

SHORT TITLE: Property; creating the Revised Uniform Unclaimed Property Act; providing for abandonment, custody, and disposition of unclaimed property; codification; effective date.

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

SENATE BILL NO. 256

By: Henry

AS INTRODUCED

An Act relating to property; creating the Revised Uniform Unclaimed Property Act; providing short title; defining terms; stating presumptions of abandonment; providing for contents of safe deposit box or other safekeeping depository; stating rules for taking custody; authorizing dormancy charge; declaring burden of proof as to property evidenced by record of check or draft; requiring report of abandoned property; requiring payment or delivery of abandoned property; requiring notice and publication of lists of abandoned property; declaring when payment or delivery is made in good faith; providing for custody by the state, recovery by a holder, and defense of holder; providing for crediting of dividends, interest, and increases to owner's account; providing for public sale of abandoned property; requiring certain deposits of funds; providing for claims to recover property; authorizing actions to establish claim; authorizing election to take payment or delivery; providing for destruction or disposition of certain property and providing for immunity from liability; stating periods of limitation; authorizing requirements for reports and examination of records; requiring retention of records; providing for enforcement; authorizing certain interstate agreements and

cooperation including joint and reciprocal actions with other states; providing for interest and penalties; prohibiting certain agreements and providing for certain other agreements to locate property; making act inapplicable to certain foreign transactions; providing transitional provisions; authorizing rulemaking; requiring uniformity of application and construction; conforming statutory references; repealing 60 O.S. 1991, Sections 651, as amended by Section 1, Chapter 404, O.S.L. 1992, 651.1, 651.2, 652, 653, 654, 654.1, 655, 655.1, 656, 657, 657.1, 657.2, 657.3, Section 27, Chapter 295, O.S.L. 1992, 658, 658.1, 658.1A, 659, 659.1, 661, 662, 663, 664, 665, 666, 667, 668, 668.1, 669, 670, 671, 672, 674, 674.1, Section 1, Chapter 304, O.S.L. 1994, as amended by Section 6, Chapter 334, O.S.L. 1996, 675, 676, 677, 677.1, 678, 679, 679.1, 680, 681, 682, 683.1, 683.2, as amended by Section 2, Chapter 404, O.S.L. 1992, 684.1, 685.1 and 686 (60 O.S. Supp. 1996, Sections 651, 657.4, 674.2 and 683.2), which relate to the Uniform Unclaimed Property Act; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

REVISED UNIFORM UNCLAIMED PROPERTY ACT

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 691 of Title 60, unless there is created a duplication in numbering, reads as follows:

SHORT TITLE

This act may be cited as the "Revised Uniform Unclaimed Property Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 691.1 of Title 60, unless there is created a duplication in numbering, reads as follows:

DEFINITIONS

In this act:

1. "Administrator" means a designee of the Oklahoma Tax Commission;
2. "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" 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" 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" means a savings and loan association, savings bank, bank, banking organization, or credit union;
6. "Holder" means a person obligated to hold for the account of, or deliver or pay to, the owner of property that is subject to this act;
7. "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" 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 resource; or any other substance defined as a mineral by the law of this state;

9. "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 thereafter. The term includes 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" includes an express money order and a personal money order, on which the remitter is the purchaser. The term 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" means a person who has a legal or equitable interest in property subject to this act or the person's legal representative. The term 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" means an individual, business association, financial organization, estate, trust, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity;

13. "Property" means tangible property described in Section 4 of this act 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. The term 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" 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" 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; and

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

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 691.2 of Title 60, unless there is created a duplication in numbering, reads as follows:

#### PRESUMPTIONS OF ABANDONMENT

A. Property is presumed abandoned if it is unclaimed by the apparent owner during the time set forth below for the particular property:

1. Traveler's check, fifteen (15) years after issuance;
2. Money order, seven (7) years after issuance;
3. Stock or other equity interest in a business association or financial organization, including a security entitlement under Article 8 of Title 12A of the Oklahoma Statutes, five years after the earlier of (i) the date of the most recent dividend, stock split, or other distribution unclaimed by the apparent owner, or

(ii) the date of the second 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;

4. Debt of a business association or financial organization, other than a bearer bond or an original issue discount bond, five (5) years after the date of the most recent interest payment unclaimed by the apparent owner;

5. A demand, savings, or time deposit, including a deposit that is automatically renewable, five (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;

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

7. Gift certificate, three years after December 31 of the year in which the certificate was sold, but if redeemable in merchandise only, the amount abandoned is deemed to be sixty percent (60%) of the certificate's face value;

8. Amount owed by an insurer on a life or endowment insurance policy or an annuity that has matured or terminated, three years after the obligation to pay arose or, in the case of a policy or annuity payable upon proof of death, three 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;

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

10. Property received by a court as proceeds of a class action, and not distributed pursuant to the judgment, one (1) year after the distribution date;

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

12. Wages or other compensation for personal services, one (1) year after the compensation becomes payable;

13. Deposit or refund owed to a subscriber by a utility, one (1) year after the deposit or refund becomes payable;

14. 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, three (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

15. All other property, five (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.

B. At the time that an interest is presumed abandoned under subsection A of this section, 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.

C. Property is unclaimed if, for the applicable period set forth in subsection A of this section, 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 its representative who has not in writing identified the property to the owner is not an indication of interest in the property by the owner.

D. An indication of an owner's interest in property includes:

1. 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;

2. 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;

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

4. 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.

E. 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.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 691.3 of Title 60, unless there is created a duplication in numbering, reads as follows:

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 remains unclaimed by the owner for more than five (5) years after expiration of the lease or rental period on the box or other depository.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 691.4 of Title 60, unless there is created a duplication in numbering, reads as follows:

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. The last-known address of the apparent owner, as shown on the records of the holder, is in this state;
2. 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. 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. 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;

5. 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. 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. 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.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 691.5 of Title 60, unless there is created a duplication in numbering, reads as follows:

#### 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.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 691.6 of Title 60, unless there is created a duplication in numbering, reads as follows:

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.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 691.7 of Title 60, unless there is created a duplication in numbering, reads as follows:

REPORT OF ABANDONED PROPERTY

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

B. The report must be verified and must contain:

1. A description of the property;

2. 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 Fifty Dollars (\$50.00) or more;

3. An aggregated amount of items valued under Fifty Dollars (\$50.00) each;

4. In the case of an amount of Fifty Dollars (\$50.00) 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;

5. 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;

6. 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

7. Other information that the administrator by rule prescribes as necessary for the administration of this act.

C. 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.

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

E. The holder of property presumed abandoned shall send written notice to the apparent owner, not more than one hundred twenty (120) days or less than sixty (60) days before filing the report, stating that the holder is in possession of property subject to this act, if:

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

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

3. The value of the property is Fifty Dollars (\$50.00) or more.

F. 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.

G. The holder of property presumed abandoned shall file with the report an affidavit stating that the holder has complied with subsection E of this section.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 691.8 of Title 60, unless there is created a duplication in numbering, reads as follows:

PAYMENT OR DELIVERY OF ABANDONED PROPERTY

A. Except for property held in a safe deposit box or other safekeeping depository, upon filing the report required by Section 8 of this act, 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 one hundred twenty (120) days after filing the report required by Section 8 of this act.

B. If the property reported to the administrator is a security or security entitlement under Article 8 of Title 12A of the Oklahoma Statutes, 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 Article 8 of Title 12A of the Oklahoma Statutes.

C. 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 Section 8-405 of Title 12A of the Oklahoma Statutes, but an indemnity bond is not required.

D. 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 11 of this act.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 691.9 of Title 60, unless there is created a duplication in numbering, reads as follows:

NOTICE AND PUBLICATION OF  
LISTS OF ABANDONED PROPERTY

A. The administrator shall publish a notice not later than November 30 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 the county of this state in which is located the last-known address of any person named in the notice. If a holder does not report an address for the apparent owner, or the address is outside this state, the notice must be published in the county in which the holder has its principal place of business within this state or another county that the administrator reasonably selects. 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:

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

2. 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;

3. 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

4. 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.

B. The administrator is not required to advertise the name and address or location of an owner of property having a total value less than Fifty Dollars (\$50.00), or information concerning a traveler's check, money order, or similar instrument.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 691.10 of Title 60, unless there is created a duplication in numbering, reads as follows:

CUSTODY BY STATE - RECOVERY

BY HOLDER - DEFENSE OF HOLDER

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

1. Payment or delivery was made in a reasonable attempt to comply with this act;

2. 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

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

B. 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.

C. 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 subsection A of Section 20 of this act.

D. 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.

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

F. 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.

G. 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.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 691.11 of Title 60, unless there is created a duplication in numbering, reads as follows:

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 the legal rate of interest 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 ten (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 the effective date of this act, unless authorized by law superseded by this act.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 691.12 of Title 60, unless there is created a duplication in numbering, reads as follows:

PUBLIC SALE OF ABANDONED PROPERTY

A. Except as otherwise provided in this section, the administrator, within three (3) years after the receipt of abandoned property, shall sell it to the highest bidder at public sale at a location in the state which 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 three (3) weeks before sale, in a newspaper of general circulation in the county in which the property is to be sold.

B. 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 three (3) years after their delivery to the administrator, a person making a claim under this act before the end of the three-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 three-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.

C. 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.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 691.13 of Title 60, unless there is created a duplication in numbering, reads as follows:

DEPOSIT OF FUNDS

A. Except as otherwise provided by this section, the administrator shall promptly deposit in the General Revenue Fund of this state all funds received under this act, including the proceeds from the sale of abandoned property under Section 13 of this act. The administrator shall retain in a separate trust fund at least One Hundred Thousand Dollars (\$100,000.00) from which the administrator shall pay claims duly allowed. 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.

B. Before making a deposit to the credit of the General Revenue Fund, the administrator may deduct:

1. Expenses of sale of abandoned property;
2. Costs of mailing and publication in connection with abandoned property;
3. Reasonable service charges; and
4. Expenses incurred in examining records of holders of property and in collecting the property from those holders.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 691.14 of Title 60, unless there is created a duplication in numbering, reads as follows:

CLAIM OF ANOTHER STATE TO RECOVER PROPERTY

A. After property has been paid or delivered to the administrator under this act, another state may recover the property if:

1. 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;

2. 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;

3. 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;

4. The property was subjected to custody by this state under paragraph 6 of Section 5 of this act 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

5. 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 paragraph 7 of

Section 5 of this act, and under the laws of the other state the property has escheated or become subject to a claim of abandonment by that state.

B. 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 ninety (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 A of this section.

C. 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.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 691.15 of Title 60, unless there is created a duplication in numbering, reads as follows:

FILING CLAIM WITH ADMINISTRATOR -  
HANDLING OF CLAIMS BY ADMINISTRATOR

A. 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.

B. Within ninety (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 what additional evidence 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 17 of this act.

C. Within thirty (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 12 and 13 of this act.

D. 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 12 and 13 of this act, may recover from the administrator the amount of the increment.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 691.16 of Title 60, unless there is created a duplication in numbering, reads as follows:

ACTION TO ESTABLISH CLAIM

A person aggrieved by a decision of the administrator or whose claim has not been acted upon within ninety (90) days after its filing may maintain an original action to establish the claim in the district court, naming the administrator as a defendant.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 691.17 of Title 60, unless there is created a duplication in numbering, reads as follows:

ELECTION TO TAKE PAYMENT OR DELIVERY

A. The administrator may decline to receive property reported under this act which the administrator considers to have a value less than the expenses of notice and sale.

B. 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 would be presumed abandoned under this act.

SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 691.18 of Title 60, unless there is created a duplication in numbering, reads as follows:

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.

SECTION 20. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 691.19 of Title 60, unless there is created a duplication in numbering, reads as follows:

PERIODS OF LIMITATION

A. The expiration, before or after the effective date of this act, 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.

B. 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 ten (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.

SECTION 21. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 691.20 of Title 60, unless there is created a duplication in numbering, reads as follows:

REQUESTS FOR REPORTS AND EXAMINATION OF RECORDS

A. 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.

B. 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.

C. 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 B of this section to both the association or organization and the agent at least ninety (90) days before the examination.

D. 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:

1. Used by the administrator in the course of an action to collect unclaimed property or otherwise enforce this act;
2. 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;

3. Produced pursuant to subpoena or court order; or

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

E. 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 Two Hundred Dollars (\$200.00) 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 C of this section may be assessed only against the business association or financial organization.

F. If, after the effective date of this act, a holder does not maintain the records required by Section 22 of this act 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.

SECTION 22. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 691.21 of Title 60, unless there is created a duplication in numbering, reads as follows:

#### RETENTION OF RECORDS

A. Except as otherwise provided in subsection B of this section, a holder required to file a report under Section 8 of this act shall maintain the records containing the information required to be included in the report for ten (10) years after the holder

files the report, unless a shorter period is provided by rule of the administrator.

B. 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 third-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 three years after the holder files the report.

SECTION 23. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 691.22 of Title 60, unless there is created a duplication in numbering, reads as follows:

#### ENFORCEMENT

The administrator may maintain an action in this or another state to enforce this act. The court may award reasonable attorney's fees to the prevailing party.

SECTION 24. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 691.23 of Title 60, unless there is created a duplication in numbering, reads as follows:

#### INTERSTATE AGREEMENTS AND COOPERATION -

##### JOINT AND RECIPROCAL ACTIONS WITH OTHER STATES

A. 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 21 of this act. 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.

B. 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.

C. 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.

D. 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.

SECTION 25. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 691.24 of Title 60, unless there is created a duplication in numbering, reads as follows:

#### INTEREST AND PENALTIES

A. 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 two percentage points 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.

B. Except as otherwise provided in subsection C of this section, 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 A of this section, a civil penalty of Two Hundred Dollars (\$200.00) for each day the report, payment, or delivery is withheld, or the duty is not performed, up to a maximum of Five Thousand Dollars (\$5,000.00).

C. 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 A of this section, a civil penalty of One Thousand Dollars (\$1,000.00) for each day the report, payment, or delivery is withheld, or the duty is not performed, up to a maximum of Twenty-five Thousand Dollars (\$25,000.00), plus twenty-five (25) percent of the value of any property that should have been but was not reported.

D. A holder who makes a fraudulent report shall pay to the administrator, in addition to interest as provided in subsection A of this section, a civil penalty of One Thousand Dollars (\$1,000.00) for each day from the date a report under this act was due, up to a maximum of Twenty-five Thousand Dollars (\$25,000.00), plus twenty-five (25) percent of the value of any property that should have been but was not reported.

E. The administrator for good cause may waive, in whole or in part, interest under subsection A of this section and penalties under subsections B and C of this section, and shall waive penalties if the holder acted in good faith and without negligence.

SECTION 26. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 691.25 of Title 60, unless there is created a duplication in numbering, reads as follows:

AGREEMENT TO LOCATE PROPERTY

A. 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 twenty-four (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.

B. 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.

C. 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.

D. An agreement covered by this section which 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.

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

SECTION 27. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 691.26 of Title 60, unless there is created a duplication in numbering, reads as follows:

FOREIGN TRANSACTIONS

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

SECTION 28. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 691.27 of Title 60, unless there is created a duplication in numbering, reads as follows:

TRANSITIONAL PROVISIONS

A. An initial report filed under this act for property that was not required to be reported before the effective date of this act but which is subject to this act must include all items of property that would have been presumed abandoned during the ten-year period next preceding the effective date of this act as if this act had been in effect during that period.

B. This act does not relieve a holder of a duty that arose before the effective date of this act to report, pay, or deliver property. Except as otherwise provided in subsection B of Section 20 of this act, 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.

SECTION 29. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 691.28 of Title 60, unless there is created a duplication in numbering, reads as follows:

RULES

The administrator may adopt, pursuant to the Administrative Procedures Act, rules necessary to carry out this act.

SECTION 30. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 691.29 of Title 60, unless there is created a duplication in numbering, reads as follows:

UNIFORMITY OF APPLICATION AND CONSTRUCTION

This act shall 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.

SECTION 31. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 691.30 of Title 60, unless there is created a duplication in numbering, reads as follows:

CONFORMING REFERENCES

Any reference in the Oklahoma Statutes to a predecessor act including, but not limited to, the Uniform Unclaimed Property Act (1981), shall be deemed to refer to this act.

SECTION 32. REPEALER 60 O.S. 1991, Sections 651, as amended by Section 1, Chapter 404, O.S.L. 1992, 651.1, 651.2, 652, 653, 654, 654.1, 655, 655.1, 656, 657, 657.1, 657.2, 657.3, Section 27, Chapter 295, O.S.L. 1992, 658, 658.1, 658.1A, 659, 659.1, 661, 662, 663, 664, 665, 666, 667, 668, 668.1, 669, 670, 671, 672, 674, 674.1, Section 1, Chapter 304, O.S.L. 1994, as amended by Section 6, Chapter 334, O.S.L. 1996, 675, 676, 677, 677.1, 678, 679, 679.1, 680, 681, 682, 683.1, 683.2, as amended by Section 2, Chapter 404, O.S.L. 1992, 684.1, 685.1 and 686 (60 O.S. Supp. 1996, Sections 651, 657.4, 674.2 and 683.2), are hereby repealed.

SECTION 33. This act shall become effective November 1, 1998.

46-1-0066

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