



GOV. MSG. NO. 697

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

May 1, 2008

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fourth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

This is to inform you that on May 1, 2008, the following bill was signed into law:

HB2559 HD2 SD1

A BILL FOR AN ACT RELATING TO THE UNIFORM
UNCLAIMED PROPERTY ACT.
(ACT 55)

Sincerely,

A handwritten signature in cursive script, appearing to read "Linda Lingle".

LINDA LINGLE

Approved by the Governor

on MAY 1 2008

HOUSE OF REPRESENTATIVES
TWENTY-FOURTH LEGISLATURE, 2008
STATE OF HAWAII

ACT 055
H.B. NO. 2559
H.D. 2
S.D. 1

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.** As used in this chapter, unless the
9 context otherwise requires:

10 "Administrator" means the director of finance.

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

14 "Business association" means a corporation, joint stock
15 company, investment company, partnership, unincorporated
16 association, joint venture, limited liability company, business
17 trust, trust company, safe deposit company, financial
18 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 of property that is subject
11 to 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 not exempt under section -3.5, security
22 deposit, refund, credit memorandum, unpaid wage,



- 1 unused ticket, mineral proceeds, or unidentified
2 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:

- 17 (A) The date of the most recent dividend, stock
18 split, or other distribution unclaimed by the
19 apparent owner; or
20 (B) The date of the second mailing of a statement of
21 account or other notification or communication
22 that was returned as undeliverable or after the



- 1 holder discontinued mailings, notifications, or
2 communications to the 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 not exempt under section -3.5,
2 five years after December 31 of the year in which the
3 certificate was sold, but if redeemable in merchandise
4 only, the amount abandoned shall be deemed to be one
5 hundred per cent of the 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 **§ -3.5 Gift certificates and gift cards.** (a) This
22 chapter shall not apply to a gift certificate or gift card;



1 provided the gift certificate or gift card has no expiration
2 date, no expiration period, and no type of post-sale charge or
3 fee (including but not limited to service charges, dormancy
4 fees, account maintenance fees, cash-out fees, replacement card
5 fees, and activation or reactivation charges).

6 (b) This chapter shall not apply to a gift certificate or
7 gift card that has an expiration date, expiration period, or any
8 type of post-sale charge or fee, including but not limited to
9 service charges, dormancy fees, account maintenance fees, cash-
10 out fees, replacement card fees, and activation or reactivation
11 charges if:

12 (1) The gift certificate or gift card was issued before
13 January 1, 2010; and

14 (2) It is the policy and practice of the issuer of the
15 gift certificate or gift card to:

16 (A) Honor the gift certificate or gift card after its
17 expiration date or the end of its expiration
18 period; and

19 (B) Eliminate all post sale charges and fees.

20 (c) As used in this section, "gift certificate" or "gift
21 card":



- 1 (1) Means a written promise or electronic payment device
2 that:
- 3 (A) Is usable at a single merchant or an affiliated
4 group of merchants that share the same name,
5 mark, or logo, or is usable at multiple,
6 unaffiliated merchants or service providers;
- 7 (B) Is issued in a specific amount (which may or may
8 not be denominated on the gift certificate or
9 gift card);
- 10 (C) May or may not be increased in value or reloaded;
- 11 (D) Is purchased, or loaded, or both, on a prepaid
12 basis for the future purchase or delivery of any
13 goods or services; and
- 14 (E) Is honored upon presentation.
- 15 (2) Shall not include:
- 16 (A) An electronic payment device linked to a deposit
17 account, or prepaid telephone calling cards;
- 18 (B) Flexible spending arrangements as defined in
19 section 106(c)(2) of the Internal Revenue Code
20 (26 U.S.C. 106(c)(2)); flexible spending accounts
21 subject to section 125 of the Internal Revenue
22 Code (26 U.S.C. 125), Archer MSAs as defined in



1 section 220(d) of the Internal Revenue Code (26
2 U.S.C. 129); dependent care reimbursement
3 accounts subject to section 129 of the Internal
4 Revenue Code (26 U.S.C. 129); health savings
5 accounts subject to section 223(d) of the
6 Internal Revenue Code (26 U.S.C. 223(d)), as
7 amended by section 1201 of the Medicare
8 Prescription Drug, Improvement, and Modernization
9 Act of 2003 (P.L. 108-173); or similar accounts
10 for which, under the Internal Revenue Code and
11 its implementing regulations, individuals may pay
12 medical expenses, health care expenses, dependent
13 care expenses, or similar expenses on a pretax
14 basis. As used in this subparagraph, "Internal
15 Revenue Code" means the Internal Revenue Code of
16 1986, as amended; and

17 (C) Payroll cards or other electronic payment devices
18 that are linked to a deposit account and that are
19 given in exchange for goods or services rendered.

20 **§ -4 Contents of safe deposit box or other safekeeping**
21 **depository.** Tangible property held in a safe deposit box or
22 other safekeeping depository in this State in the ordinary



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

6 § -5 Rules of taking custody. Except as otherwise
7 provided in this chapter or by other statute of this State,
8 property that is presumed abandoned, whether located in this or
9 another state, shall be subject to the custody of this State if:

- 10 (1) The last known address of the apparent owner, as shown
11 on the records of the holder, is in this State;
- 12 (2) The records of the holder do not reflect the identity
13 of the person entitled to the property and it is
14 established that the last known address of the person
15 entitled to the property is in this State;
- 16 (3) The records of the holder do not reflect the last
17 known address of the apparent owner and it is
18 established that:
- 19 (A) The last known address of the person entitled to
20 the property is in this State; or
- 21 (B) The holder is domiciled in this State or is a
22 government or governmental subdivision, agency,



1 or instrumentality of this State and has not
2 previously paid or delivered the property to the
3 state of the last known address of the apparent
4 owner or other person entitled to the property;

5 (4) The last known address of the apparent owner, as shown
6 on the records of the holder, is in a state that does
7 not provide for the escheat or custodial taking of the
8 property and the holder is domiciled in this State or
9 is a government or governmental subdivision, agency,
10 or instrumentality of this State;

11 (5) The last known address of the apparent owner, as shown
12 on the records of the holder, is in a foreign country
13 and the holder is domiciled in this State or is a
14 government or governmental subdivision, agency, or
15 instrumentality of this State;

16 (6) The transaction out of which the property arose
17 occurred in this State, the holder is domiciled in a
18 state that does not provide for the escheat or
19 custodial taking of the property, and the last known
20 address of the apparent owner or other person entitled
21 to the property is unknown or is in a state that does



1 not provide for the escheat or custodial taking of the
2 property; or

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

11 **§ -6 Dormancy charge.** A holder may deduct from property
12 presumed abandoned a charge imposed by reason of the owner's
13 failure to claim the property within a specified time only if
14 there is a valid and enforceable written contract between the
15 holder and the owner under which the holder may impose the
16 charge and the holder regularly imposes the charge, which is not
17 regularly reversed or otherwise canceled. The amount of the
18 deduction shall be limited to an amount that is not
19 unconscionable.

20 **§ -7 Burden of proof as to property evidenced by record**
21 **of check or draft.** A record of the issuance of a check, draft,
22 or similar instrument shall be prima facie evidence of an



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

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

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

12 (1) A description of the property;

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

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

20 (4) In the case of an amount of \$50 or more held or owing
21 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, the date of the
10 last transaction with the apparent owner with respect
11 to the property, and whether the property is an
12 interest bearing account; and

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

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



1 (d) The report shall be filed before November 1 of each
2 year and cover the twelve months next preceding July 1 of that
3 year; provided that a report with respect to a life insurance
4 company shall be filed before November 1 of each year for the
5 calendar year next preceding.

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

10 (1) The holder has in its records an address for the
11 apparent owner which the holder's records do not
12 disclose to be inaccurate;

13 (2) The claim of the apparent owner is not barred by a
14 statute of limitations; and

15 (3) The value of the property is \$50 or more.

16 (f) Before the date for filing the report, the holder of
17 property presumed abandoned may request the administrator to
18 extend the time for filing the report. The administrator may
19 grant the extension for good cause. The holder, upon receipt of
20 the extension, may make an interim payment on the amount the
21 holder estimates will ultimately be due, which shall terminate
22 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 **5 -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 notice shall be given by using one or more of the
16 following methods:

17 (1) Posting on the State of Hawaii, department of budget
18 and finance internet website;

19 (2) Publication in a daily or weekly publication of
20 statewide circulation; or

21 (3) Any other method the administrator deems effective for
22 publicizing the notice.



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

5 § -11 Custody by State; recovery by holder; defense of
6 holder. (a) In this section, payment or delivery is made in
7 "good faith" if:

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

10 (2) The holder was not then in breach of a fiduciary
11 obligation with respect to the property and had a
12 reasonable basis for believing, based on the facts
13 then known, that the property was presumed abandoned;
14 and

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

18 (b) Upon payment or delivery of property to the
19 administrator, the state shall assume custody and responsibility
20 for the safekeeping of the property. A holder who pays or
21 delivers property to the administrator in good faith shall be



1 relieved of all liability arising thereafter with respect to the
2 property.

3 (c) A holder who has paid money to the administrator
4 pursuant to this chapter may subsequently make payment to a
5 person reasonably appearing to the holder to be entitled to
6 payment. Upon a filing by the holder of proof of payment and
7 proof that the payee was entitled to the payment, the
8 administrator shall promptly reimburse the holder for the
9 payment without imposing a fee or other charge. If
10 reimbursement is sought for a payment made on a negotiable
11 instrument, including a traveler's check or money order, the
12 holder shall be reimbursed upon filing proof that the instrument
13 was duly presented and that payment was made to a person who
14 reasonably appeared to be entitled to payment. The holder shall
15 be reimbursed for payment made even if the payment was made to a
16 person whose claim was barred under section -19(a).

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



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

4 (f) If a holder pays or delivers property to the
5 administrator in good faith and thereafter another person claims
6 the property from the holder or another state claims the money
7 or property under its laws relating to escheat or abandoned or
8 unclaimed property, the administrator, upon written notice of
9 the claim, shall defend the holder against the claim and
10 indemnify the holder against any liability on the claim
11 resulting from payment or delivery of the property to the
12 administrator.

13 (g) Property removed from a safe deposit box or other
14 safekeeping depository shall be received by the administrator
15 subject to the holder's right to be reimbursed for the cost of
16 the opening and to any valid lien or contract providing for the
17 holder to be reimbursed for unpaid rent or storage charges. The
18 administrator shall reimburse the holder out of the proceeds
19 remaining after deducting the expense incurred by the
20 administrator in selling the property.

21 § -12 Crediting of dividends, interest, and increments
22 to owner's account. If property other than money is delivered



1 to the administrator under this chapter, the owner shall be
2 entitled to receive from the administrator any income or gain
3 realized or accruing on the property at or before liquidation or
4 conversion of the property into money. If the property was an
5 interest-bearing demand, savings, or time deposit, including a
6 deposit that is automatically renewable, the administrator shall
7 pay simple interest at the legal rate of interest established in
8 section 478-2, or any lesser rate the property earned while in
9 the possession of the administrator. Interest shall begin to
10 accrue when the property is delivered to the administrator and
11 ceases on the earlier of the expiration of ten years after
12 delivery or the date on which payment is made to the owner.
13 Interest on interest-bearing property shall not be payable for
14 any property delivered to the administrator before the effective
15 date of this chapter.

16 **§ -13 Public sale of abandoned property.** (a) Except as
17 otherwise provided in this section, the administrator, within
18 three years after the receipt of abandoned property, shall sell
19 it to the highest bidder at public sale at a location in the
20 State which in the judgment of the administrator affords the
21 most favorable market for the property. The administrator may
22 decline the highest bid and reoffer the property for sale if the



1 administrator considers the bid to be insufficient. The
2 administrator need not offer the property for sale if the
3 administrator considers that the probable cost of sale will
4 exceed the proceeds of the sale. A sale held under this section
5 shall be preceded by a single publication of notice, at least
6 three weeks before sale, in a newspaper of general circulation
7 in the county in which the property is to be sold.

8 (b) Securities listed on an established stock exchange
9 shall be sold at prices prevailing on the exchange at the time
10 of sale. Other securities may be sold over-the-counter at
11 prices prevailing at the time of sale or by any reasonable
12 method selected by the administrator. If securities are sold by
13 the administrator before the expiration of three years after
14 their delivery to the administrator, a person making a valid
15 claim under this chapter before the end of the three-year period
16 shall be entitled to the proceeds of the sale of the securities
17 or the market value of the securities at the time the valid
18 claim is made, whichever is greater, plus dividends, interest,
19 and other increments thereon up to the time the valid claim is
20 made, less any deduction for expenses of sale. A person making
21 a valid claim under this chapter after the expiration of the
22 three-year period shall be entitled to receive the securities



1 delivered to the administrator by the holder, if they still
2 remain in the custody of the administrator, or the net proceeds
3 received from sale, and shall not be entitled to receive any
4 appreciation in the value of the property occurring after
5 delivery to the administrator, except in a case of intentional
6 misconduct or malfeasance by the administrator.

7 (c) A purchaser of property at a sale conducted by the
8 administrator pursuant to this chapter shall take the property
9 free of all claims of the owner or previous holder and of all
10 persons claiming through or under them. The administrator shall
11 execute all documents necessary to complete the transfer of
12 ownership.

13 **§ -14 Claim of another state to recover property. (a)**

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

16 (1) The property was paid or delivered to the custody of
17 this State because the records of the holder did not
18 reflect a last known location of the apparent owner
19 within the borders of the other state and the other
20 state establishes that the apparent owner or other
21 person entitled to the property was last known to be
22 located within the borders of that state and under the



1 laws of that state the property has escheated or
2 become subject to a claim of abandonment by that
3 state;

4 (2) The property was paid or delivered to the custody of
5 this State because the laws of the other state did not
6 provide for the escheat or custodial taking of the
7 property, and under the laws of that state
8 subsequently enacted the property has escheated or
9 become subject to a claim of abandonment by that
10 state;

11 (3) The records of the holder were erroneous in that they
12 did not accurately identify the owner of the property
13 and the last known location of the owner within the
14 borders of another state and under the laws of that
15 state the property has escheated or become subject to
16 a claim of abandonment by that state;

17 (4) The property was subjected to custody by this State
18 under section -5(6) and under the laws of the state
19 of domicile of the holder the property has escheated
20 or become subject to a claim of abandonment by that
21 state; or



1 (5) The property is a sum payable on a traveler's check,
2 money order, or similar instrument that was purchased
3 in the other state and delivered into the custody of
4 this State under section -5(7), and under the laws
5 of the other state the property has escheated or
6 become subject to a claim of abandonment by that
7 state.

8 (b) A claim of another state to recover escheated or
9 abandoned property shall be presented in a form prescribed by
10 the administrator, who shall decide the claim within ninety days
11 after it is presented. The administrator shall allow the claim
12 upon determining that the other state is entitled to the
13 abandoned property under subsection (a).

14 (c) The administrator shall require another state, before
15 recovering property under this section, to agree to indemnify
16 this State and its officers and employees against any liability
17 on a claim to the property.

18 **§ -15 Filing claim with administrator; handling of**
19 **claims by administrator.** (a) A person, excluding another
20 state, claiming property paid or delivered to the administrator
21 may file a claim on a form prescribed by the administrator and
22 verified by the claimant.



1 (b) Within one hundred twenty days after a claim is filed,
2 the administrator shall allow or deny the claim and give written
3 notice of the decision to the claimant. If the claim is denied,
4 the administrator shall inform the claimant of the reasons for
5 the denial and specify what additional evidence is required
6 before the claim will be allowed. The claimant may then file a
7 new claim with the administrator or maintain an action under
8 section -16.

9 (c) Within thirty days after a claim is allowed, the
10 property or the net proceeds of a sale of the property shall be
11 delivered or paid by the administrator to the claimant, together
12 with any dividend, interest, or other increment to which the
13 claimant is entitled under sections -12 and -13.

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

19 **§ -16 Action to establish claim.** A person, excluding
20 another state, aggrieved by a decision of the administrator or
21 whose claim has not been acted upon within one hundred twenty
22 days after its filing may maintain an original action to



1 establish the claim in the circuit court, naming the
2 administrator as a defendant. If the aggrieved person
3 establishes the claim in an action against the administrator,
4 the court may award the claimant reasonable attorney's fees.

5 **§ -17 Election to take payment or delivery.** (a) The
6 administrator may decline to receive property reported under
7 this chapter that the administrator considers to have a value
8 less than the expenses of notice and sale.

9 (b) A holder, with the written consent of the
10 administrator and upon conditions and terms prescribed by the
11 administrator, may report and deliver property before the
12 property is presumed abandoned. Property so delivered shall be
13 held by the administrator and shall not be presumed abandoned
14 until it otherwise would be presumed abandoned under this
15 chapter.

16 **§ -18 Destruction or disposition of property having no**
17 **substantial commercial value; immunity from liability.** If the
18 administrator determines after investigation that property
19 delivered under this chapter has no substantial commercial
20 value, the administrator may destroy or otherwise dispose of the
21 property at any time. An action or proceeding shall not be
22 maintained against the State or any officer or against the



1 holder for or on account of an act of the administrator under
2 this section, except for intentional misconduct or malfeasance.

3 **§ -19 Periods of limitation.** (a) The expiration,
4 before or after the effective date of this chapter, of a period
5 of limitation on the owner's right to receive or recover
6 property, whether specified by contract, statute, or court
7 order, shall not preclude the property from being presumed
8 abandoned or affect a duty to file a report or to pay or deliver
9 or transfer property to the administrator as required by this
10 chapter.

11 (b) An action or proceeding may not be maintained by the
12 administrator to enforce this chapter in regard to the
13 reporting, delivery, or payment of property more than ten years
14 after the holder specifically identified the property in a
15 report filed with the administrator or gave express notice to
16 the administrator of a dispute regarding the property. In the
17 absence of such a report or other express notice, the period of
18 limitation shall be tolled. The period of limitation shall also
19 be tolled by the filing of a report that is fraudulent.

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

21 (a) The administrator may require a person who has not filed a
22 report, or a person who the administrator believes has filed an



1 inaccurate, incomplete, or false report, to file a verified
2 report in a form specified by the administrator. The report
3 shall state whether the person is holding property reportable
4 under this chapter, describe property not previously reported or
5 as to which the administrator has made inquiry, and specifically
6 identify and state the amounts of property that may be in issue.

7 (b) The administrator, at reasonable times and upon
8 reasonable notice, may examine the records of any person to
9 determine whether the person has complied with this chapter.
10 The administrator may conduct the examination even if the person
11 believes it is not in possession of any property that must be
12 reported, paid, or delivered under this chapter. The
13 administrator may contract with any other person to conduct the
14 examination on behalf of the administrator.

15 (c) The administrator at reasonable times may examine the
16 records of an agent, including a dividend disbursing agent or
17 transfer agent, of a business association or financial
18 association that is the holder of property presumed abandoned if
19 the administrator has given the notice required by subsection
20 (b) to both the association or organization and the agent at
21 least ninety days before the examination.



1 (d) Documents and working papers obtained or compiled by
2 the administrator, or the administrator's agents, employees, or
3 designated representatives, in the course of conducting an
4 examination are confidential and are not public records;
5 provided that the documents and papers may be:

6 (1) Used by the administrator in the course of an action
7 to collect unclaimed property or otherwise enforce
8 this chapter;

9 (2) Used in joint examinations conducted with or pursuant
10 to an agreement with another state, the federal
11 government, or any other governmental subdivision,
12 agency, or instrumentality;

13 (3) Produced pursuant to subpoena or court order; or

14 (4) Disclosed to the abandoned property office of another
15 state for that state's use in circumstances equivalent
16 to those described in this subsection, if the other
17 state is bound to keep the documents and papers
18 confidential.

19 (e) If an examination of the records of a person results
20 in the disclosure of property reportable under this chapter, the
21 administrator may assess the cost of the examination against the
22 holder at the rate of \$200 a day for each examiner, or a greater



1 amount that is reasonable and was incurred, but the assessment
2 may not exceed the value of the property found to be reportable.
3 The cost of an examination made pursuant to subsection (c) may
4 be assessed only against the business association or financial
5 organization.

6 (f) If, after the effective date of this chapter, a holder
7 does not maintain the records required by section -21 and the
8 records of the holder available for the periods subject to this
9 chapter are insufficient to permit the preparation of a report,
10 the administrator may require the holder to report and pay to
11 the administrator the amount the administrator reasonably
12 estimates, on the basis of any available records of the holder
13 or by any other reasonable method of estimation, should have
14 been but was not reported.

15 **§ -21 Retention of records.** (a) Except as otherwise
16 provided in subsection (b), a holder required to file a report
17 under section -8 shall maintain the records containing the
18 information required to be included in the report for ten years
19 after the holder files the report, unless a shorter period is
20 provided by rule of the administrator.

21 (b) A business association or financial organization that
22 sells, issues, or provides to others for sale or issue in this



1 State, traveler's checks, money orders, or similar instruments
2 other than third-party bank checks, on which the business
3 association or financial organization is directly liable, shall
4 maintain a record of the instruments while they remain
5 outstanding, indicating the state and date of issue, for three
6 years after the holder files the report.

7 **§ -22 Enforcement.** The administrator may maintain an
8 action in this or another state to enforce this chapter. The
9 court may award reasonable attorney's fees to the prevailing
10 party.

11 **§ -23 Interstate agreements and cooperation; joint and**
12 **reciprocal actions with other states.** (a) The administrator
13 may enter into an agreement with another state to exchange
14 information relating to abandoned property or its possible
15 existence. The agreement may permit the other state, or another
16 person acting on behalf of a state, to examine records as
17 authorized in section -20. The administrator by rule may
18 require the reporting of information needed to enable compliance
19 with an agreement made under this section and prescribe the
20 form.



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

4 (c) At the request of another state, the attorney general
5 of this State may maintain an action on behalf of the other
6 state to enforce, in this State, the unclaimed property laws of
7 the other state against a holder of property subject to escheat
8 or a claim of abandonment by the other state, if the other state
9 has agreed to pay expenses incurred by the attorney general in
10 maintaining the action.

11 (d) The administrator may request that the attorney
12 general of another state or another attorney commence an action
13 in the other state on behalf of the administrator. With the
14 approval of the attorney general of this State, the
15 administrator may retain any other attorney to commence an
16 action in this state on behalf of the administrator. This State
17 shall pay all expenses, including attorney's fees, in
18 maintaining an action under this subsection. With the
19 administrator's approval, the expenses and attorney's fees may
20 be paid from money received under this chapter. The
21 administrator may agree to pay expenses and attorney's fees
22 based in whole or in part on a percentage of the value of any



1 property recovered in the action. Any expenses or attorney's
2 fees paid under this subsection may not be deducted from the
3 amount that is subject to the claim by the owner under this
4 chapter.

5 **§ -24 Interest and penalties.** (a) A holder who fails
6 to report, pay, or deliver property within the time prescribed
7 by this chapter shall pay to the administrator interest at the
8 annual rate of two percentage points above the annual rate of
9 discount in effect on the date the property should have been
10 paid or delivered for the most recent issue of fifty-two-week
11 United States Treasury bills on the property or value thereof
12 from the date the property should have been reported, paid, or
13 delivered.

14 (b) Except as otherwise provided in subsection (c), a
15 holder who fails to report, pay, or deliver property within the
16 time prescribed by this chapter, or fails to perform other
17 duties imposed by this chapter, shall pay to the administrator,
18 in addition to interest as provided in subsection (a), a civil
19 penalty of \$200 for each day the report, payment, or delivery is
20 withheld, or the duty is not performed, up to a maximum of
21 \$5,000.



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

10 (d) A holder who makes a fraudulent report shall pay to
11 the administrator, in addition to interest as provided in
12 subsection (a), a civil penalty of \$1,000 for each day from the
13 date a report under this chapter was due, up to a maximum of
14 \$25,000, plus twenty-five per cent of the value of any property
15 that should have been but was not reported.

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

20 **§ -25 Agreement to locate property.** (a) An agreement
21 by an owner, the primary purpose of which is to locate, deliver,
22 recover, or assist in the recovery of property that is presumed



1 abandoned shall be void and unenforceable if it was entered into
2 during the period commencing on the date the property was
3 presumed abandoned and extending to a time that is twenty-four
4 months after the date the property is paid or delivered to the
5 administrator. This subsection does not apply to an owner's
6 agreement with an attorney to file a claim as to identified
7 property or contest the administrator's denial of a claim.

8 (b) An agreement by an owner, the primary purpose of which
9 is to locate, deliver, recover, or assist in the recovery of
10 property shall be enforceable only if the agreement is in
11 writing, clearly sets forth the nature of the property and the
12 services to be rendered, is signed by the apparent owner, and
13 states the value of the property before and after the fee or
14 other compensation has been deducted.

15 (c) If an agreement covered by this section applies to
16 mineral proceeds and the agreement contains a provision to pay
17 compensation that includes a portion of the underlying minerals
18 or any mineral proceeds not then presumed abandoned, the
19 provision shall be void and unenforceable.

20 (d) An agreement covered by this section which provides
21 for compensation that is unconscionable shall be unenforceable
22 except by the owner. An owner who has agreed to pay



1 compensation that is unconscionable, or the administrator on
2 behalf of the owner, may maintain an action to reduce the
3 compensation to a conscionable amount. The court may award
4 reasonable attorney's fees to an owner who prevails in the
5 action.

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

9 **§ -26 Deposit of funds.** (a) There is established in
10 the state treasury the unclaimed property trust fund, which
11 shall be administered by the administrator. All moneys
12 collected by the unclaimed property program from holders of
13 property presumed abandoned and all proceeds from the sale of
14 unclaimed property, less costs in connection with the sale of
15 the abandoned property, shall be deposited into the unclaimed
16 property trust fund.

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

19 (1) Claims for the return of abandoned property to their
20 rightful owners;



- 1 (2) Payment to other states' unclaimed property programs
2 for owners whose last known address was in that other
3 state;
- 4 (3) Any costs incurred in connection with the sale of
5 abandoned property;
- 6 (4) Costs of mailing and publication in connection with
7 any abandoned property;
- 8 (5) Reasonable service charges;
- 9 (6) Costs incurred in examining the records of holders of
10 property and in collecting such property from those
11 holders; and
- 12 (7) Any other charges, costs, or expenses incurred in the
13 operation, administration, and enforcement of this
14 chapter.
- 15 (c) Except as provided in section -12, moneys in the
16 unclaimed property trust fund shall be invested by the
17 administrator, and all investment earnings shall be deposited to
18 the credit of the general fund.
- 19 (d) All unencumbered and unexpended moneys in excess of
20 \$1,300,000 remaining on balance in the unclaimed property trust
21 fund on June 30 of each year shall lapse to the credit of the
22 state general fund.



1 **§ -27 Foreign transactions.** This chapter does not apply
2 to property held, due, and owing in a foreign country and
3 arising out of a foreign transaction.

4 **§ -28 Transitional provisions.** (a) An initial report
5 filed under this chapter for property that was not required to
6 be reported before the effective date of this chapter but which
7 is subject to this chapter shall include all items of property
8 that would have been presumed abandoned during the ten-year
9 period next preceding the effective date of this chapter as if
10 this chapter had been in effect during that period.

11 (b) This chapter does not relieve a holder of a duty that
12 arose before the effective date of this chapter to report, pay,
13 or deliver property. Except as otherwise provided in section
14 -19(b), a holder who did not comply with the law in effect
15 before the effective date of this chapter shall be subject to
16 the applicable provisions for enforcement and penalties which
17 then existed, which are continued in effect for the purpose of
18 this section.

19 **§ -29 Rules.** The administrator may adopt, pursuant to
20 chapter 91, rules necessary to carry out this chapter.

21 **§ -30 Uniformity of application and construction.** This
22 chapter shall be applied and construed to effectuate its general



1 purpose to make uniform the law with respect to the subject of
2 this chapter among states enacting it."

3 SECTION 2. Section 523A-63, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "[+]§523A-63[+] **Disposition of property received.**

6 Property received under this part shall be deposited or sold by
7 the director as though received under [~~part I of this chapter.~~]
8 chapter. Property received under this part shall not be
9 subject to claim within two years following the date upon which
10 it is paid to or received by the State. Thereafter, persons
11 claiming an interest in the unclaimed property delivered to the
12 State pursuant to this part shall make their claims in the
13 manner provided in [~~part I of this chapter.~~] chapter."

14 SECTION 3. Section 523A-65, Hawaii Revised Statutes, is
15 amended by amending subsection (a) to read as follows:

16 "(a) Notwithstanding any other provision of law, the right
17 of the State to maintain an action and to recover presumptively
18 abandoned property and the obligation of the federal government,
19 or any federal agency, entity, officer, or appointee thereof, to
20 comply with the requirements contained in [~~sections 523A-1 to~~
21 523A-64] chapter and sections 523A-51 to 523A-64 shall not



1 be affected by any state failure to adhere to sections 523A-54
2 to 523A-64."

3 SECTION 4. Chapter 523A, part I, Hawaii Revised Statutes,
4 is repealed.

5 SECTION 5. On the effective date of this Act, the director
6 of finance shall transfer all of the funds in the unclaimed
7 property trust fund established by section 523A-23.5, Hawaii
8 Revised Statutes, to the unclaimed property trust fund created
9 by section -26 in section 1 of this Act.

10 SECTION 6. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 7. This Act shall take effect on July 1, 2009.

APPROVED this 1 day of MAY, 2008

GOVERNOR OF THE STATE OF HAWAII

