

HANDBOOK
OF THE
NATIONAL CONFERENCE
OF COMMISSIONERS
ON
UNIFORM STATE LAWS
AND
PROCEEDINGS
OF THE
ANNUAL CONFERENCE
MEETING IN ITS SIXTY-THIRD
YEAR



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UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT

PREFATORY NOTE

Uniform and comprehensive state legislation dealing with the disposition of unclaimed property should fill a very real need. Present statutory provisions on the subject are exceedingly diverse in character and are often not well formulated. Most states already have statutes dealing with the disposition of unclaimed tangible personal property, the abandonment of which is a more or less obvious fact. In addition, a considerable number of states have statutes dealing with the disposition of unclaimed bank deposits. However, only ten states have adopted really comprehensive legislation covering the entire field of unclaimed property. They are: Arkansas, Connecticut, Kentucky, Massachusetts, Michigan, New Jersey, New York, North Carolina, Oregon, and Pennsylvania. Several other states have, however, currently manifested interest in adopting comprehensive legislation on the subject. If the Uniform Disposition of Unclaimed Property Act serves to promote a fair and adequate treatment of the subject in state legislation, a good cause will be served.

In addition to the general desirability of symmetry in the law for the benefit of persons doing business in more than one state, there is at least one especially important reason for uniform legislation on the subject. Two recent decisions of the United States Supreme Court, *Connecticut Mutual Insurance Co. v. Moore*, 333 U.S. 541, 92 L. Ed. 863 (1947) and *Standard Oil Co. v. New Jersey*, 341 U.S. 428, 95 L. Ed. 1078 (1951), (both of which are explained more fully in the commentary to Section 10) reveal that a troublesome problem of multiple liability for the holder of unclaimed property arises in case two or more states, each having jurisdiction over such property, enact statutes dealing with the subject. If two such statutes cover the same items of property, and if each state seeks to exercise its jurisdiction, it becomes likely that the holder may be subjected to double, or, perhaps, even more extensive liability for funds in its custody. Or, even though the statutes are so framed as to avoid multiple liability, a "race of diligence" between states having jurisdiction may ensue, with each state trying to reach the funds first. In the 1947 decision in *Connecticut Mutual Insurance Co. v. Moore*, the United States Supreme Court held that the state of New York may take possession of unclaimed funds due on insurance policies issued to persons in the state of New York, even though the insurance company holder of the funds is domiciled in another state. Jurisdiction is based upon the relationship of the policy

holders to the state. Later, in 1951 in the *Standard Oil Company* case, the Court upheld the right of the state of New Jersey, the domicile of the company, to escheat stock and stock dividends belonging to residents of the state of New York. So jurisdiction can also be based upon the domicile of the holder. These two decisions viewed together reveal the possibilities of multiple liability. Moreover, since federal concepts of jurisdiction may not preclude multiple liability, it is especially proper and desirable to resort to a uniform state act providing reciprocity. The Uniform Act here submitted deals specifically with this problem.

The Uniform Act is custodial in nature,—that is to say, it does not result in the loss of the owner's property rights. The state takes custody and remains the custodian in perpetuity. Although the actual possibility of his presenting a claim in the distant future is not great, the owner retains his right of presenting his claim at any time no matter how remote. State records will have to be kept on a permanent basis. In this respect the measure differs from the escheat type of statute, pursuant to which the right of the owner is foreclosed and the title to the property passes to the state. Not only does the custodial type of statute more adequately preserve the owner's interests, but, in addition, it makes possible a substantial simplification of procedure.

The Act, which consists of thirty-two sections, commences with the usual section on definitions. This is followed by Sections 2 through 9 devoted to defining and describing the circumstances under which various classes of property are to be presumed abandoned under the Act. Separate sections deal with property held or owing by banks or other financial organizations, insurance corporations, public utilities, other business associations, trustees in corporate dissolution proceedings, fiduciaries, and state courts and other public agencies. Section 9 is an omnibus section covering all other items held or owing "in the ordinary course of the holder's business." Thereafter comes Section 10 which may be regarded as a key section in the Act, for it contains the provisions which preclude the possibility of multiple liability being imposed upon the holder of unclaimed property who happens to be subject to the jurisdiction of two or more states. The remaining sections, 11 through 32, deal principally with procedural matters, including the reporting of unclaimed property, the giving of notice to owners, payment into the custody of the state and various provisions pursuant to which the owner may subsequently present his claim to the state and recover his property.

The Uniform Disposition of Unclaimed Property Act, if adopted by the states, will serve to protect the interests of owners, to relieve the holders from annoyance, expense and liability, to preclude multiple liability, and to give the adopting state the use of some considerable sums of money that otherwise would, in effect, become a windfall to the holders thereof.

UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT
AN ACT RELATING TO THE DISPOSITION OF UNCLAIMED PROPERTY AND
MAKING UNIFORM THE LAW WITH REFERENCE THERETO

1 SECTION 1. [*Definitions and Use of Terms.*] As used in this act,
2 unless the context otherwise requires:

3 (a) "Banking organization" means any bank, trust company,
4 savings bank [industrial bank, land bank, safe deposit company,]
5 or a private banker engaged in business in this state.

6 (b) "Business association" means any corporation (other than
7 a public corporation), joint stock company, business trust, part-
8 nership, or any association for business purposes of two or more
9 individuals.

10 (c) "Financial organization" means any savings and loan asso-
11 ciation, building and loan association, credit union, [cooperative
12 bank] or investment company, engaged in business in this state.

13 (d) "Holder" means any person in possession of property sub-
14 ject to this act belonging to another, or who is trustee in case of a
15 trust, or is indebted to another on an obligation subject to this
16 act.

17 (e) "Life insurance corporation" means any association or cor-
18 poration transacting within this state the business of insurance
19 on the lives of persons or insurance appertaining thereto, including,
20 but not by way of limitation, endowments and annuities.

21 (f) "Owner" means a depositor in case of a deposit, a beneficiary
22 in case of a trust, a creditor, claimant, or payee in case of other
23 choses in action, or any person having a legal or equitable interest
24 in property subject to this act, or his legal representative.

25 (g) "Person" means any individual, business association, gov-
26 ernment or political subdivision, public corporation, public author-
27 ity, estate, trust, two or more persons having a joint or common
28 interest, or any other legal or commercial entity.

29 (h) "Utility" means any person who owns or operates within
30 this state, for public use, any plant, equipment, property, fran-
31 chise, or license for the transmission of communications or the
32 production, storage, transmission, sale, delivery, or furnishing of
33 electricity, water, steam, or gas.

1 SECTION 2. [*Property Held by Banking or Financial Organiza-*
2 *tions.*] The following property held or owing by a banking or
3 financial organization is presumed abandoned:

4 (a) Any demand, savings, or matured time deposit made in
5 this state with a banking organization, together with any interest
6 or dividend thereon, excluding any charges that may lawfully be
7 withheld, unless the owner has, within seven years:

8 (1) Increased or decreased the amount of the deposit, or pre-
9 sented the passbook or other similar evidence of the deposit for
10 the crediting of interest; or

11 (2) Corresponded in writing with the banking organization
12 concerning the deposit; or

13 (3) Otherwise indicated an interest in the deposit as evi-
14 denced by a memorandum on file with the banking organization.

15 (b) Any funds paid in this state toward the purchase of shares
16 or other interest in a financial organization [or any deposit made
17 therewith in this state], and any interest or dividends thereon,
18 excluding any charges that may lawfully be withheld, unless the
19 owner has within seven years:

20 (1) Increased or decreased the amount of the funds [or de-
21 posit], or presented an appropriate record for the crediting of
22 interest or dividends; or

23 (2) Corresponded in writing with the financial organization
24 concerning the funds [or deposit]; or

25 (3) Otherwise indicated an interest in the funds [or deposit]
26 as evidenced by a memorandum on file with the financial organi-
27 zation.

28 (c) Any sum payable on checks certified in this state or on
29 written instruments issued in this state on which a banking or
30 financial organization is directly liable, including, by way of illus-
31 tration but not of limitation, certificates of deposit, drafts, and
32 traveler's checks, that has been outstanding for more than seven
33 years from the date it was payable, or from the date of its issuance
34 if payable on demand, unless the owner has within seven years
35 corresponded in writing with the banking or financial organization
36 concerning it, or otherwise indicated an interest as evidenced by
37 a memorandum on file with the banking or financial organization.

38 (d) Any funds or other personal property, tangible or intangible,
39 removed from a safe deposit box or any other safekeeping reposi-
40 tory [or agency or collateral deposit box] in this state on which
41 the lease or rental period has expired due to nonpayment of rental
42 charges or other reason, or any surplus amounts arising from the
43 sale thereof pursuant to law, that have been unclaimed by the
44 owner for more than seven years from the date on which the lease
45 or rental period expired.

COMMENT

Section 2(a) establishes the criteria for the presumption of abandonment of deposits held by banking organizations. Section 2(b) establishes similar criteria for funds paid toward shares or other interests in financial organizations other than banks. Section 2(c) deals with other forms of obligations of both banking and financial organizations, and Section 2(d) covers the contents of safe deposit boxes and other deposit arrangements. In each instance the jurisdictional test for presumption of abandonment within the enacting state bears direct relationship to events taking place within that state, e.g., deposits "made in this state," funds "paid in this state," written instruments "issued in this state," property removed from safe deposit boxes "in this state." These qualifications are explicitly included both for the legal reason that there must be a jurisdictional basis for the claiming of the property within the state, and also for the practical reason that the presence of the events within the state means that the convenience of various parties in interest will be best served in this way.

Including both the states having general abandoned property laws, and others that deal only with certain specific items of property, some 36 states now have legislation designed to capture dormant bank deposits (See Garrison, "Escheats, Abandoned Property Acts, and their Revenue Aspects," 35 Ky. L.J. 302 (1947)). Section 2 parallels Section 300 of the New York Abandoned Property Law which is a general statute, and more or less similar provisions are found in the legislation of Arizona, California, Connecticut, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, North Carolina, and Pennsylvania.

Comment should be made concerning the seven-year period, the lapse of which gives rise to the presumption of abandonment. This period is used throughout the Uniform Act and is applied to all types of property subject to the Act. It is a fact, however, that the various states have adopted different time periods for this purpose. Moreover, in any single state different time periods may be prescribed for different items of property. Possibly differing business practices in various parts of the country will indicate the desirability in some states of the utilization of a period other than seven years in connection with at least some types of property. This may be especially the case with respect to savings bank deposits, for in many states it may be deemed desirable to allow more than seven years, and perhaps allow a longer period of dormancy for such deposits than is allowed in connection with other items of unclaimed property. Each state may adjust the time period to its own needs, and although a seven-year period seems reasonably satisfactory for most purposes for most parts of the country, the benefits of this Uniform Act, particularly the benefits of the reciprocal provisions of Section 10, will in no way be diminished by the substitution of some other time period if deemed more satisfactory in view of the local practices.

Comment should also be made concerning the reference to "deposits" in Section 2(b). Normally financial organizations, as that term is defined in this Act, do not receive deposits, but instead they receive funds for the purchase of shares. However, in some states such funds are in fact referred to as "deposits" in the pertinent statutes. Therefore the word is included in Section 2(b), but is set forth in brackets to indicate that it may be eliminated in any state where it is inapplicable.

- 1 SECTION 3. [*Unclaimed Funds Held by Life Insurance Cor-*
- 2 *porations.*]
- 3 (a) Unclaimed funds, as defined in this section, held and owing
- 4 by a life insurance corporation shall be presumed abandoned if the

5. last known address, according to the records of the corporation, of
6. the person entitled to the funds is within this state. If a person
7. other than the insured or annuitant is entitled to the funds and no
8. address of such person is known to the corporation or if it is not
9. definite and certain from the records of the corporation what per-
10. son is entitled to the funds, it is presumed that the last known
11. address of the person entitled to the funds is the same as the last
12. known address of the insured or annuitant according to the records
13. of the corporation.

14. (b) "Unclaimed funds," as used in this section, means all
15. moneys held and owing by any life insurance corporation un-
16. claimed and unpaid for more than seven years after the moneys
17. became due and payable as established from the records of the
18. corporation under any life or endowment insurance policy or an-
19. nuity contract which has matured or terminated. A life insurance
20. policy not matured by actual proof of the death of the insured is
21. deemed to be matured and the proceeds thereof are deemed to be
22. due and payable if such policy was in force when the insured
23. attained the limiting age under the mortality table on which the
24. reserve is based, unless the person appearing entitled thereto has
25. within the preceding seven years, (1) assigned, readjusted, or paid
26. premiums on the policy, or subjected the policy to loan, or (2)
27. corresponded in writing with the life insurance corporation con-
28. cerning the policy. Moneys otherwise payable according to the
29. records of the corporation are deemed due and payable although
30. the policy or contract has not been surrendered as required.

COMMENT

Section 3, dealing with unclaimed funds held by insurance companies, establishes as the jurisdictional test for the purposes of the Section the fact that "the last known address, according to the records of the corporation, of the person entitled to the funds is within this state." For perfectly practical reasons this test differs in coverage from that applied under Section 2 to deposits in banks and also under Section 5 to undistributed dividends of corporations. In general, insurance companies qualify and are authorized to write insurance in many or most of the states of the Union. Therefore, jurisdiction over such companies as holders of unclaimed property is normally wide-spread throughout the country, thus permitting and suggesting differentiation from ordinary business or industrial corporations and also from banking organizations. Indeed, reliance upon the state of incorporation or principal place of business of the insurance company to take custody of unclaimed property would be most undesirable, both for the reason that it would concentrate the administrative burdens in the few states that incorporate most of the insurance companies, and also because such reliance would result in the same few states obtaining the use of the bulk of the unclaimed funds regardless of the state of address of the persons entitled thereto. The alternative used in Section 3 is preferable, and accordingly, jurisdiction is conferred upon the state of the last recorded address of the person entitled. This practice has been adopted in the

states which have most recently enacted legislation of this nature, notably Connecticut, Massachusetts, North Carolina, and Pennsylvania.

1 SECTION 4. [*Deposits and Refunds Held by Utilities.*] The
2 following funds held or owing by any utility are presumed
3 abandoned:

4 (a) Any deposit made by a subscriber with a utility to secure
5 payment for, or any sum paid in advance for, utility services to be
6 furnished in this state, less any lawful deductions, that has re-
7 mained unclaimed by the person appearing on the records of the
8 utility entitled thereto for more than seven years after the ter-
9 mination of the services for which the deposit or advance payment
10 was made.

11 (b) Any sum which a utility has been ordered to refund and
12 which was received for utility services rendered in this state, to-
13 gether with any interest thereon, less any lawful deductions, that
14 has remained unclaimed by the person appearing on the records
15 of the utility entitled thereto for more than seven years after the
16 date it became payable in accordance with the final determination
17 or order providing for the refund.

COMMENT

Section 4, dealing with deposits and refunds held by public utilities, establishes as the jurisdictional test the fact that the deposit has been made or the refund has been ordered with respect to utility services "furnished in this state." A question naturally arises in connection with the utility which does business in two or more states and collects advances or is required to pay refunds in each of the states concerned. Suppose one or more states fail to enact abandoned property legislation. Should the state of incorporation of the utility be empowered to take custody of the windfall in the event other states do not do so?

In answering this question account must be taken of the administrative inconvenience to the state of incorporation if it is obliged to undertake the advertising, mailing of notices, accounting, etc., for unclaimed funds due to persons who received utility service in other jurisdictions. Moreover, account must be taken of the inconvenience to customers in other states who would be compelled to seek their unclaimed funds from the State Treasurer of a state other than that of their residence. Furthermore, recognizing the desirability of avoiding a windfall by the utility, there is nevertheless a certain lack of equity in the acquisition of funds by a state other than that in which the services were rendered. Weighing these several considerations, and proceeding on the assumption that legislation of the nature of the Unclaimed Property Act will be widely adopted, it seems desirable to base the jurisdictional test in this section upon the fact of rendition of the services "within the state." This has been done in Section 4.

1 SECTION 5. [*Undistributed Dividends and Distributions of Busi-*
2 *ness Associations.*] Any stock or other certificate of ownership, or
3 any dividend, profit, distribution, interest, payment on principal,
4 or other sum held or owing by a business association for or to a

5 shareholder, certificate holder, member, bondholder, or other se-
6 curity holder, or a participating patron of a cooperative, who has
7 not claimed it, or corresponded in writing with the business associ-
8 ation concerning it, within seven years after the date prescribed for
9 payment or delivery, is presumed abandoned if:

10 (a) It is held or owing by a business association organized
11 under the laws of or created in this state; or

12 (b) It is held or owing by a business association doing business
13 in this state, but not organized under the laws of or created in this
14 state, and the records of the business association indicate that the
15 last known address of the person entitled thereto is in this state.

COMMENT

This section deals with ordinary business and industrial corporations, and their stock and dividends. A corporation may be incorporated and do business in but a single state and at the same time its stock may be owned by residents of many states. Such other states would have no jurisdiction over the corporation such as to permit it to compel reporting unclaimed dividends and delivering custody of property. Hence, for want of a better solution and to prevent a windfall to the corporation, the state of incorporation must assume jurisdiction, unless through the effect of the reciprocal clause in Section 10 its jurisdiction is precluded by virtue of the fact that another state in which the stockholder has his last known address also has jurisdiction over the corporation. Accordingly, a dual jurisdictional test is set up in Section 5 and reliance is placed upon the reciprocal clause of Section 10 to prevent multiple liability.

1 SECTION 6. [*Property of Business Associations and Banking or*
2 *Financial Organizations Held in Course of Dissolution.*] All in-
3 tangible personal property distributable in the course of a volun-
4 tary dissolution of a business association, banking organization, or
5 financial organization organized under the laws of or created in
6 this state, that is unclaimed by the owner within two years after
7 the date for final distribution, is presumed abandoned.

1 SECTION 7. [*Property Held by Fiduciaries.*] All intangible per-
2 sonal property and any income or increment thereon, held in a
3 fiduciary capacity for the benefit of another person is presumed
4 abandoned unless the owner has, within seven years after it be-
5 comes payable or distributable, increased or decreased the prin-
6 cipal, accepted payment of principal or income, corresponded in
7 writing concerning the property, or otherwise indicated an interest
8 as evidenced by a memorandum on file with the fiduciary:

9 (a) If the property is held by a banking organization or a
10 financial organization, or by a business association organized un-
11 der the laws of or created in this state; or

12 (b) If it is held by a business association, doing business in this

13 state, but not organized under the laws of or created in this state,
14 and the records of the business association indicate that the last
15 known address of the person entitled thereto is in this state; or
16 (c) If it is held in this state by any other person.

1 SECTION 8. [*Property Held by State Courts and Public Officers*
2 *and Agencies.*] All intangible personal property held for the owner
3 by any court, public corporation, public authority, or public officer
4 of this state, or a political subdivision thereof, that has remained
5 unclaimed by the owner for more than seven years is presumed
6 abandoned.

1 SECTION 9. [*Miscellaneous Personal Property Held for Another*
2 *Person.*] All intangible personal property, not otherwise covered
3 by this act, including any income or increment thereon and de-
4 ducting any lawful charges, that is held or owing in this state in
5 the ordinary course of the holder's business and has remained
6 unclaimed by the owner for more than seven years after it became
7 payable or distributable is presumed abandoned.

COMMENT

Section 9 is the omnibus section covering all other intangible personal property not otherwise covered by the more specific provisions of the Act. It should be noted that to be subject to the section the property must be held or owing in the "ordinary course of the holder's business in this state." A wide variety of items will be embraced under this section, including, by way of illustration, money, stocks, bonds, certificates of membership in corporations, securities, bills of exchange, deposits, interest, dividends, income, amounts due and payable under the terms of insurance policies not covered by Section 4, pension trust agreements, profit-sharing plans, credit balances on paid wages, security deposits, refunds, funds deposited to redeem stocks, bonds, coupons and other securities, or to make a distribution thereof, together with any interest or increment thereon. If desired, these specific items could readily be written into Section 9 itself, thus perhaps adding to clarity and ready understanding of the coverage of the section, although necessarily at the expense of brevity.

1 SECTION 10. [*Reciprocity for Property Presumed Abandoned or*
2 *Escheated Under the Laws of Another State.*] If specific property
3 which is subject to the provisions of sections 2, 5, 6, 7, and 9 is
4 held for or owed or distributable to an owner whose last known
5 address is in another state by a holder who is subject to the juris-
6 diction of that state, the specific property is not presumed aban-
7 doned in this state and subject to this act if:

- 8 (a) It may be claimed as abandoned or escheated under the laws
9 of such other state; and
10 (b) The laws of such other state make reciprocal provision that

11 similar specific property is not presumed abandoned or escheatable
12 by such other state when held for or owed or distributable to an
13 owner whose last known address is within this state by a holder
14 who is subject to the jurisdiction of this state.

COMMENT

This is a key section of the Act. If two states, each having contact with the transaction, have each adopted the Act, the jurisdictional test becomes the last known address of the owner. Accordingly, if the holder is within the jurisdiction of the state of last known address, that state takes custody of the unclaimed funds regardless of the domicile of the holder. To illustrate, if a corporation is domiciled in state A but does business in both state A and state B, and if it owes dividends to a person whose last known address is in state B, then without the benefit of Section 10 both states A and B could demand custody of the unclaimed dividends—state A on the basis of corporate domicile, and state B on the basis of the last known address of the person entitled. However, if Section 10 is adopted in both states, the state of domicile of the corporation would relinquish custody because (1) the last known address of the owner is in state B, (2) the holder is subject to the jurisdiction of state B, (3) the dividends are claimed as abandoned property by state B, and (4) the laws of state B contain the reciprocal provision.

Thus the reciprocal provision serves to avoid the problems of multiple liability and the "race of diligence" made possible by the decisions in *Connecticut Mutual Insurance Co. v. Moore*, 333 U.S. 541, 92 L. Ed. 863 (1946) and *Standard Oil Co. v. New Jersey*, 341 U.S. 428, 95 L. Ed. 1078 (1951). These problems are surely going to arise when two or more states claim the property under their respective unclaimed property statutes if no such reciprocity provision is available.

It should be noted that Section 10 does not apply to unclaimed property covered by Section 3 (insurance companies), Section 4 (public utilities), and Section 8 (property held by state courts and public officers) for the reason that in each of these instances practical considerations have resulted in limiting the jurisdiction in such manner as to preclude the possibility of multiple state jurisdiction.

1 SECTION 11. [*Report of Abandoned Property.*]

2 (a) Every person holding funds or other property, tangible or
3 intangible, presumed abandoned under this act shall report to the
4 [State Treasurer] with respect to the property as hereinafter
5 provided.

6 (b) The report shall be verified and shall include:

7 (1) The name, if known, and last known address, if any, of
8 each person appearing from the records of the holder to be the
9 owner of any property of the value of [\$3.00] or more presumed
10 abandoned under this act;

11 (2) In case of unclaimed funds of life insurance corporations,
12 the full name of the insured or annuitant and his last known ad-
13 dress according to the life insurance corporation's records;

14 (3) The nature and identifying number, if any, or description
15 of the property and the amount appearing from the records to be
16 due, except that items of value under [\$3.00] each may be reported
17 in aggregate;

18 (4) The date when the property became payable, demand-
19 able, or returnable, and the date of the last transaction with the
20 owner with respect to the property; and

21 (5) Other information which the [State Treasurer] prescribes
22 by rule as necessary for the administration of this act.

23 (c) If the person holding property presumed abandoned is a
24 successor to other persons who previously held the property for
25 the owner, or if the holder has changed his name while holding
26 the property, he shall file with his report all prior known names
27 and addresses of each holder of the property.

28 (d) The report shall be filed before November 1 of each year as
29 of June 30 next preceding, but the report of life insurance corpora-
30 tions shall be filed before May 1 of each year as of December 31
31 next preceding. The [State Treasurer] may postpone the reporting
32 date upon written request by any person required to file a report.

33 (e) If the holder of property presumed abandoned under this
34 act knows the whereabouts of the owner and if the owner's claim
35 has not been barred by the statute of limitations, the holder shall,
36 before filing the annual report, communicate with the owner and
37 take necessary steps to prevent abandonment from being pre-
38 sumed. The holder shall exercise due diligence to ascertain the
39 whereabouts of the owner.

40 (f) Verification, if made by a partnership, shall be executed by
41 a partner; if made by an unincorporated association or private
42 corporation, by an officer; and if made by a public corporation, by
43 its chief fiscal officer.

44 (g) The initial report filed under this act shall include all items
45 of property that would have been presumed abandoned if this act
46 had been in effect during the ten year period preceding its effective
47 date.

1 SECTION 12. [*Notice and Publication of Lists of Abandoned*
2 *Property.*]

3 (a) Within [120] days from the filing of the report required by
4 section 11, the [State Treasurer] shall cause notice to be published
5 at least once each week for two successive weeks in an English
6 language newspaper of general circulation in the county in this
7 state in which is located the last known address of any person to
8 be named in the notice. If no address is listed or if the address is
9 outside this state, the notice shall be published in the county in
10 which the holder of the abandoned property has his principal place
11 of business within this state.

12 (b) The published notice shall be entitled "Notice of Names of
13 Persons Appearing to be Owners of Abandoned Property," and
14 shall contain:

15 (1) The names in alphabetical order and last known ad-
16 dresses, if any, of persons listed in the report and entitled to notice
17 within the county as hereinbefore specified.

18 (2) A statement that information concerning the amount or
19 description of the property and the name and address of the holder
20 may be obtained by any persons possessing an interest in the
21 property by addressing an inquiry to the [State Treasurer].

22 (3) A statement that if proof of claim is not presented by the
23 owner to the holder and if the owner's right to receive the property
24 is not established to the holder's satisfaction within [65] days from
25 the date of the second published notice, the abandoned property
26 will be placed not later than [85] days after such publication date
27 in the custody of the [State Treasurer] to whom all further claims
28 must thereafter be directed.

29 (c) The [State Treasurer] is not required to publish in such
30 notice any item of less than [\$25.00] unless he deems such publi-
31 cation to be in the public interest.

32 (d) Within [120] days from the receipt of the report required
33 by section 11, the [State Treasurer] shall mail a notice to each
34 person having an address listed therein who appears to be entitled
35 to property of the value of [\$25.00] or more presumed abandoned
36 under this act.

37 (e) The mailed notice shall contain:

38 (1) A statement that, according to a report filed with the
39 [State Treasurer], property is being held to which the addressee
40 appears entitled.

41 (2) The name and address of the person holding the property
42 and any necessary information regarding changes of name and
43 address of the holder.

44 (3) A statement that, if satisfactory proof of claim is not
45 presented by the owner to the holder by the date specified in the
46 published notice, the property will be placed in the custody of the
47 [State Treasurer] to whom all further claims must be directed.

COMMENT

Every effort is made in the Uniform Act to minimize the expense of administration. Not only is there the provision in Section 11 which permits aggregate reporting of claims under \$3.00 in amount, but Section 12 gives the State Treasurer authority to eliminate from the published notices any item of less than \$25 unless he deems such publication to be in the public interest. And finally, notice need not be sent by mail to any person who is entitled to property of the value of less than \$25. Furthermore, it should be noted that the notice published in any county will include only the names and addresses of the persons who are "entitled to notice within the county." In other words, it is not necessary to go to the expense of listing the names of all persons appearing entitled in each of the counties involved.

1 SECTION 13. [*Payment or Delivery of Abandoned Property.*]
2 Every person who has filed a report as provided by Section 11
3 shall within [20] days after the time specified in Section 12 for
4 claiming the property from the holder pay or deliver to the [State
5 Treasurer] all abandoned property specified in the report, except
6 that, if the owner establishes his right to receive the abandoned
7 property to the satisfaction of the holder within the time specified
8 in Section 12, or if it appears that for some other reason the pre-
9 sumption of abandonment is erroneous, the holder need not pay or
10 deliver the property, which will no longer be presumed abandoned,
11 to the [State Treasurer], but in lieu thereof shall file a verified
12 written explanation of the proof of claim or of the error in the
13 presumption of abandonment.

1 SECTION 14. [*Relief from Liability by Payment or Delivery.*]
2 Upon the payment or delivery of abandoned property to the [State
3 Treasurer], the state shall assume custody and shall be responsible
4 for the safekeeping thereof. Any person who pays or delivers
5 abandoned property to the [State Treasurer] under this act is
6 relieved of all liability to the extent of the value of the property
7 so paid or delivered for any claim which then exists or which
8 thereafter may arise or be made in respect to the property. Any
9 holder who has paid moneys to the [State Treasurer] pursuant to
10 this act may make payment to any person appearing to such
11 holder to be entitled thereto, and upon proof of such payment and
12 proof that the payee was entitled thereto, the [State Treasurer]
13 shall forthwith reimburse the holder for the payment.

1 SECTION 15. [*Income Accruing After Payment or Delivery.*]
2 When property is paid or delivered to the [State Treasurer]
3 under this act, the owner is not entitled to receive income or other
4 increments accruing thereafter.

1 SECTION 16. [*Periods of Limitation Not a Bar.*] The expiration
2 of any period of time specified by statute or court order, during
3 which an action or proceeding may be commenced or enforced to
4 obtain payment of a claim for money or recovery of property, shall
5 not prevent the money or property from being presumed aban-
6 doned property, nor affect any duty to file a report required by
7 this act or to pay or deliver abandoned property to the [State
8 Treasurer].

COMMENT

Section 16 treats unclaimed property as subject to the Act even though the period of limitations has run prior to date of presumed abandonment. A special

problem is presented that warrants careful consideration in relation to the local law in each state adopting the Uniform Act. The following brief statement of the authorities will be of service.

The Supreme Court has held that, where, under the local law as interpreted by the courts, title to real or personal property has not "vested," the 14th Amendment is not violated by legislation reviving a cause of action already barred by the running of the statute of limitations. *Campbell v. Holt*, 115 U.S. 620, 29 L. Ed. 483 (1885); *Chase Securities Corp. v. Donaldson*, 325 U.S. 304, 89 L. Ed. 1628 (1944). However, there are a number of courts which have held that the defense of the statute of limitations creates a vested right and in that case it cannot be taken away by statute. See cases collected in notes entitled Power of Legislature to Revoke a Right of Action Barred by Limitation, 36 A.L.R. 1316 (1924); 133 A.L.R. 384 (1940). Comment, Developments in the Law, Statutes of Limitations, 63 Harv. L. Rev. 1177, 1178-1190 (1950).

Illustrative of the problem is *Standard Oil Co. v. New Jersey*, 5 N.J. 281 (1950), in which case the defendant raised the defense of the bar of limitations against an action of escheat brought by the state under its general unclaimed property law. The property involved consisted of unpaid stock dividends, shares of stock, unpaid wages, money withheld from wages toward purchase of liberty bonds, money held to pay checks issued by the corporation, and money owing on uncashed bond coupons. The court stated that:

"The principle is imbedded in our jurisprudence that where a right of action has become barred under existing law, the statutory defense constitutes a vested right which is proof against legislative impairment."

Under the doctrine of escheat, the court said, the state merely succeeds to the rights of the owner. If such rights have been barred by the statute of limitations, the state has no derivative right because the owner has no right. Thus, the court concluded the state had no right to unpaid wages, money owing on checks, and the money payable on the bond coupons. However, the court decided otherwise as to dividends on stock and money withheld from wages for purchase of bonds, for these, the court said, were in the nature of a trust against which the statute of limitations did not run. Thus the state was enabled to escheat these items.

The New Jersey Legislature has taken action to avoid this decision by revising its escheat law to provide that cash, dividends, interest, and wages owed by a corporation shall be presumed abandoned and delivered to the custody of the state after being unclaimed for five years, instead of the previous period of fourteen years. The new period is shorter than the period of limitations. N. J. Stat., Sec. 2A:37-29 (1951). After two years of custody, the property is escheated to the state. Thus, the statute of limitations with a period exceeding five years will be no defense to an action against a corporation to escheat these items of property.

Each state, in considering the adoption of the Uniform Act, must investigate its own law on the subject to determine whether the bar of the statute of limitations can be lifted. Oklahoma, for instance, appears to have a constitutional prohibition against reviving a cause of action barred by the statute of limitations. *Mines v. Hogan*, 79 Okla. 233, 192 Pac. 811 (1920). If the law of vesting is in accord with that of New Jersey, the solution used by that state may well be desired. Of course, in determining the question of policy, any state may conclude to permit the statute of limitations to serve as a defense. Kentucky has so decided, Ky. Rev. Stat. (1949), Sec. 393.110. In such case, the problem is eliminated by the holder becoming entitled to the property.

Finally, it should be noted that, in connection with many types of abandoned property, the statute does not run during the period of inactivity which gives rise to the presumption of abandonment. Thus where the claim is against a fiduciary,

as with some of the items involved in *Standard Oil Co. v. New Jersey, supra*, or if "demand" is a condition of the owners' right to sue, as in the case of utility deposits and certificates of deposit in banks (see the Uniform Commercial Code, Sec. 3-108(2): "A cause of action on a certificate of deposit does not accrue until demand. . ."), the problem of removing the bar of the statute will not arise. (See also Comment, Developments in the Law, Statutes of Limitations, *supra*, pp. 1200 et seq., for general discussion of when the statute begins to run.) In case of insurance policies, the obligation of the company is generally conditioned upon the submission of proof of death or other contingency. Thus it would seem the statute would not begin to run until such proof was submitted. Bank deposits fall into a similar category. Thus it may well be that the bulk of abandoned property falls outside the scope of the statute of limitations problem.

Finally, in connection with the removal of the bar of the statute of limitations, attention must be given to the fact that in connection with certain classes of business transactions, for example, so-called "nominee dividends" in brokers' accounts, reliance may have been placed upon the bar of the statute of limitations and the holder of unclaimed property may have made distribution or otherwise utilized it in some manner which would result in severe prejudice if the bar of the statute were later removed for the purposes of the unclaimed property law. In such instances it may prove necessary to include an exception, either in this section or elsewhere in the Act avoiding hardship by precluding the arising of presumption of abandonment in such cases.

1 SECTION 17. [*Sale of Abandoned Property.*]

2 (a) All abandoned property other than money delivered to the
3 [State Treasurer] under this act shall within one year after the
4 delivery be sold by him to the highest bidder at public sale in
5 whatever city in the state affords in his judgment the most favor-
6 able market for the property involved. The [State Treasurer]
7 may decline the highest bid and reoffer the property for sale if he
8 considers the price bid insufficient. He need not offer any property
9 for sale if, in his opinion, the probable cost of sale exceeds the
10 value of the property.

11 (b) Any sale held under this section shall be preceded by a
12 single publication of notice thereof, at least [3] weeks in advance
13 of sale in an English language newspaper of general circulation in
14 the county where the property is to be sold.

15 (c) The purchaser at any sale conducted by the [State Treas-
16 urer] pursuant to this act shall receive title to the property pur-
17 chased, free from all claims of the owner or prior holder thereof
18 and of all persons claiming through or under them. The [State
19 Treasurer] shall execute all documents necessary to complete the
20 transfer of title.

COMMENT

Because of the considerable number of events involved it may prove helpful to summarize the "time-table" for the disposition of unclaimed property. The steps are as follows:

(1) *Filing of report by holder*, before November 1, except that insurance companies file before May 1, Section 11(d).

- (2) *Publishing notice*, 120 days after filing of report, Section 12(a).
(3) *Mailing notice*, 120 days after filing of report, Section 12(d).
(4) *Period for owner claiming from holder*, 65 days from the date of the second published notice, Section 12(b)(3).
(5) *Delivery by holder to State Treasurer*, 20 days after expiration of period for claiming from holder, 85 days after date of the second published notice, Section 13.
(6) *Sale by state*, within one year after delivery, Section 17.

It should be noted that most of the time-table dates are bracketed, and hence they may be adjusted by any adopting state to the convenience of its own business and administrative practices.

1 SECTION 18. [*Deposit of Funds.*]

2 (a) All funds received under this act, including the proceeds
3 from the sale of abandoned property under section 17, shall forth-
4 with be deposited by the [State Treasurer] in the [general funds]
5 of the state, [except that the [State Treasurer] shall retain in a
6 separate trust fund an amount not exceeding [\$25,000] from which
7 he shall make prompt payment of claims duly allowed by him as
8 hereinafter provided.] Before making the deposit he shall record
9 the name and last known address of each person appearing from
10 the holders' reports to be entitled to the abandoned property and
11 of the name and last known address of each insured person or
12 annuitant, and with respect to each policy or contract listed in the
13 report of a life insurance corporation, its number, the name of the
14 corporation, and the amount due. The record shall be available
15 for public inspection at all reasonable business hours.

16 [(b) Before making any deposit to the credit of the [general
17 funds], the [State Treasurer] may deduct: (1) any costs in con-
18 nection with sale of abandoned property, (2) any costs of mailing
19 and publication in connection with any abandoned property, and
20 (3) reasonable service charges.]

1 SECTION 19. [*Claim for Abandoned Property Paid or Delivered.*]

2 Any person claiming an interest in any property delivered to the
3 state under this act may file a claim thereto or to the pro-
4 ceeds from the sale thereof on the form prescribed by the [State
5 Treasurer].

1 SECTION 20. [*Determination of Claims.*]

2 (a) The [State Treasurer] shall consider any claim filed under
3 this act and may hold a hearing and receive evidence concerning it.
4 If a hearing is held, he shall prepare a finding and a decision in
5 writing on each claim filed, stating the substance of any evidence
6 heard by him and the reasons for his decision. The decision shall
7 be a public record.

8 (b) [If the claim is allowed, the [State Treasurer] shall make
9 payment forthwith.] The claim shall be paid without deduction for
10 costs of notices or sale or for service charges.

1 [SECTION 21. *Judicial Action upon Determinations.*] Any per-
2 son aggrieved by a decision of the [State Treasurer] or as to whose
3 claim the [State Treasurer] has failed to act within [90] days
4 after the filing of the claim, may commence an action in the [dis-
5 trict] [circuit] court to establish his claim. The proceeding shall
6 be brought within [90] days after the decision of the [State Treas-
7 urer] or within [180] days from the filing of the claim if the [State
8 Treasurer] fails to act. The action shall be tried *de novo* without
9 a jury.]

1 SECTION 22. *Election to Take Payment or Delivery.*] The
2 [State Treasurer], after receiving reports of property deemed
3 abandoned pursuant to this act, may decline to receive any prop-
4 erty reported which he deems to have a value less than the cost
5 of giving notice and holding sale, or he may, if he deems it desir-
6 able because of the small sum involved, postpone taking possession
7 until a sufficient sum accumulates. Unless the holder of the
8 property is notified to the contrary within [120] days after filing
9 the report required under section 11, the [State Treasurer] shall be
10 deemed to have elected to receive the custody of the property.

1 SECTION 23. *Examination of Records.*] The [State Treasurer]
2 may at reasonable times and upon reasonable notice examine the
3 records of any person if he has reason to believe that such person
4 has failed to report property that should have been reported pur-
5 suant to this act.

1 SECTION 24. *Proceeding to Compel Delivery of Abandoned*
2 *Property.*] If any person refuses to deliver property to the [State
3 Treasurer] as required under this act, he shall bring an action in a
4 court of appropriate jurisdiction to enforce such delivery.

1 SECTION 25. *Penalties.*

2 (a) Any person who wilfully fails to render any report or per-
3 form other duties required under this act, shall be punished by a
4 fine of [\$.] for each day such report is withheld, but not
5 more than [\$.].

6 (b) Any person who wilfully refuses to pay or deliver abandoned
7 property to the [State Treasurer] as required under this act shall
8 be punished by a fine of not less than [\$.] nor more than

9. [\$.....], or imprisonment for not more than [.....] months,
10 or both, in the discretion of the court.

1 SECTION 26. [*Rules and Regulations.*] The [State Treasurer] is
2 hereby authorized to make necessary rules and regulations to carry
3 out the provisions of this act.

1 SECTION 27. [*Effect of Laws of Other States.*] This act shall not
2 apply to any property that has been presumed abandoned or
3 escheated under the laws of another state prior to the effective
4 date of this act.

1 SECTION 28. [*Severability.*] If any provision of this act or the
2 application thereof to any person or circumstances is held invalid,
3 the invalidity shall not affect other provisions or applications of
4 the act which can be given effect without the invalid provision or
5 application, and to this end the provisions of this act are severable.

1 SECTION 29. [*Uniformity of Interpretation.*] This act shall be
2 so construed as to effectuate its general purpose to make uniform
3 the law of those states which enact it.

1 SECTION 30. [*Short Title.*] This act may be cited as the Uniform
2 Disposition of Unclaimed Property Act.

1 SECTION 31. [*Repeal.*] [The following acts and parts of acts are
2 hereby repealed:
3 (a)
4 (b)
5 (c) .]

1 SECTION 32. [*Time of Taking Effect.*] This act shall take effect
2