
A BILL FOR AN ACT

RELATING TO THE UNIFORM UNCLAIMED PROPERTY ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

4 **"CHAPTER**

5 **UNIFORM UNCLAIMED PROPERTY ACT**

6 § -1 **Short title.** This chapter may be cited as the
7 Uniform Unclaimed Property Act.

8 § -2 **Definitions.** In this chapter:

9 "Administrator" means the director of finance.

10 "Apparent owner" means a person whose name appears on the
11 records of a holder as the person entitled to property held,
12 issued, or owing by the holder.

13 "Business association" means a corporation, joint stock
14 company, investment company, partnership, unincorporated
15 association, joint venture, limited liability company, business
16 trust, trust company, safe deposit company, financial
17 organization, insurance company, mutual fund, utility, or other



1 business entity consisting of one or more persons, whether or
2 not for profit.

3 "Domicile" means the state of incorporation of a
4 corporation and the state of the principal place of business of
5 a holder other than a corporation.

6 "Financial organization" means a savings and loan
7 association, financial services loan company, bank, banking
8 organization, or credit union.

9 "Holder" means a person obligated to hold for the account
10 of, or deliver or pay to, the owner property that is subject to
11 this chapter.

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

20 "Mineral" means gas; oil; coal; other gaseous, liquid, and
21 solid hydrocarbons; oil shale; cement material; sand and gravel;
22 road material; building stone; chemical raw material; gemstone;



1 fissionable and nonfissionable ores; colloidal and other clay;
2 steam and other geothermal resource; or any other substance
3 defined as a mineral by the law of this state.

4 "Mineral proceeds" means amounts payable for the
5 extraction, production, or sale of minerals, or, upon the
6 abandonment of those payments, all payments that become payable
7 thereafter. The term includes amounts payable:

- 8 (1) For the acquisition and retention of a mineral lease,
9 including bonuses, royalties, compensatory royalties,
10 shut-in royalties, minimum royalties, and delay
11 rentals;
- 12 (2) For the extraction, production, or sale of minerals,
13 including net revenue interests, royalties, overriding
14 royalties, extraction payments, and production
15 payments; and
- 16 (3) Under an agreement or option, including a joint
17 operating agreement, unit agreement, pooling
18 agreement, and farm-out agreement.

19 "Money order" includes an express money order and a
20 personal money order, on which the remitter is the purchaser.
21 The term does not include a bank money order or any other



1 instrument sold by a financial organization if the seller has
2 obtained the name and address of the payee.

3 "Owner" means a person who has a legal or equitable
4 interest in property subject to this chapter or the person's
5 legal representative. The term includes a depositor in the case
6 of a deposit, a beneficiary in the case of a trust other than a
7 deposit in trust, and a creditor, claimant, or payee in the case
8 of other property.

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

13 "Property" means tangible property described in section
14 -4 or a fixed and certain interest in intangible property
15 that is held, issued, or owed in the course of a holder's
16 business, or by a government, governmental subdivision, agency,
17 or instrumentality, and all income or increments therefrom. The
18 term includes property that is referred to as or evidenced by:

19 (1) Money, a check, draft, deposit, interest, or dividend;

20 (2) A credit balance, customer's overpayment, gift
21 certificate, security deposit, refund, credit



- 1 memorandum, unpaid wage, unused ticket, mineral
2 proceeds, or unidentified remittance;
- 3 (3) Stock or other evidence of ownership of an interest in
4 a business association or financial organization;
- 5 (4) A bond, debenture, note, or other evidence of
6 indebtedness;
- 7 (5) Money deposited to redeem stocks, bonds, coupons, or
8 other securities or to make distributions;
- 9 (6) An amount due and payable under the terms of an
10 annuity or insurance policy, including policies
11 providing life insurance, property and casualty
12 insurance, workers' compensation insurance, or health
13 and disability insurance; and
- 14 (7) An amount distributable from a trust or custodial fund
15 established under a plan to provide health, welfare,
16 pension, vacation, severance, retirement, death, stock
17 purchase, profit sharing, employee savings,
18 supplemental unemployment insurance, or similar
19 benefits.

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



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

5 "Utility" has the same meaning as the term "public utility"
6 under section 269-1.

7 § -3 **Presumptions of abandonment.** (a) Property is
8 presumed abandoned if it is unclaimed by the apparent owner
9 during the time set forth below for the particular property:

- 10 (1) Traveler's check, fifteen years after issuance;
- 11 (2) Money order, seven years after issuance;
- 12 (3) Stock or other equity interest in a business
13 association or financial organization, including a
14 security entitlement under article 8 of the Uniform
15 Commercial Code - Investment Securities, five years
16 after the earlier of (A) the date of the most recent
17 dividend, stock split, or other distribution unclaimed
18 by the apparent owner, or (B) the date of the second
19 mailing of a statement of account or other
20 notification or communication that was returned as
21 undeliverable or after the holder discontinued



- 1 mailings, notifications, or communications to the
2 apparent owner;
- 3 (4) Debt of a business association or financial
4 organization, other than a bearer bond or an original
5 issue discount bond, five years after the date of the
6 most recent interest payment unclaimed by the apparent
7 owner;
- 8 (5) A demand, savings, or time deposit, including a
9 deposit that is automatically renewable, five years
10 after the earlier of maturity or the date of the last
11 indication by the owner of interest in the property;
12 provided that a deposit that is automatically
13 renewable is deemed matured for purposes of this
14 section upon its initial date of maturity, unless the
15 owner has consented to a renewal at or about the time
16 of the renewal and the consent is in writing or is
17 evidenced by a memorandum or other record on file with
18 the holder;
- 19 (6) Money or credits owed to a customer as a result of a
20 retail business transaction, five years after the
21 obligation accrued;



- 1 (7) Gift certificate, five years after December 31 of the
2 year in which the certificate was sold, but if
3 redeemable in merchandise only, the amount abandoned
4 shall be deemed to be one hundred per cent of the
5 certificate's face value;
- 6 (8) Amount owed by an insurer on a life or endowment
7 insurance policy or an annuity that has matured or
8 terminated, five years after the obligation to pay
9 arose or, in the case of a policy or annuity payable
10 upon proof of death, three years after the insured has
11 attained, or would have attained if living, the
12 limiting age under the mortality table on which the
13 reserve is based;
- 14 (9) Property distributable by a business association or
15 financial organization in a course of dissolution, one
16 year after the property becomes distributable;
- 17 (10) Property received by a court as proceeds of a class
18 action, and not distributed pursuant to the judgment,
19 one year after the distribution date;
- 20 (11) Property held by a court, government, governmental
21 subdivision, agency, or instrumentality, one year
22 after the property becomes distributable;



- 1 (12) Wages or other compensation for personal services, one
- 2 year after the compensation becomes payable;
- 3 (13) Deposit or refund owed to a subscriber by a utility,
- 4 one year after the deposit or refund becomes payable;
- 5 (14) Property in an individual retirement account, defined
- 6 benefit plan, or other account or plan that is
- 7 qualified for tax deferral under the income tax laws
- 8 of the United States, three years after the earliest
- 9 of the date of the distribution or attempted
- 10 distribution of the property, the date of the required
- 11 distribution as stated in the plan or trust agreement
- 12 governing the plan, or the date, if determinable by
- 13 the holder, specified in the income tax laws of the
- 14 United States by which distribution of the property
- 15 shall begin to avoid a tax penalty; and
- 16 (15) All other property, five years after the owner's right
- 17 to demand the property or after the obligation to pay
- 18 or distribute the property arises, whichever first
- 19 occurs.
- 20 (b) At the time that an interest is presumed abandoned
- 21 under subsection (a), any other property right accrued or



1 accruing to the owner as a result of the interest, and not
2 previously presumed abandoned, shall also be presumed abandoned.

3 (c) Property is unclaimed if, for the applicable period
4 set forth in subsection (a), the apparent owner has not
5 communicated in writing or by other means reflected in a
6 contemporaneous record prepared by or on behalf of the holder,
7 with the holder concerning the property or the account in which
8 the property is held, and has not otherwise indicated an
9 interest in the property. A communication with an owner by a
10 person other than the holder or its representative who has not
11 in writing identified the property to the owner shall not be an
12 indication of interest in the property by the owner.

13 (d) An indication of an owner's interest in property
14 includes:

15 (1) The presentment of a check or other instrument of
16 payment of a dividend or other distribution made with
17 respect to an account or underlying stock or other
18 interest in a business association or financial
19 organization or, in the case of a distribution made by
20 electronic or similar means, evidence that the
21 distribution has been received;



1 (2) Owner-directed activity in the account in which the
2 property is held, including a direction by the owner
3 to increase, decrease, or change the amount or type of
4 property held in the account;

5 (3) The making of a deposit to or withdrawal from a bank
6 account; and

7 (4) The payment of a premium with respect to a property
8 interest in an insurance policy; but the application
9 of an automatic premium loan provision or other
10 nonforfeiture provision contained in an insurance
11 policy shall not prevent a policy from maturing or
12 terminating if the insured has died or the insured or
13 the beneficiary of the policy has otherwise become
14 entitled to the proceeds before the depletion of the
15 cash surrender value of a policy by the application of
16 those provisions.

17 (e) Property shall be payable or distributable for
18 purposes of this chapter notwithstanding the owner's failure to
19 make demand or present an instrument or document otherwise
20 required to obtain payment.

21 § -4 Contents of safe deposit box or other safekeeping
22 depository. Tangible property held in a safe deposit box or



1 other safekeeping depository in this state in the ordinary
2 course of the holder's business and proceeds resulting from the
3 sale of the property permitted by other law, shall be presumed
4 abandoned if the property remains unclaimed by the owner for
5 more than five years after expiration of the lease or rental
6 period on the box or other depository.

7 § -5 Rules of taking custody. Except as otherwise
8 provided in this chapter or by other statute of this state,
9 property that is presumed abandoned, whether located in this or
10 another state, is subject to the custody of this state if:

11 (1) The last known address of the apparent owner, as shown
12 on the records of the holder, is in this state;

13 (2) The records of the holder do not reflect the identity
14 of the person entitled to the property and it is
15 established that the last known address of the person
16 entitled to the property is in this state;

17 (3) The records of the holder do not reflect the last
18 known address of the apparent owner and it is
19 established that:

20 (A) The last known address of the person entitled to
21 the property is in this state; or

- 1 (B) The holder is domiciled in this state or is a
2 government or governmental subdivision, agency,
3 or instrumentality of this state and has not
4 previously paid or delivered the property to the
5 state of the last known address of the apparent
6 owner or other person entitled to the property;
- 7 (4) The last known address of the apparent owner, as shown
8 on the records of the holder, is in a state that does
9 not provide for the escheat or custodial taking of the
10 property and the holder is domiciled in this state or
11 is a government or governmental subdivision, agency,
12 or instrumentality of this state;
- 13 (5) The last known address of the apparent owner, as shown
14 on the records of the holder, is in a foreign country
15 and the holder is domiciled in this state or is a
16 government or governmental subdivision, agency, or
17 instrumentality of this state;
- 18 (6) The transaction out of which the property arose
19 occurred in this state, the holder is domiciled in a
20 state that does not provide for the escheat or
21 custodial taking of the property, and the last known
22 address of the apparent owner or other person entitled



1 to the property is unknown or is in a state that does
2 not provide for the escheat or custodial taking of the
3 property; or

4 (7) The property is a traveler's check or money order
5 purchased in this state, or the issuer of the
6 traveler's check or money order has its principal
7 place of business in this state and the issuer's
8 records show that the instrument was purchased in a
9 state that does not provide for the escheat or
10 custodial taking of the property, or do not show the
11 state in which the instrument was purchased.

12 § -6 **Dormancy charge.** A holder may deduct from property
13 presumed abandoned a charge imposed by reason of the owner's
14 failure to claim the property within a specified time only if
15 there is a valid and enforceable written contract between the
16 holder and the owner under which the holder may impose the
17 charge and the holder regularly imposes the charge, which is not
18 regularly reversed or otherwise canceled. The amount of the
19 deduction shall be limited to an amount that is not
20 unconscionable.

21 § -7 **Burden of proof as to property evidenced by record**
22 **of check or draft.** A record of the issuance of a check, draft,



1 or similar instrument shall be prima facie evidence of an
2 obligation. In claiming property from a holder who is also the
3 issuer, the administrator's burden of proof as to the existence
4 and amount of the property and its abandonment shall be
5 satisfied by showing issuance of the instrument and passage of
6 the requisite period of abandonment. Defenses of payment,
7 satisfaction, discharge, and want of consideration are
8 affirmative defenses that shall be established by the holder.

9 § -8 **Report of abandoned property.** (a) A holder of
10 property presumed abandoned shall make a report to the
11 administrator concerning the property.

12 (b) The report shall be verified and shall contain:

13 (1) A description of the property;

14 (2) Except with respect to a traveler's check or money
15 order, the name, if known, and last known address, if
16 any, and the social security number or taxpayer
17 identification number, if readily ascertainable, of
18 the apparent owner of property of the value of \$50 or
19 more;

20 (3) An aggregated amount of items valued under \$50 each;

21 (4) In the case of an amount of \$50 or more held or owing
22 under an annuity or a life or endowment insurance



1 policy, the full name and last known address of the
2 annuitant or insured and of the beneficiary;

3 (5) In the case of property held in a safe deposit box or
4 other safekeeping depository, an indication of the
5 place where it is held and where it may be inspected
6 by the administrator, and any amounts owing to the
7 holder;

8 (6) The date, if any, on which the property became
9 payable, demandable, or returnable, and the date of
10 the last transaction with the apparent owner with
11 respect to the property; and

12 (7) Other information that the administrator by rules
13 adopted under chapter 91 prescribes as necessary for
14 the administration of this chapter.

15 (c) If a holder of property presumed abandoned is a
16 successor to another person who previously held the property for
17 the apparent owner or the holder has changed its name while
18 holding the property, the holder shall file with the report its
19 former names, if any, and the known names and addresses of all
20 previous holders of the property.

21 (d) The report shall be filed before November 1 of each
22 year and cover the twelve months next preceding July 1 of that



1 year; provided that a report with respect to a life insurance
2 company shall be filed before November 1 of each year for the
3 calendar year next preceding.

4 (e) The holder of property presumed abandoned shall send
5 written notice to the apparent owner, not more than six months
6 before filing the report, stating that the holder is in
7 possession of property subject to this chapter, if:

- 8 (1) The holder has in its records an address for the
9 apparent owner which the holder's records do not
10 disclose to be inaccurate;
- 11 (2) The claim of the apparent owner is not barred by a
12 statute of limitations; and
- 13 (3) The value of the property is \$50 or more.

14 (f) Before the date for filing the report, the holder of
15 property presumed abandoned may request the administrator to
16 extend the time for filing the report. The administrator may
17 grant the extension for good cause. The holder, upon receipt of
18 the extension, may make an interim payment on the amount the
19 holder estimates will ultimately be due, which shall terminate
20 the accrual of additional interest on the amount paid.



1 (g) The holder of property presumed abandoned shall file
2 with the report an affidavit stating that the holder has
3 complied with subsection (e).

4 § -9 **Payment or delivery of abandoned property.** (a)

5 Except for property held in a safe deposit box or other
6 safekeeping depository, within six months after the final date
7 for filing the report required by section -8, the holder of
8 property presumed abandoned shall pay, deliver, or cause to be
9 paid or delivered to the administrator the property described in
10 the report as unclaimed, but if the property is an automatically
11 renewable deposit, and a penalty or forfeiture in the payment of
12 interest would result, the time for compliance shall be extended
13 until a penalty or forfeiture would no longer result. Tangible
14 property held in a safe deposit box or other safekeeping
15 depository shall not be delivered to the administrator until an
16 additional one hundred twenty days after the time for payment or
17 delivery to the administrator of property presumed abandoned as
18 required by this subsection.

19 (b) If the property reported to the administrator is a
20 security or security entitlement under article 8 of the Uniform
21 Commercial Code - Investment Securities, the administrator shall
22 be an appropriate person to make an indorsement, instruction, or



1 entitlement order on behalf of the apparent owner to invoke the
2 duty of the issuer or its transfer agent or the securities
3 intermediary to transfer or dispose of the security or the
4 security entitlement in accordance with article 8 of the Uniform
5 Commercial Code - Investment Securities.

6 (c) If the holder of property reported to the
7 administrator is the issuer of a certificated security, the
8 administrator shall have the right to obtain a replacement
9 certificate pursuant to section 490:8-405; provided that an
10 indemnity bond shall not be required.

11 (d) An issuer, the holder, and any transfer agent or other
12 person acting pursuant to the instructions of and on behalf of
13 the issuer or holder in accordance with this section shall not
14 be liable to the apparent owner and shall be indemnified against
15 claims of any person in accordance with section -11.

16 § -10 **Notice and publication of lists of abandoned**
17 **property.** (a) The administrator shall publish a notice not
18 later than March 1 of the year next following the report
19 required by section -8 at least once statewide. The notice
20 shall be in a form that, in the judgment of the administrator,
21 is likely to attract the attention of the apparent owner of the
22 unclaimed property. The form shall contain:



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

4 (2) The last known address or location of each person
5 appearing to be the owner of the property, if an
6 address or location is set forth in the report filed
7 by the holder;

8 (3) A statement explaining that property of the owner is
9 presumed to be abandoned and has been taken into the
10 protective custody of the administrator; and

11 (4) A statement that information about the property and
12 its return to the owner is available to a person
13 having a legal or beneficial interest in the property,
14 upon request to the administrator.

15 (b) The administrator shall not be required to advertise
16 the name and address or location of an owner of property having
17 a total value less than \$100, or information concerning a
18 traveler's check, money order, or similar instrument.

19 § -11 Custody by state; recovery by holder; defense of
20 holder. (a) In this section, payment or delivery is made in
21 "good faith" if:



1 (1) Payment or delivery was made in a reasonable attempt
2 to comply with this chapter;

3 (2) The holder was not then in breach of a fiduciary
4 obligation with respect to the property and had a
5 reasonable basis for believing, based on the facts
6 then known, that the property was presumed abandoned;
7 and

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

11 (b) Upon payment or delivery of property to the
12 administrator, the state assumes custody and responsibility for
13 the safekeeping of the property. A holder who pays or delivers
14 property to the administrator in good faith is relieved of all
15 liability arising thereafter with respect to the property.

16 (c) A holder who has paid money to the administrator
17 pursuant to this chapter may subsequently make payment to a
18 person reasonably appearing to the holder to be entitled to
19 payment. Upon a filing by the holder of proof of payment and
20 proof that the payee was entitled to the payment, the
21 administrator shall promptly reimburse the holder for the
22 payment without imposing a fee or other charge. If



1 reimbursement is sought for a payment made on a negotiable
2 instrument, including a traveler's check or money order, the
3 holder shall be reimbursed upon filing proof that the instrument
4 was duly presented and that payment was made to a person who
5 reasonably appeared to be entitled to payment. The holder shall
6 be reimbursed for payment made even if the payment was made to a
7 person whose claim was barred under section -19(a).

8 (d) A holder who has delivered property other than money
9 to the administrator pursuant to this chapter may reclaim the
10 property if it is still in the possession of the administrator,
11 without paying any fee or other charge, upon filing proof that
12 the apparent owner has claimed the property from the holder.

13 (e) The administrator may accept a holder's affidavit as
14 sufficient proof of the holder's right to recover money and
15 property under this section.

16 (f) If a holder pays or delivers property to the
17 administrator in good faith and thereafter another person claims
18 the property from the holder or another state claims the money
19 or property under its laws relating to escheat or abandoned or
20 unclaimed property, the administrator, upon written notice of
21 the claim, shall defend the holder against the claim and
22 indemnify the holder against any liability on the claim



1 resulting from payment or delivery of the property to the
2 administrator.

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

11 **§ -12 Crediting of dividends, interest, and increments**
12 **to owner's account.** If property other than money is delivered
13 to the administrator under this chapter, the owner shall be
14 entitled to receive from the administrator any income or gain
15 realized or accruing on the property at or before liquidation or
16 conversion of the property into money. If the property was an
17 interest bearing demand, savings, or time deposit, including a
18 deposit that is automatically renewable, the administrator shall
19 pay interest at the legal rate of interest established in
20 section 478-2, or any lesser rate the property earned while in
21 the possession of the holder. Interest shall begin to accrue
22 when the property is delivered to the administrator and ceases



1 on the earlier of the expiration of ten years after delivery or
2 the date on which payment is made to the owner. Interest on
3 interest bearing property shall not be payable for any period
4 before the effective date of this chapter, unless authorized by
5 law superseded by this chapter.

6 § -13 **Public sale of abandoned property.** (a) Except as
7 otherwise provided in this section, the administrator, within
8 three years after the receipt of abandoned property, shall sell
9 it to the highest bidder at public sale at a location in the
10 state which in the judgment of the administrator affords the
11 most favorable market for the property. The administrator may
12 decline the highest bid and reoffer the property for sale if the
13 administrator considers the bid to be insufficient. The
14 administrator need not offer the property for sale if the
15 administrator considers that the probable cost of sale will
16 exceed the proceeds of the sale. A sale held under this section
17 must be preceded by a single publication of notice, at least
18 three weeks before sale, in a newspaper of general circulation
19 in the county in which the property is to be sold.

20 (b) Securities listed on an established stock exchange
21 shall be sold at prices prevailing on the exchange at the time
22 of sale. Other securities may be sold over-the-counter at



1 prices prevailing at the time of sale or by any reasonable
2 method selected by the administrator. If securities are sold by
3 the administrator before the expiration of three years after
4 their delivery to the administrator, a person making a valid
5 claim under this chapter before the end of the three-year period
6 shall be entitled to the proceeds of the sale of the securities
7 or the market value of the securities at the time the valid
8 claim is made, whichever is greater, plus dividends, interest,
9 and other increments thereon up to the time the valid claim is
10 made, less any deduction for expenses of sale. A person making
11 a valid claim under this chapter after the expiration of the
12 three-year period is entitled to receive the securities
13 delivered to the administrator by the holder, if they still
14 remain in the custody of the administrator, or the net proceeds
15 received from sale, and shall not be entitled to receive any
16 appreciation in the value of the property occurring after
17 delivery to the administrator, except in a case of intentional
18 misconduct or malfeasance by the administrator.

19 (c) A purchaser of property at a sale conducted by the
20 administrator pursuant to this chapter takes the property free
21 of all claims of the owner or previous holder and of all persons



1 claiming through or under them. The administrator shall execute
2 all documents necessary to complete the transfer of ownership.

3 § -14 Claim of another state to recover property. (a)

4 After property has been paid or delivered to the administrator
5 under this chapter, another state may recover the property if:

6 (1) The property was paid or delivered to the custody of
7 this state because the records of the holder did not
8 reflect a last known location of the apparent owner
9 within the borders of the other state and the other
10 state establishes that the apparent owner or other
11 person entitled to the property was last known to be
12 located within the borders of that state and under the
13 laws of that state the property has escheated or
14 become subject to a claim of abandonment by that
15 state;

16 (2) The property was paid or delivered to the custody of
17 this state because the laws of the other state did not
18 provide for the escheat or custodial taking of the
19 property, and under the laws of that state
20 subsequently enacted the property has escheated or
21 become subject to a claim of abandonment by that
22 state;



- 1 (3) The records of the holder were erroneous in that they
2 did not accurately identify the owner of the property
3 and the last known location of the owner within the
4 borders of another state and under the laws of that
5 state the property has escheated or become subject to
6 a claim of abandonment by that state;
- 7 (4) The property was subjected to custody by this state
8 under section -5(6) and under the laws of the state
9 of domicile of the holder the property has escheated
10 or become subject to a claim of abandonment by that
11 state; or
- 12 (5) The property is a sum payable on a traveler's check,
13 money order, or similar instrument that was purchased
14 in the other state and delivered into the custody of
15 this state under section -5(7), and under the laws
16 of the other state the property has escheated or
17 become subject to a claim of abandonment by that
18 state.
- 19 (b) A claim of another state to recover escheated or
20 abandoned property shall be presented in a form prescribed by
21 the administrator, who shall decide the claim within ninety days
22 after it is presented. The administrator shall allow the claim



1 upon determining that the other state is entitled to the
2 abandoned property under subsection (a).

3 (c) The administrator shall require another state, before
4 recovering property under this section, to agree to indemnify
5 this state and its officers and employees against any liability
6 on a claim to the property.

7 **§ -15 Filing claim with administrator; handling of**
8 **claims by administrator.** (a) A person, excluding another
9 state, claiming property paid or delivered to the administrator
10 may file a claim on a form prescribed by the administrator and
11 verified by the claimant.

12 (b) Within one-hundred twenty days after a claim is filed,
13 the administrator shall allow or deny the claim and give written
14 notice of the decision to the claimant. If the claim is denied,
15 the administrator shall inform the claimant of the reasons for
16 the denial and specify what additional evidence is required
17 before the claim will be allowed. The claimant may then file a
18 new claim with the administrator or maintain an action under
19 section -16.

20 (c) Within thirty days after a claim is allowed, the
21 property or the net proceeds of a sale of the property shall be
22 delivered or paid by the administrator to the claimant, together



1 with any dividend, interest, or other increment to which the
2 claimant is entitled under sections -12 and -13.

3 (d) A holder who pays the owner for property that has been
4 delivered to the state and which, if claimed from the
5 administrator by the owner would be subject to an increment
6 under sections -12 and -13, may recover from the
7 administrator the amount of the increment.

8 ~~§ -16~~ **Action to establish claim.** A person, excluding
9 another state, aggrieved by a decision of the administrator or
10 whose claim has not been acted upon within one-hundred twenty
11 days after its filing may maintain an original action to
12 establish the claim in the circuit court, naming the
13 administrator as a defendant. If the aggrieved person
14 establishes the claim in an action against the administrator,
15 the court may award the claimant reasonable attorney's fees.

16 **§ -17 Election to take payment or delivery.** (a) The
17 administrator may decline to receive property reported under
18 this chapter which the administrator considers to have a value
19 less than the expenses of notice and sale.

20 (b) A holder, with the written consent of the
21 administrator and upon conditions and terms prescribed by the
22 administrator, may report and deliver property before the



1 property is presumed abandoned. Property so delivered shall be
2 held by the administrator and shall not be presumed abandoned
3 until it otherwise would be presumed abandoned under this
4 chapter.

5 § -18 **Destruction or disposition of property having no**
6 **substantial commercial value; immunity from liability.** If the
7 administrator determines after investigation that property
8 delivered under this chapter has no substantial commercial
9 value, the administrator may destroy or otherwise dispose of the
10 property at any time. An action or proceeding shall not be
11 maintained against the state or any officer or against the
12 holder for or on account of an act of the administrator under
13 this section, except for intentional misconduct or malfeasance.

14 § -19 **Periods of limitation.** (a) The expiration,
15 before or after the effective date of this chapter, of a period
16 of limitation on the owner's right to receive or recover
17 property, whether specified by contract, statute, or court
18 order, shall not preclude the property from being presumed
19 abandoned or affect a duty to file a report or to pay or deliver
20 or transfer property to the administrator as required by this
21 chapter.



1 (b) An action or proceeding may not be maintained by the
2 administrator to enforce this chapter in regard to the
3 reporting, delivery, or payment of property more than ten years
4 after the holder specifically identified the property in a
5 report filed with the administrator or gave express notice to
6 the administrator of a dispute regarding the property. In the
7 absence of such a report or other express notice, the period of
8 limitation is tolled. The period of limitation is also tolled
9 by the filing of a report that is fraudulent.

10 § -20 **Requests for reports and examination of records.**

11 (a) The administrator may require a person who has not filed a
12 report, or a person who the administrator believes has filed an
13 inaccurate, incomplete, or false report, to file a verified
14 report in a form specified by the administrator. The report
15 shall state whether the person is holding property reportable
16 under this chapter, describe property not previously reported or
17 as to which the administrator has made inquiry, and specifically
18 identify and state the amounts of property that may be in issue.

19 (b) The administrator, at reasonable times and upon
20 reasonable notice, may examine the records of any person to
21 determine whether the person has complied with this chapter.
22 The administrator may conduct the examination even if the person



1 believes it is not in possession of any property that must be
2 reported, paid, or delivered under this chapter. The
3 administrator may contract with any other person to conduct the
4 examination on behalf of the administrator.

5 (c) The administrator at reasonable times may examine the
6 records of an agent, including a dividend disbursing agent or
7 transfer agent, of a business association or financial
8 association that is the holder of property presumed abandoned if
9 the administrator has given the notice required by subsection
10 (b) to both the association or organization and the agent at
11 least ninety days before the examination.

12 (d) Documents and working papers obtained or compiled by
13 the administrator, or the administrator's agents, employees, or
14 designated representatives, in the course of conducting an
15 examination are confidential and are not public records;
16 provided that the documents and papers may be:

17 (1) Used by the administrator in the course of an action
18 to collect unclaimed property or otherwise enforce
19 this chapter;

20 (2) Used in joint examinations conducted with or pursuant
21 to an agreement with another state, the federal



1 government, or any other governmental subdivision,
2 agency, or instrumentality;
3 (3) Produced pursuant to subpoena or court order; or
4 (4) Disclosed to the abandoned property office of another
5 state for that state's use in circumstances equivalent
6 to those described in this subsection, if the other
7 state is bound to keep the documents and papers
8 confidential.

9 (e) If an examination of the records of a person results
10 in the disclosure of property reportable under this chapter, the
11 administrator may assess the cost of the examination against the
12 holder at the rate of \$200 a day for each examiner, or a greater
13 amount that is reasonable and was incurred, but the assessment
14 may not exceed the value of the property found to be reportable.
15 The cost of an examination made pursuant to subsection (c) may
16 be assessed only against the business association or financial
17 organization.

18 (f) If, after the effective date of this chapter, a holder
19 does not maintain the records required by section -21 and the
20 records of the holder available for the periods subject to this
21 chapter are insufficient to permit the preparation of a report,
22 the administrator may require the holder to report and pay to



1 the administrator the amount the administrator reasonably
2 estimates, on the basis of any available records of the holder
3 or by any other reasonable method of estimation, should have
4 been but was not reported.

5 § -21 **Retention of records.** (a) Except as otherwise
6 provided in subsection (b), a holder required to file a report
7 under section -8 shall maintain the records containing the
8 information required to be included in the report for ten years
9 after the holder files the report, unless a shorter period is
10 provided by rule of the administrator.

11 (b) A business association or financial organization that
12 sells, issues, or provides to others for sale or issue in this
13 state, traveler's checks, money orders, or similar instruments
14 other than third-party bank checks, on which the business
15 association or financial organization is directly liable, shall
16 maintain a record of the instruments while they remain
17 outstanding, indicating the state and date of issue, for three
18 years after the holder files the report.

19 § -22 **Enforcement.** The administrator may maintain an
20 action in this or another state to enforce this chapter. The
21 court may award reasonable attorney's fees to the prevailing
22 party.



1 § -23 Interstate agreements and cooperation; joint and
2 reciprocal actions with other states. (a) The administrator
3 may enter into an agreement with another state to exchange
4 information relating to abandoned property or its possible
5 existence. The agreement may permit the other state, or another
6 person acting on behalf of a state, to examine records as
7 authorized in section -20. The administrator by rule may
8 require the reporting of information needed to enable compliance
9 with an agreement made under this section and prescribe the
10 form.

11 (b) The administrator may join with another state to seek
12 enforcement of this chapter against any person who is or may be
13 holding property reportable under this chapter.

14 (c) At the request of another state, the attorney general
15 of this state may maintain an action on behalf of the other
16 state to enforce, in this state, the unclaimed property laws of
17 the other state against a holder of property subject to escheat
18 or a claim of abandonment by the other state, if the other state
19 has agreed to pay expenses incurred by the attorney general in
20 maintaining the action.

21 (d) The administrator may request that the attorney
22 general of another state or another attorney commence an action



1 in the other state on behalf of the administrator. With the
2 approval of the attorney general of this state, the
3 administrator may retain any other attorney to commence an
4 action in this state on behalf of the administrator. This state
5 shall pay all expenses, including attorney's fees, in
6 maintaining an action under this subsection. With the
7 administrator's approval, the expenses and attorney's fees may
8 be paid from money received under this chapter. The
9 administrator may agree to pay expenses and attorney's fees
10 based in whole or in part on a percentage of the value of any
11 property recovered in the action. Any expenses or attorney's
12 fees paid under this subsection may not be deducted from the
13 amount that is subject to the claim by the owner under this
14 chapter.

15 § -24 **Interest and penalties.** (a) A holder who fails
16 to report, pay, or deliver property within the time prescribed
17 by this chapter shall pay to the administrator interest at the
18 annual rate of two percentage points above the annual rate of
19 discount in effect on the date the property should have been
20 paid or delivered for the most recent issue of fifty-two-week
21 United States Treasury bills on the property or value thereof



1 from the date the property should have been reported, paid, or
2 delivered.

3 (b) Except as otherwise provided in subsection (c), a
4 holder who fails to report, pay, or deliver property within the
5 time prescribed by this chapter, or fails to perform other
6 duties imposed by this chapter, shall pay to the administrator,
7 in addition to interest as provided in subsection (a), a civil
8 penalty of \$200 for each day the report, payment, or delivery is
9 withheld, or the duty is not performed, up to a maximum of
10 \$5,000.

11 (c) A holder who wilfully fails to report, pay, or deliver
12 property within the time prescribed by this chapter, or wilfully
13 fails to perform other duties imposed by this chapter, shall pay
14 to the administrator, in addition to interest as provided in
15 subsection (a), a civil penalty of \$1,000 for each day the
16 report, payment, or delivery is withheld, or the duty is not
17 performed, up to a maximum of \$25,000, plus twenty-five per cent
18 of the value of any property that should have been but was not
19 reported.

20 (d) A holder who makes a fraudulent report shall pay to
21 the administrator, in addition to interest as provided in
22 subsection (a), a civil penalty of \$1,000 for each day from the



1 date a report under this chapter was due, up to a maximum of
2 \$25,000, plus twenty-five per cent of the value of any property
3 that should have been but was not reported.

4 (e) The administrator for good cause may waive, in whole
5 or in part, interest under subsection (a) and penalties under
6 subsections (b) and (c), and shall waive penalties if the holder
7 acted in good faith and without negligence.

8 § -25 **Agreement to locate property.** (a) An agreement
9 by an owner, the primary purpose of which is to locate, deliver,
10 recover, or assist in the recovery of property that is presumed
11 abandoned shall be void and unenforceable if it was entered into
12 during the period commencing on the date the property was
13 presumed abandoned and extending to a time that is twenty-four
14 months after the date the property is paid or delivered to the
15 administrator. This subsection does not apply to an owner's
16 agreement with an attorney to file a claim as to identified
17 property or contest the administrator's denial of a claim.

18 (b) An agreement by an owner, the primary purpose of which
19 is to locate, deliver, recover, or assist in the recovery of
20 property shall be enforceable only if the agreement is in
21 writing, clearly sets forth the nature of the property and the
22 services to be rendered, is signed by the apparent owner, and



1 states the value of the property before and after the fee or
2 other compensation has been deducted.

3 (c) If an agreement covered by this section applies to
4 mineral proceeds and the agreement contains a provision to pay
5 compensation that includes a portion of the underlying minerals
6 or any mineral proceeds not then presumed abandoned, the
7 provision shall be void and unenforceable.

8 (d) An agreement covered by this section which provides
9 for compensation that is unconscionable shall be unenforceable
10 except by the owner. An owner who has agreed to pay
11 compensation that is unconscionable, or the administrator on
12 behalf of the owner, may maintain an action to reduce the
13 compensation to a conscionable amount. The court may award
14 reasonable attorney's fees to an owner who prevails in the
15 action.

16 (e) This section does not preclude an owner from asserting
17 that an agreement covered by this section is invalid on grounds
18 other than unconscionable compensation.

19 § -26 **Deposit of funds.** (a) There is established in
20 the state treasury the unclaimed property trust fund, which
21 shall be administered by the administrator. All moneys
22 collected by the unclaimed property program from holders of



1 property presumed abandoned and all proceeds from the sale of
2 unclaimed property, less costs in connection with the sale of
3 the abandoned property, shall be deposited into the unclaimed
4 property trust fund.

5 (b) Moneys in the unclaimed property trust fund shall be
6 used for the payment of the following:

- 7 (1) Claims for the return of abandoned property to their
8 rightful owners;
- 9 (2) Payment to other states' unclaimed property programs
10 for owners whose last known address was in that other
11 state;
- 12 (3) Any costs incurred in connection with the sale of
13 abandoned property;
- 14 (4) Costs of mailing and publication in connection with
15 any abandoned property;
- 16 (5) Reasonable service charges;
- 17 (6) Costs incurred in examining the records of holders of
18 property and in collecting such property from those
19 holders; and
- 20 (7) Any other charges, costs, or expenses incurred in the
21 operation, administration, and enforcement of this
22 chapter.



1 (c) Moneys in the unclaimed property trust fund shall be
2 invested by the administrator, and all investment earnings shall
3 be deposited to the credit of the general fund.

4 (d) All unencumbered and unexpended moneys in excess of
5 \$1,300,000 remaining on balance in the unclaimed property trust
6 fund on June 30 of each year shall lapse to the credit of the
7 state general fund.

8 § -27 **Foreign transactions.** This chapter does not apply
9 to property held, due, and owing in a foreign country and
10 arising out of a foreign transaction.

11 § -28 **Transitional provisions.** (a) An initial report
12 filed under this chapter for property that was not required to
13 be reported before the effective date of this chapter but which
14 is subject to this chapter shall include all items of property
15 that would have been presumed abandoned during the ten-year
16 period next preceding the effective date of this chapter as if
17 this chapter had been in effect during that period.

18 (b) This chapter does not relieve a holder of a duty that
19 arose before the effective date of this chapter to report, pay,
20 or deliver property. Except as otherwise provided in section

21 -19(b), a holder who did not comply with the law in effect
22 before the effective date of this chapter is subject to the



1 applicable provisions for enforcement and penalties which then
2 existed, which are continued in effect for the purpose of this
3 section.

4 § -29 **Rules.** The administrator may adopt, pursuant to
5 chapter 91, rules necessary to carry out this chapter.

6 § -30 **Uniformity of application and construction.** This
7 chapter shall be applied and construed to effectuate its general
8 purpose to make uniform the law with respect to the subject of
9 this chapter among states enacting it."

10 SECTION 2. Chapter 523A, part I, Hawaii Revised Statutes,
11 is repealed.

12 SECTION 3. On the effective date of this Act, the director
13 of finance shall transfer all of the funds in the unclaimed
14 property trust fund established by section 523A-23.5, Hawaii
15 Revised Statutes, to the unclaimed property trust fund created
16 by section -26 in section 1 of this Act.

17 SECTION 4. This Act shall take effect on July 1, 2008.



Report Title:

Uniform Unclaimed Property Act

Description:

Updates the Uniform Unclaimed Property Act by replacing the existing 1981 version of the Act with the 1995 version, among other things. (HB2559 HD1)

