensation exceeding 15 percent of the value of recoverable property, unless the agreement is:

- A. In writing and signed by the property owner;
- B. Discloses the nature and value of the property; and
- C. Discloses the name and address of the holder.

2. Excessive consideration. Nothing in this section shall be construed to prevent an owner from asserting, at any time, that any agreement to locate property is based on an excessive or unjust consideration.

Comment

This section establishes limits on compensation that may be received by professional "finders". This section is based on the California Act, but establishes a higher maximum. It is intended to prevent abuses of the State's abandoned property program.

§ 1365. Effect of laws of other states

This chapter shall not apply to any property that has been presumed abandoned or escheated under the laws of another state prior to the effective date of this chapter.

§ 1366. Severability

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision of application, and to this end the provisions of this chapter are severable.

Comment

These two sections are adopted from the UDUPA and provide for the effect of other state's laws and severability. These sections are designed to avoid potential legal difficulties and thus to preserve the content of this Act.

Sec. 9. Transition and application. Any person holding property that was not required to be reported, delivered or paid to any State agency as abandoned property under the laws of this State prior to January 1, 1979, and which, on December 31, 1978, has been held for a period greater than the period for abandonment established by this Act, is not required to report that property to the Treasurer under this Act. However that property shall be reported, delivered or paid to the Treasurer. The Treasurer shall adopt regulations governing the manner and time for the reporting, delivery or payment of that property in order to promote its identification and delivery and the reasonable convenience of the holders.

Any person holding property that was subject to reporting, delivery or payment to a State agency as abandoned property under the laws of this State prior to January 1, 1979, and that is subject to a shorter period for abandonment under this Act, may report and deliver or pay to the Treasurer that property between January 1, 1979 and June 30, 1979. The Treasurer may grant further extensions of time to any holder of property with a shortened abandonment period if he deems the extension is necessary to an orderly transition.

This Act shall not effect any duty to file a report or deliver or pay to any State agency and abandoned property under the laws of this State prior to January 1, 1979.

On January 1, 1979, the Treasurer shall transfer all funds in the Public Administrator's Fund to the Abandoned Property Fund as established by 24-A MRSA § 1358 of this Act, and shall within 60 days thereafter, transfer all funds in excess of \$50,000 to the General Fund as required by that section.

Sec. 10. Appropriation. There is appropriated from the General Fund to the Treasurer the sum of \$ 23,300 to carry out the purposes of this Act. The breakdown shall be as follows:

TREASURY DEPARTMENT	1978-79
Treasurer-Department Operations ... 2-127	
Positions	(3)
Personal Services	\$17,400
All Other	3,400
Capital Expenditures	2,500
Total:	<u>\$23,300</u>

Sec. 11. Effective date. The effective date of this Act shall be January 1, 1979.

FISCAL NOTE

The effect of this Act is likely to be an increase in State revenues. It is estimated that after the initial surge in revenues due to the decrease in the periods of abandonment, the State will receive between \$100,000 to \$200,000 each year in General Fund revenues. This estimate, however, is subject to the efficacy of enforcement of the Act and the response of private holders of abandoned property.

The appropriation in the bill is to meet the expense for three positions in the Treasurer's office, for six months, beginning January 1, 1979. These positions will be a paralegal-administrator and two governmental auditors. The All Other account covers travel and miscellaneous expenses and the Capital Expenditures account covers the one-time expenses for equipment. The appropriation will be met by the increase in General Fund revenues under this Act.

There will be a non-recurring transfer of approximately \$500,000 to the General Fund after enactment, because the transition clause requires the discontinuance of the Public Administrator's Fund and the maintenance of only a \$50,000 balance in the Abandoned Property Fund. Approximately \$350,000 is contained in the Public Administrator's Fund, which will be transferred to the Abandoned Property Fund on the effective date of this Act.

STATEMENT OF FACT

This Bill is the result of a study conducted by the State Government Committee of the 108th Legislature pursuant to H.P. 1802. Copies of the Report of the Committee are available in the Committee's hearing room in the State House in Augusta.

This Bill establishes an Abandoned Property Act. Abandoned property is property which is being held for another person and which has been unclaimed for a specific period of years. Present statutes provide for the period of abandonment and the disposition of abandoned property for specific types of property, such as inactive savings or checking accounts, abandoned safe deposit boxes, unclaimed dividends or shareholder distributions, undistributed assets, unclaimed life insurance funds and other similar accounts. The present periods range from 5 to 22 years of inactivity prior to a finding of "abandonment". Present statutes also provide for various procedures to find the owners, to enforce the statutes and to turn over "abandoned property" to the State. This Bill enacts provisions that cover all types of property, establishes shorter and more uniform periods for abandonment, and establishes a uniform procedure for collection and enforcement.

The Committee Report contains a section by section analysis of the Bill.