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78-43-7. Saving clause.

The provisions of Title 78, "The Judicial Code," set out in Section 1 of this act, with respect to the organization of each of the several courts therein provided for, including all officers and employees thereof, shall be construed as continuations of existing law, and the tenure of the justices, judges, justices of the peace, officers, and employees of each of the same, in office on the effective date of this act, shall not be affected by the enactment, but each of them shall continue to serve in the same capacity under the appropriate provisions of Title 78, as set out in Section 1 of this act, pursuant to his prior election or appointment. No loss of rights, interruption of jurisdiction, or prejudice to matters pending in any of such courts on the effective date of this act shall result from its enactment.

History: L. 1951, ch. 58, § 2; C. 1943, Supp., 104-43-7.

"Effective date of this act". — The term "effective date of this act," referred to in this section, means May 8, 1951, the effective date of Laws 1951, Chapter 58.

Meaning of "this act". — The term "this act," referred to in this section, means Laws 1951, Chapter 58, which appears as various sections in Title 78, Chapters 1, 2, 3, 5 to 7, 11

to 13, 21, 22, 24 to 27, and 31 to 41 and §§ 78-43-7 and 78-43-8.

Compiler's Notes. — Although §§ 78-43-1 to 78-43-6 were repealed, this section is still effective; various sections in Title 78, Chapters 1, 2, 3, 5 to 7, 11 to 13, 21, 22, 24 to 27, and 31 to 41 that were also enacted by Laws 1951, ch. 58, § 1 remain in effect.

78-43-8. Repealing clause.

Title 20 and Title 104, Utah Code Annotated 1943, as amended and chapters 19, 33 and 34, Laws of Utah 1943; chapters 8 and 10, Laws of Utah 1947; and chapter 76, Laws of Utah 1949 are hereby repealed.

History: L. 1951, ch. 58, § 3; C. 1943, Supp., 104-43-8.

Compiler's Notes. — Although §§ 78-43-1 to 78-43-6 were repealed, this section is still

effective; various sections in Title 78, Chapters 1, 2, 3, 5 to 7, 11 to 13, 21, 22, 24 to 27, and 31 to 41 that were also enacted by Laws 1951, ch. 58, § 1 remain in effect.

CHAPTER 44

UNIFORM UNCLAIMED PROPERTY ACT

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|------------------|--|------------------|--|
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| 78-44-2. | Definitions. | 78-44-9. | Utility deposits. |
| 78-44-3. | Presumption of abandonment of intangible property. | 78-44-10. | Refunds ordered by court or agency. |
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| 78-44-6. | Money payable on checks, drafts and similar instruments. | 78-44-13. | Intangible property held in fiduciary capacity. |
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| 78-44-15. Gift certificates — Credit memos. | 78-44-27. Action on claim denied or not acted on — Limitation — Costs and attorney fees. |
| 78-44-16. Unpaid wages. | |
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| 78-44-17.5. Retention of unclaimed capital credits by electric and telephone cooperatives — Use of retained money — Reporting requirements. | 78-44-28. Administrator may refuse to receive property — Delivery of property before it is presumed abandoned. |
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| | 78-44-38. Property in foreign country or from foreign transaction exempt. |
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78-44-1. Short title.

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

History: C. 1953, 78-44-1, enacted by L. 1983, ch. 164, § 1.

Repeals and Enactments. — Laws 1983, ch. 164, § 1 repealed former §§ 78-44-1 to 78-44-29 (L. 1957, ch. 6, §§ 1 to 26, 28, 29;

1959, ch. 147, §§ 1 to 3; 1959, ch. 148, § 1; 1977, ch. 148, § 1), the Uniform Disposition of Unclaimed Property Act, and enacted present §§ 78-44-1 to 78-44-40.

COLLATERAL REFERENCES

Am. Jur. 2d. — 27 Am. Jur. 2d Escheat § 1 et seq.

C.J.S. — 30A C.J.S. Escheat § 1 et seq.
Key Numbers. — Escheat ⇌ 1 et seq.

78-44-2. Definitions.

As used in this chapter:

(1) "Administrator" means the deputy state treasurer assigned by the state treasurer to administer the law governing unclaimed property in Utah.

(2) "Apparent owner" means the person whose name appears on the records of the holder as the person entitled to property held, issued, or owing by the holder.

(3) "Attorney general" means the chief legal officer of this state.

(4) "Banking organization" means a bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, or any organization defined by other law as a bank or banking organization.

(5) "Business association" means a nonpublic corporation, joint stock company, investment company, finance company, business trust, partnership, or association for business purposes of two or more individuals, whether or not for profit, including a banking organization, financial organization, insurance company, or utility.

(6) "Domicile" means the state of incorporation of a corporation and the state of the principal place of business of an unincorporated person.

(7) "Financial organization" means a savings and loan association, building and loan association, industrial loan corporation, or credit union.

(8) "Holder" means a person, wherever organized or domiciled, who is:

(a) in possession of property belonging to another;

(b) a trustee; or

(c) indebted to another on an obligation.

(9) "Insurance company" means an association, corporation, fraternal or mutual benefit organization, whether or not for profit, which is engaged in providing insurance coverage, including accident, burial, casualty, credit life, contract performance, dental, fidelity, fire, health, hospitalization, illness, life (including endowments and annuities), malpractice, marine, automobile, mortgage, surety, and wage protection insurance.

(10) "Intangible property" includes:

(a) money, checks, drafts, deposits, interest, dividends, and income;

(b) credit balances, customer overpayments, gift certificates, security deposits, refunds, credit memos, unpaid wages, unused airline tickets, and unidentified remittances;

(c) stocks and other intangible ownership interests in business associations;

(d) money deposited to redeem stocks, bonds, coupons, and other securities, or to make distributions;

(e) amounts due and payable under the terms of insurance policies; and

(f) amounts distributable from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefits.

(11) "Last known address" means a description of the last known location of the apparent owner sufficient for the purpose of the delivery of mail to that location.

(12) "Owner" means a depositor in the case of a deposit, a beneficiary in case of a trust other than a deposit in trust, a creditor, claimant, or payee in the case of other intangible property, or a person having a legal

or equitable interest in property subject to this chapter or the legal representative of such person.

(13) "Person" means an individual, business association, state or other government, governmental subdivision or agency, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity.

(14) "State" means any state, district, commonwealth, territory, insular possession, or any other area subject to the legislative authority of the United States.

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

History: C. 1953, 78-44-2, enacted by L. 1983, ch. 164, § 1.

78-44-3. Presumption of abandonment of intangible property.

(1) Except as otherwise provided by this chapter, all intangible property, including any income or increment derived from it, less any lawful charges, that is held, issued, or owing in the ordinary course of a holder's business and has remained unclaimed by the owner for more than five years after it became payable or distributable is presumed abandoned.

(2) Property is payable or distributable for the purpose of this chapter even if the owner fails to make demand or to present any instrument or document required to receive payment.

History: C. 1953, 78-44-3, enacted by L. 1983, ch. 164, § 1.

COLLATERAL REFERENCES

Am. Jur. 2d. — 27 Am. Jur. 2d Escheat § 5.

C.J.S. — 30A C.J.S. Escheat §§ 2, 3.

Key Numbers. — Escheat ⇐ 3, 4.

78-44-4. State custody of abandoned intangible property.

Unless otherwise provided in this chapter or by other statute of this state, intangible property is subject to the custody of this state as unclaimed property if the conditions raising a presumption of abandonment under § 78-44-3 and §§ 78-44-6 to 78-44-17 are satisfied and:

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

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

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

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

(b) The holder is a domiciliary or is an issuer of travelers checks or money orders as described in § 78-44-5, or is a government or governmental subdivision or agency and has not previously paid or delivered the property to the state or country of the last known address of the apparent owner or other person entitled to the property;

(4) The last known address of the apparent owner, as shown on the records of the holder, is a description of a location in a state or country that does not provide by law for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property and the holder is a domiciliary or is an issuer of travelers checks or money orders as described in § 78-44-5, or is a government or governmental subdivision or agency;

(5) The last known address of the apparent owner, as shown on the records of the holder, is a description of a location in a foreign nation and the holder is a domiciliary or is an issuer of travelers checks or money orders as described in § 78-44-5, or is a government or governmental subdivision or agency; or

(6) The transaction out of which the property arose occurred in this state; and

(a) (i) The last known address of the apparent owner or other person entitled to the property is unknown; or

(ii) The last known address of the apparent owner or other person entitled to the property is in a state that does not provide by law for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property; and

(b) The holder is a domiciliary of a state that does not provide by law for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property.

History: C. 1953, 78-44-4, enacted by L. 1983, ch. 164, § 1.

COLLATERAL REFERENCES

Am. Jur. 2d. — 27 Am. Jur. 2d Escheat §§ 2, 3.

C.J.S. — 30A C.J.S. Escheat §§ 2, 3.
Key Numbers. — Escheat ⇌ 2 to 4.

78-44-5. Money payable on travelers checks, money orders and similar instruments.

(1) Subject to Subsection (4), any sum payable on a travelers check that has been outstanding for more than 15 years after its issuance is presumed abandoned unless the owner, within 15 years, has communicated in writing with the issuer concerning it or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the issuer.

(2) Subject to Subsection (4), any sum payable on a money order or similar written instrument, other than a third-party bank or business check, that has been outstanding for more than seven years after its issuance is presumed abandoned unless the owner, within seven years, has communicated in writing with the issuer concerning it or otherwise indicated an interest as evi-

denced by a memorandum or other record on file prepared by an employee of the issuer.

(3) A holder may not deduct from the amount of a travelers check or money order any charge imposed by reason of the failure to present the instrument for payment unless there is a valid and enforceable written contract between the issuer and the owner of the instrument under which the issuer may impose a charge and the issuer regularly imposes such charges and does not reverse or otherwise cancel them.

(4) No sum payable on a travelers check, money order, or similar written instrument, other than a third-party bank or business check, described in Subsections (1) and (2) may be subjected to the custody of this state as unclaimed property unless:

(a) The records of the issuer show that the travelers check, money order, or similar written instrument was purchased in this state;

(b) The issuer has its principal place of business in this state and the records of the issuer do not show the state or country in which the travelers check, money order, or similar written instrument was purchased; or

(c) The issuer has its principal place of business in this state; the records of the issuer show the state or country in which the travelers check, money order, or similar written instrument was purchased; and the laws of the state or country of purchase do not provide for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property.

(5) Notwithstanding any other provision of this chapter, Subsection (4) applies to sums payable on travelers checks, money orders, and similar written instruments presumed abandoned on or after February 1, 1965, except to the extent that those sums have been paid over to a state prior to January 1, 1974.

History: C. 1953, 78-44-5, enacted by L. 1983, ch. 164, § 1.

COLLATERAL REFERENCES

Am. Jur. 2d. — 27 Am. Jur. 2d Escheat §§ 5, 10.

C.J.S. — 30A C.J.S. Escheat §§ 2, 3.
Key Numbers. — Escheat ☞ 3, 4.

78-44-6. Money payable on checks, drafts and similar instruments.

(1) Any sum payable on a check, draft, or similar instrument, except those subject to § 78-44-5, on which a banking or financial organization is directly liable, including a cashier's check and a certified check, which has been outstanding for more than seven years after it was payable or after its issuance if payable on demand, is presumed abandoned, unless the payee, within seven years, has communicated in writing with the banking or financial organization concerning it or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee thereof.

(2) A holder may not deduct from the amount of any instrument subject to this section any charge imposed by reason of the failure to present the instrument for payment unless there is a valid and enforceable written contract between the holder and the owner of the instrument under which the holder

may impose a charge, and the holder regularly imposes charges and does not reverse or otherwise cancel them.

(3) For the purpose of this section, the terms and provisions appearing on a signature card of an account, including provisions which incorporate by reference the rules and regulations of the institution and the schedule of charges applicable to such an account, shall constitute a valid enforceable written contract between the institution and the owner of the account, if a copy of the rules and regulations and schedule of charges is made available upon request of the owner of the account.

History: C. 1953, 78-44-6, enacted by L. 1983, ch. 164, § 1.

COLLATERAL REFERENCES

Am. Jur. 2d. — 27 Am. Jur. 2d Escheat §§ 5, 10.

C.J.S. — 30A C.J.S. Escheat §§ 2, 3.
Key Numbers. — Escheat ☞ 3, 4.

78-44-7. Deposit or payment toward purchase of an interest in a financial organization.

(1) Any demand, savings, or matured time deposit with a banking or financial organization, including a deposit that is automatically renewable, and any funds paid toward the purchase of a share, a mutual investment certificate, or any other interest in a banking or financial organization is presumed abandoned unless the owner, within seven years, has:

(a) in the case of a deposit, increased or decreased its amount or presented the passbook or other similar evidence of the deposit for the crediting of interest;

(b) communicated in writing with the banking or financial organization concerning the property;

(c) otherwise indicated an interest in the property as evidenced by a memorandum or other record on file prepared by an employee of the banking or financial organization;

(d) owned other property to which paragraphs (a), (b), or (c) applies and if the banking or financial organization communicates in writing with the owner with regard to the property that would otherwise be presumed abandoned under this subsection at the address to which communications regarding the other property regularly are sent; or

(e) had another relationship with the banking or financial organization concerning which the owner has:

(i) communicated in writing with the banking or financial organization; or

(ii) otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the banking or financial organization and if the banking or financial organization communicates in writing with the owner with regard to the property that would otherwise be abandoned under this subsection at the address to which communications regarding the other relationship regularly are sent;

(f) any correspondence in writing from a banking or financial organization to the owner, such as the mailing of a statement, a report of interest

paid or credited, or the mailing of form 1099 or other written advice relating to a deposit, shall be construed to mean that the owner has indicated an interest in the deposit, if the correspondence in writing is not returned to the banking or financial organization for nondelivery. All banking and financial organizations shall retain in the account file all returned correspondence or make a dated computer entry showing the basic facts of the mailing and return of all correspondence.

(2) For purposes of Subsection (1), property includes interest and dividends.

(3) A holder may not impose with respect to property described in Subsection (1) any charge due to dormancy or inactivity or cease payment of interest unless:

(a) There is an enforceable written contract between the holder and the owner of the property under which the holder may impose a charge or cease payment of interest;

(b) For property in excess of \$2, the holder, no more than three months before the initial imposition of those charges or cessation of interest, has given written notice to the owner of the amount of those charges at the last known address of the owner stating that those charges will be imposed or that interest will cease, but the notice provided in this section need not be given with respect to charges imposed or interest ceased before the effective date of this chapter; and

(c) The holder regularly imposes such charges or ceases payment of interest and does not reverse or otherwise cancel them or retroactively credit interest with respect to the property.

(4) Any property described in Subsection (1) that is automatically renewable or concerning which correspondence in writing has been returned to the banking or financial institution for nondelivery as set forth in Subsection (1)(e)(iii) is presumed abandoned under Subsection (1) upon the expiration of its initial time period or seven years, whichever is longer. Any property described in Subsection (1) which is renewed with the consent of the owner in writing and the banking or financial organization possessing evidence of the renewal in the form of a memorandum or other record on file prepared by an employee of the organization, is presumed abandoned upon the expiration of the last time period for which consent was given or seven years from the last consent, whichever is longer. If, at the time provided for delivery in § 78-44-20, a penalty or forfeiture in the payment of interest would result from the delivery of the property, the time for delivery is extended until the time when no penalty or forfeiture would result.

History: C. 1953, 78-44-7, enacted by L. 1983, ch. 164, § 1.

"Effective date of this chapter". — The

term "effective date of this chapter," referred to in this section, means July 1, 1983, the effective date of Laws 1983, Chapter 164.

COLLATERAL REFERENCES

Am. Jur. 2d. — 27 Am. Jur. 2d Escheat §§ 5, 10.

C.J.S. — 30A C.J.S. Escheat §§ 2, 3.
Key Numbers. — Escheat ⇌ 3, 4.

78-44-8. Life or endowment insurance policies — Annuity contracts — Duties of insurers.

(1) Funds held or owing under any life or endowment insurance policy or annuity contract that has matured or terminated are presumed abandoned if unclaimed for more than five years after the funds became due and payable as established from the records of the insurance company holding or owing the funds, but property described in Subsection (3)(b) is presumed abandoned if unclaimed for more than two years.

(2) If a person other than the insured or annuitant is entitled to the funds and an address of the person is not known to the company or it is not definite and certain from the records of the company who is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the company.

(3) For purposes of this chapter a life or endowment insurance policy or annuity contract not matured by actual proof of the death of the insured or annuitant according to the records of the company is matured and the proceeds due and payable if:

(a) The company knows that the insured or annuitant has died; or
(b) (i) The insured has attained, or would have attained if he were living, the limiting age under the mortality table on which the reserve is based;

(ii) The policy was in force at the time the insured attained, or would have attained, the limiting age specified in Subparagraph (i); and

(iii) Neither the insured nor any other person appearing to have an interest in the policy within the preceding two years, according to the records of the company, has assigned, readjusted, or paid premiums on the policy, subjected the policy to a loan, corresponded in writing with the company concerning the policy, or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the company.

(4) For purposes of this chapter, the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent a policy from being matured or terminated under Subsection (1) if the insured has died or the insured or the beneficiary of the policy otherwise has become entitled to the proceeds thereof before the depletion of the cash surrender value of a policy by the application of those provisions.

(5) If the laws of this state or the terms of the life insurance policy require the company to give notice to the insured or owner that an automatic premium loan provision or other nonforfeiture provision has been exercised and the notice, given to an insured or owner whose last known address according to the records of the company is in this state, is undeliverable, the company shall make a reasonable search to ascertain the policyholder's correct address to which the notice must be mailed.

(6) Notwithstanding any other provision of law, if the company learns of the death of the insured or annuitant and the beneficiary has not communicated with the insurer within four months after the death, the company shall take reasonable steps to pay the proceeds to the beneficiary.

(7) Commencing two years after the effective date of this chapter, every change of beneficiary form issued by an insurance company under any life or endowment insurance policy or annuity contract to an insured or owner who is a resident of this state shall request the following information:

- (a) the name of each beneficiary, or if a class of beneficiaries is named, the name of each current beneficiary in the class;
- (b) the address of each beneficiary; and
- (c) the relationship of each beneficiary to the insured.

History: C. 1953, 78-44-8, enacted by L. 1983, ch. 164, § 1.

"Effective date of this chapter". — The

term "effective date of this chapter," referred to in this section, means July 1, 1983, the effective date of Laws 1983, Chapter 164.

COLLATERAL REFERENCES

Am. Jur. 2d. — 27 Am. Jur. 2d Escheat §§ 5, 10.

C.J.S. — 30A C.J.S. Escheat §§ 2, 3.
Key Numbers. — Escheat ⇌ 3, 4.

78-44-9. Utility deposits.

A deposit, including any interest on it, made by a subscriber with a utility to secure payment or any sum paid in advance for utility services to be furnished, less any lawful deductions, that remains unclaimed by the owner for more than one year after termination of the services for which the deposit or advance payment was made is presumed abandoned.

History: C. 1953, 78-44-9, enacted by L. 1983, ch. 164, § 1.

COLLATERAL REFERENCES

Am. Jur. 2d. — 27 Am. Jur. 2d Escheat §§ 5, 10.

C.J.S. — 30A C.J.S. Escheat §§ 2, 3.
Key Numbers. — Escheat ⇌ 3, 4.

78-44-10. Refunds ordered by court or agency.

Any court or administratively ordered refund which remains unclaimed by the owners for more than one year after it becomes payable is presumed abandoned, unless otherwise provided in the order.

History: C. 1953, 78-44-10, enacted by L. 1983, ch. 164, § 1.

COLLATERAL REFERENCES

Am. Jur. 2d. — 27 Am. Jur. 2d Escheat §§ 5, 10.

C.J.S. — 30A C.J.S. Escheat §§ 2, 3.
Key Numbers. — Escheat ⇌ 3, 4.

78-44-11. Business association ownership interests.

(1) Except as provided in Subsections (2) and (5), stock or other intangible ownership interest in a business association, the existence of which is evidenced by records available to the association, is presumed abandoned and, with respect to the interest, the association is the holder, if a dividend, distribution, or other sum payable as a result of the interest has remained unclaimed by the owner for seven years from the date it becomes payable and the owner within seven years has not:

(a) communicated in writing with the association regarding the interest or a dividend, distribution, or other sum payable as a result of the interest; or

(b) otherwise communicated with the association regarding the interest or a dividend, distribution, or other sum payable as a result of the interest, as evidenced by a memorandum or other record on file with the association prepared by an employee of the association.

(2) The interest is not presumed abandoned until at least seven unclaimed dividends, distributions or other sums have been paid over a period of not less than seven years, although more than seven years may pass from the date the first of the unclaimed dividends, distributions or other sums became payable.

(3) The running of the period of abandonment ceases immediately upon the occurrence of a communication referred to in Subsection (1). If any future dividend, distribution, or other sum payable to the owner as a result of the interest is subsequently not claimed by the owner, a new period of abandonment commences and relates back to the time that dividend, distribution, or other sum became due and payable.

(4) When an interest is presumed abandoned under this section, any dividend, distribution, or other sum then held for or owing to the owner as a result of the interest, and not previously presumed abandoned, is presumed abandoned.

(5) This chapter does not apply to any stock or other intangible ownership interest enrolled in a plan that provides for the automatic reinvestment of dividends, distributions, or other sums payable as a result of the interest unless the records available to the administrator of the plan show, with respect to any intangible ownership interest not enrolled in the reinvestment plan, that the owner has not within seven years communicated in any manner described in Subsection (1).

History: C. 1953, 78-44-11, enacted by L. 1983, ch. 164, § 1.

COLLATERAL REFERENCES

Am. Jur. 2d. — 27 Am. Jur. 2d Escheat §§ 5, 10.

C.J.S. — 30A C.J.S. Escheat § 2.
Key Numbers. — Escheat ☞ 2, 3.

78-44-12. Intangible property distributable on dissolution of business association.

Intangible property distributable in the course of a dissolution of a business association which remains unclaimed by the owner for more than one year after the date specified for final distribution is presumed abandoned.

History: C. 1953, 78-44-12, enacted by L. 1983, ch. 164, § 1.

COLLATERAL REFERENCES

Am. Jur. 2d. — 27 Am. Jur. 2d Escheat §§ 5, 10.

C.J.S. — 30A C.J.S. Escheat §§ 2, 3.
Key Numbers. — Escheat ⇌ 3, 4.

78-44-13. Intangible property held in fiduciary capacity.

(1) Intangible property and any income or increment derived from it, held in a fiduciary capacity for the benefit of another person is presumed abandoned unless the owner, as defined in Subsection 78-44-2(12), within five years after it has become payable or distributable, has increased or decreased the principal, accepted payment of principal or income, communicated concerning the property, or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by the fiduciary.

(2) Funds in an individual retirement account or a retirement plan for self-employed individuals or similar account or plan established under the Internal Revenue Code and regulations of the United States are not payable or distributable within the meaning of Subsection (1) except when mandated by the terms of the account or plan.

(3) For the purpose of this section, a person who holds property as an agent for a business association holds the property in a fiduciary capacity for that business association alone, unless the agreement between him and the business association provides otherwise.

(4) For the purposes of this chapter, a person who holds property in a fiduciary capacity for a business association alone is the holder of the property only insofar as the interest of the business association in the property is concerned, and the business association is the holder of the property insofar as the interest of any other person in the property is concerned.

History: C. 1953, 78-44-13, enacted by L. 1983, ch. 164, § 1.

COLLATERAL REFERENCES

Am. Jur. 2d. — 27 Am. Jur. 2d Escheat §§ 5, 10.

C.J.S. — 30A C.J.S. Escheat §§ 2, 3.
Key Numbers. — Escheat ⇌ 2 to 4.

78-44-14. Intangible property held by public authority for owner.

Intangible property held for the owner by a court, state or other government, governmental subdivision or agency, public corporation, or public authority which remains unclaimed by the owner for more than one year after becoming payable or distributable is presumed abandoned.

History: C. 1953, 78-44-14, enacted by L. 1983, ch. 164, § 1.

COLLATERAL REFERENCES

Am. Jur. 2d. — 27 Am. Jur. 2d Escheat § 37 et seq.

C.J.S. — 30A C.J.S. Escheat § 19.
Key Numbers. — Escheat ⇌ 7.

78-44-15. Gift certificates — Credit memos.

(1) A gift certificate or a credit memo issued in the ordinary course of an issuer's business which remains unclaimed by the owner for more than five years after becoming payable or distributable is presumed abandoned.

(2) In the case of a gift certificate, the amount presumed abandoned is the price paid by the purchaser for the gift certificate. In the case of a credit memo, the amount presumed abandoned is the amount credited to the recipient of the memo.

History: C. 1953, 78-44-15, enacted by L. 1983, ch. 164, § 1.

COLLATERAL REFERENCES

Am. Jur. 2d. — 27 Am. Jur. 2d Escheat §§ 5, 10.

C.J.S. — 30A C.J.S. Escheat §§ 2, 3.
Key Numbers. — Escheat ⇌ 3, 7.

78-44-16. Unpaid wages.

Unpaid wages, including wages represented by unresented payroll checks, owing in the ordinary course of the holder's business which remain unclaimed by the owner for more than one year after becoming payable are presumed abandoned.

History: C. 1953, 78-44-16, enacted by L. 1983, ch. 164, § 1.

COLLATERAL REFERENCES

Am. Jur. 2d. — 27 Am. Jur. 2d Escheat § 5.
C.J.S. — 30A C.J.S. Escheat § 3.
Key Numbers. — Escheat ⇌ 3.

78-44-17. Safe deposit box contents.

All tangible and intangible property held in a safe deposit box or any other safekeeping repository in this state in the ordinary course of the holder's business and proceeds resulting from the sale of the property, which remain unclaimed by the owner for more than five years after the lease or rental period on the box or other repository has expired, are presumed abandoned.

History: C. 1953, 78-44-17, enacted by L. 1983, ch. 164, § 1.

COLLATERAL REFERENCES

Am. Jur. 2d. — 27 Am. Jur. 2d Escheat §§ 5, 10.

C.J.S. — 30A C.J.S. Escheat §§ 2, 3.
Key Numbers. — Escheat ☞ 2, 3.

78-44-17.5. Retention of unclaimed capital credits by electric and telephone cooperatives — Use of retained moneys — Reporting requirements.

(1) Capital credits given to customers of electric and telephone cooperatives in this state, which remain unclaimed for a period of three years after the end of the year in which the credit is given, shall be retained by the electric or telephone cooperative.

(2) Monies retained shall be used solely for the purpose of assisting low income persons to pay their utility bills.

(3) Each electric or telephone cooperative shall:

(a) establish guidelines based on factors such as income or special needs to determine persons who qualify;

(b) submit copies annually to the Public Service Commission of (i) the cooperative's guidelines, and (ii) amounts and disposition of retained capital credits by individual recipients; and

(c) submit annually to the state treasurer the amounts and names of persons whose unclaimed capital credits have been retained during the preceding 12 months.

History: C. 1953, § 78-44-17.5, enacted by L. 1987, ch. 205, § 1.

78-44-18. Report of abandoned property by holder — Contents — Time for filing — Notice to owner.

(1) A person holding property tangible or intangible, presumed abandoned and subject to custody as unclaimed property under this chapter shall file a verified report with the administrator as provided in this section.

(2) The report shall include:

(a) except with respect to travelers checks and money orders, the name and social security number or tax I.D. number, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of property of the value of \$25 or more which is presumed abandoned under this chapter;

(b) in the case of unclaimed funds of \$25 or more held or owing under any life or endowment insurance policy or annuity contract, the full name and social security number or tax I.D. number, if known, and last known address of the insured or annuitant and of the beneficiary according to the records of the insurance company holding or owing the funds;

(c) in the case of the contents of a safe deposit box or other safekeeping repository or of other tangible property, a description of the property and the place where it is held and may be inspected by the administrator and any amounts owing to the holder;

(d) the nature and an identifying number, if any, or description of the property and the amount appearing from the records to be due (items of value under \$25 each may be reported in the aggregate);

(e) the date the property became payable, demandable, or returnable, and the date of the last transaction with the apparent owner with respect to the property; and

(f) other information the administrator prescribes by rule as necessary for the administration of this chapter.

(3) If the person holding property presumed abandoned and subject to custody as unclaimed property is a successor to other persons who previously held the property for the apparent owner or the holder has changed names while holding the property, that person shall file with the report all known names and addresses of each previous holder of the property.

(4) The report shall be filed before November 1 of each year as of June 30, next preceding, but the report of any life insurance company shall be filed before May 1 of each year as of December 31 next preceding. On written request by any person required to file a report, the administrator may postpone the reporting date.

(5) Not more than 120 days before filing the report required by this section, the holder in possession of property presumed abandoned and subject to custody as unclaimed property under this chapter shall send written notice to the apparent owner at his or her last known address informing him or her that the holder is in possession of property subject to this chapter if:

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

(b) The property has a value of \$50 or more.

History: C. 1953, 78-44-18, enacted by L. 1983, ch. 164, § 1.

COLLATERAL REFERENCES

Am. Jur. 2d. — 27 Am. Jur. 2d Escheat §§ 20, 26 et seq.

C.J.S. — 30A C.J.S. Escheat § 6 et seq.
Key Numbers. — Escheat ⇐ 6.

78-44-19. Publication of notice.

(1) The administrator shall cause a notice to be published not later than March 1, or in the case of property reported by life insurance companies, September 1, of the year immediately following the filing of the report required by § 78-44-18 at least once a week for two consecutive weeks in a newspaper having general circulation in this state and containing, if available, the last known address of any person to be named in the notice. If no

address is listed or the address is outside this state, the notice shall be published in a newspaper having general circulation in the county in which the holder of the property has its principal place of business within this state.

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

(a) the names in alphabetical order and last known address, if any, of persons listed in the report and entitled to notice as specified in Subsection (1);

(b) a statement that information concerning the property and the name and last known address of the holder may be obtained by any person possessing an interest in the property by addressing an inquiry to the administrator; and

(c) a statement that if proof of claim is not presented by the owner to the holder and the owner's right to receive the property is not established to the holder's satisfaction before April 20, or, in the case of property reported by life insurance companies, before October 20, the property will be placed, not later than May 1, or in the case of property reported by life insurance companies, not later than November 1, in the custody of the administrator and that all further claims shall thereafter be directed to the administrator.

(3) The administrator is not required to publish in the notice any items of less than \$50 unless the administrator considers such publication to be in the public interest.

(4) This section is not applicable to sums payable on travelers checks, money orders, and other written instruments presumed abandoned under § 78-44-5.

History: C. 1953, 78-44-19, enacted by L. 1983, ch. 164, § 1.

COLLATERAL REFERENCES

Am. Jur. 2d. — 27 Am. Jur. 2d Escheat § 31.

C.J.S. — 30A C.J.S. Escheat § 14.
Key Numbers. — Escheat ⇌ 6.

78-44-20. Delivery of abandoned property to administrator.

(1) Except as otherwise provided in Subsections (2) and (3), a person who is required to file a report under § 78-44-18, within six months after the final date for filing the report as required by § 78-44-18, shall pay or deliver to the administrator all abandoned property required to be reported.

(2) If the owner establishes the right to receive the abandoned property to the satisfaction of the holder before the property has been delivered or it appears that for some other reason the presumption of abandonment is erroneous, the holder need not pay or deliver the property to the administrator, and the property will no longer be presumed abandoned. In that case, the holder shall file with the administrator a verified written explanation of the proof of claim or of the error in the presumption of abandonment.

(3) Property reported under § 78-44-18 for which the holder is not required to report the name of the apparent owner, shall be delivered to the administrator at the time of filing the report.

(4) The holder of an interest under § 78-44-11 shall deliver a duplicate certificate or other evidence of ownership if the holder does not issue certificates of ownership to the administrator. Upon delivery of a duplicate certificate to the administrator, the holder and any transfer agent, registrar, or other person acting for or on behalf of a holder in executing or delivering the duplicate certificate is relieved of all liability of every kind in accordance with the provisions of § 78-44-21 to every person, including any person acquiring the original certificate or the duplicate of the certificate issued to the administrator, for any losses or damages resulting to any person by the issuance and delivery to the administrator of the duplicate certificate.

History: C. 1953, 78-44-20, enacted by L. 1983, ch. 164, § 1.

COLLATERAL REFERENCES

Am. Jur. 2d. — 27 Am. Jur. 2d Escheat §§ 27, 37 et seq.

C.J.S. — 30A C.J.S. Escheat §§ 19 to 21.
Key Numbers. — Escheat ☞ 6 to 8.

78-44-21. Responsibility for property delivered to administrator — Owner claiming property after delivery — Payment of deposit box charges.

(1) Upon the payment or delivery of property to the administrator, the state assumes custody and responsibility for the safekeeping of the property. A person who pays or delivers property to the administrator in good faith is relieved of all liability for any claim then existing or which thereafter may arise or be made in respect to the property.

(2) A holder who has paid money to the administrator under this chapter may make payment to any person appearing to the holder to be entitled to payment and, upon filing proof of payment and proof that the payee was entitled thereto, the administrator shall promptly reimburse the holder for the payment without imposing any fee or other charge. If reimbursement is sought for a payment made on a negotiable instrument, including a travelers check or money order, the holder shall be reimbursed under this subsection upon filing proof that the instrument was duly presented and that payment was made to a person who appeared to the holder to be entitled to payment. The holder shall be reimbursed for payment made under this subsection even if the payment was made to a person whose claim was barred under Subsection 78-44-30(1).

(3) A holder who has delivered property, including a certificate of any interest in a business association, other than money to the administrator under this chapter may reclaim the property if it is still in the possession of the administrator, without paying any fee or other charge, upon filing proof that the owner has claimed the property from the holder.

(4) The administrator may accept the holder's notarized affidavit as sufficient proof of the facts that entitle the holder to recover money and property under this section.

(5) If the holder pays or delivers property to the administrator in good faith and thereafter another person claims the property from the holder or another state claims the money or property under its laws relating to escheat or aban-

doned or unclaimed property, the administrator, upon written notice of the claim, shall defend the holder against the claim and indemnify the holder against any liability on the claim.

(6) For the purposes of this section, "good faith" means that:

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

(b) the person delivering the property was not a fiduciary then in breach of trust in respect to the property and had a reasonable basis for believing, based on the facts then known to that person, that the property was abandoned for the purposes of this chapter; and

(c) there is no showing that the records pursuant to which the delivery was made did not meet reasonable commercial standards of practice in the industry.

(7) Property removed from a safe deposit box or other safekeeping repository is received by the administrator subject to the holder's right under this subsection to be reimbursed for the actual cost of the opening and to any valid lien or contract providing for the holder to be reimbursed for unpaid rent or storage charges. The administrator shall reimburse or pay the holder out of the proceeds remaining after deducting the administrator's selling cost.

History: C. 1953, 78-44-21, enacted by L. 1983, ch. 164, § 1.

COLLATERAL REFERENCES

Am. Jur. 2d. — 27 Am. Jur. 2d Escheat §§ 43, 44.

C.J.S. — 30A C.J.S. Escheat §§ 19, 21.
Key Numbers. — Escheat ⇨ 5.

78-44-22. Right to increments realized on property delivered to administrator.

Whenever property other than money is paid or delivered to the administrator under this chapter, the owner is entitled to receive from the administrator any dividends, interest, or other increments realized or accruing on the property at or before liquidation or conversion thereof into money.

History: C. 1953, 78-44-22, enacted by L. 1983, ch. 164, § 1.

COLLATERAL REFERENCES

Am. Jur. 2d. — 27 Am. Jur. 2d Escheat §§ 46, 47.

C.J.S. — 30A C.J.S. Escheat §§ 19 to 21.
Key Numbers. — Escheat ⇨ 7, 8.

78-44-23. Sale by administrator — Holding period — Rights of owner and purchaser.

(1) Except as provided in Subsections (2), (3), and (4), the administrator, within three years after the receipt of abandoned property, shall sell it to the highest bidder at public sale in whatever city in or out of the state affords in the judgment of the administrator the most favorable market for the property involved. The administrator may decline the highest bid and reoffer the prop-

erty for sale if in the judgment of the administrator the bid is insufficient. If in the judgment of the administrator the probable cost of sale exceeds the value of the property, it need not be offered for sale. Any sale held under this section must be preceded by a single publication of notice, at least three weeks in advance of sale, in a newspaper of general circulation in this state.

(2) Securities listed on an established stock exchange may be sold only at prices prevailing at the time of sale on the exchange. Other securities may be sold only at prices prevailing at the time of sale and may be sold over the counter or by any other method the administrator considers advisable.

(3) Unless the administrator considers it to be in the best interest of the state to do otherwise, all securities, other than those presumed abandoned under § 78-44-11, delivered to the administrator shall be held for at least one year before he or she may sell them.

(4) Unless the administrator considers it to be in the best interest of the state to do otherwise, all securities presumed abandoned under § 78-44-11, and delivered to the administrator shall be held for at least three years before he or she may sell them. If the administrator sells any securities delivered under § 78-44-11, before the expiration of the three-year period, any person making a claim under this chapter before the end of the three-year period is entitled to either the proceeds of the sale of the securities or the market value of the securities at the time the claim is made, whichever amount is greater, less any deduction for fees under Subsection 78-44-24(2). A person making a claim under this chapter after the expiration of this three-year period is entitled to receive either the securities delivered to the administrator by the holder, if the securities still remain in the hands of the administrator, or the proceeds received from sale, less any amounts deducted under Subsection 78-44-24(2), but no person has any claim under this chapter against the state, the holder, any transfer agent, registrar, or other person acting for or on behalf of a holder for any appreciation in the value of the property occurring after delivery by the holder to the administrator.

(5) The purchaser of property at any sale conducted by the administrator pursuant to this chapter takes the property free of all claims of the owner or previous holder of the property and of all persons claiming through or under them. The administrator shall execute all documents necessary to complete the transfer of ownership.

History: C. 1953, 78-44-23, enacted by L. 1983, ch. 164, § 1.

COLLATERAL REFERENCES

Am. Jur. 2d. — 27 Am. Jur. 2d Escheat § 40 et seq.

C.J.S. — 30A C.J.S. Escheat §§ 20, 21.
Key Numbers. — Escheat ☞ 8.

78-44-24. Receipts deposited in uniform school fund — Fund for payment of claims — Expenses deducted.

(1) Except as otherwise provided by this section, the administrator shall promptly deposit in the uniform school fund of this state all funds received under this chapter, including the proceeds from the sale of abandoned prop-

erty under § 78-44-23. The administrator shall retain in a separate trust fund an amount not less than \$100,000 from which prompt payment of claims duly allowed shall be made. Before making the deposit, the administrator shall record the name and last known address of each person appearing from the holders' reports to be entitled to the property and the name and last known address of each insured person or annuitant and beneficiary and with respect to each policy or contract listed in the report of an insurance company its number, the name of the company, and the amount due.

(2) Before making any deposit to the credit of the uniform school fund, the administrator may deduct:

- (a) any costs in connection with the sale of abandoned property;
- (b) costs of mailing and publication in connection with any abandoned property;
- (c) reasonable service charges; and
- (d) costs incurred in examining records of holders of property and in collecting the property from those holders.

History: C. 1953, 78-44-24, enacted by L. 1983, ch. 164, § 1.

78-44-25. Claims — Filing — Notice of denial — Payment — Amount — Reimbursement of holder [Effective until January 1, 1988].

(1) A person, excluding another state, claiming an interest in any property paid or delivered to the administrator may file a verified claim on a form prescribed by the administrator.

(2) The administrator shall consider each claim within 90 days after it is filed and give written notice to the claimant if the claim is denied in whole or in part. The notice may be given by mailing it to the last address, if any, stated in the claim as the address to which notices are to be sent. If no address for notices is stated in the claim, the notice may be mailed to the last address, if any, of the claimant as stated in the claim. No notice of denial need be given if the claim fails to state either the last address to which notices are to be sent or the address of the claimant.

(3) If a claim is allowed, the administrator shall pay over or deliver to the claimant the property or the amount the administrator actually received or the net proceeds if the property has been sold by the administrator, plus any additional amount required by § 78-44-22. If the claim is for property presumed abandoned under § 78-44-11 which was sold by the administrator within three years after the date of delivery, the amount payable for that claim is the value of the property at the time the claim was made or the net proceeds of sale, whichever is greater. If the property claimed was interest-bearing to the owner on the date of surrender by the holder, the administrator also shall pay interest at a rate of 12% a year or any lesser rate the property earned while in the possession of the holder. Interest begins to accrue when the property is delivered to the administrator and ceases on the earlier of the expiration of ten years after delivery or the date on which payment is made to the owner. No interest on interest-bearing property is payable for any period before the effective date of this chapter.

(4) Any holder who pays the owner for property that has been delivered to the state and which, if claimed from the administrator, would be subject to Subsection (3) shall add interest as provided in Subsection (3). The added interest shall be repaid to the holder by the administrator in the same manner as the principal.

**Claims — Filing — Notice of denial — Payment —
Amount — Reimbursement of holder [Effective
January 1, 1988].**

(1) A person, excluding another state, claiming an interest in any property paid or delivered to the administrator may file a verified claim on a form prescribed by the administrator.

(2) (a) The administrator shall consider each claim within 90 days after it is filed and give written notice to the claimant if the claim is denied in whole or in part.

(b) The notice may be given by mailing it to the last address, if any, stated in the claim as the address to which notices are to be sent.

(c) If no address for notices is stated in the claim, the notice may be mailed to the last address, if any, of the claimant as stated in the claim.

(d) No notice of denial need be given if the claim fails to state either the last address to which notices are to be sent or the address of the claimant.

(3) If the claim is denied, the claimant may request a hearing.

(4) (a) If a claim is allowed, the administrator shall pay over or deliver to the claimant the property, or, if the administrator has sold the property, the amount the administrator actually received, or the net proceeds of the property, plus any additional amount required by § 78-44-22.

(b) If the claim is for property presumed abandoned under § 78-44-11 that was sold by the administrator within three years after the date of delivery, the amount payable for that claim is the value of the property at the time the claim was made or the net proceeds of sale, whichever is greater.

(c) If the property claimed was interest-bearing to the owner on the date of surrender by the holder, the administrator also shall pay interest at a rate of 12% a year or any lesser rate the property earned while in the possession of the holder.

(d) Interest begins to accrue when the property is delivered to the administrator and ceases on the earlier of the expiration of ten years after delivery or the date on which payment is made to the owner.

(e) No interest on interest-bearing property is payable for any period before the effective date of this chapter.

(5) (a) Any holder who pays the owner for property that has been delivered to the state and that, if claimed from the administrator, would be subject to Subsection 4 shall add interest as provided in Subsection (4).

(6) The added interest shall be repaid to the holder by the administrator in the same manner as the principal.

History: C. 1953, 78-44-25, enacted by L. 1983, ch. 164, § 1; 1987, ch. 161, § 307. effective January 1, 1988. See catchline "Amendment Notes," below.

Amended effective January 1, 1988. — **Amendment Notes.** — The 1987 amendment, effective January 1, 1988, inserted the

present Subsection (3), redesignated the former Subsections (3) and (4) as the present Subsections (4) and (5), in Subsection (5)(a) substituted "Subsection (4)" for "Subsection (3)" at the end, designated the last sentence of the former Subsection (4) as the present Subsection

(6) and made minor changes in phraseology and punctuation throughout the section.

"Effective date of this chapter". — The term "effective date of this chapter," referred to in this section, means July 1, 1983, the effective date of Laws 1983, Chapter 164.

COLLATERAL REFERENCES

Am. Jur. 2d. — 27 Am. Jur. 2d Escheat § 44.

C.J.S. — 30A C.J.S. Escheat § 21.
Key Numbers. — Escheat ☞ 8.

78-44-26. Recovery by another state — Grounds — Claim — Indemnity agreement.

(1) At any time after property has been paid or delivered to the administrator under this chapter another state may recover the property if:

(a) The property was subjected to custody by this state because the records of the holder did not reflect the last known address of the apparent owner when the property was presumed abandoned under this chapter, and the other state establishes that the last known address of the apparent owner or other person entitled to the property was in that state, and under the laws of that state the property escheated to or became subject to a claim of abandonment by that state;

(b) The last known address of the apparent owner or other person entitled to the property, as reflected by the records of the holder, is in the other state and under the laws of that state the property escheated to or became subject to a claim of abandonment by that state;

(c) The records of the holder were erroneous in that they did not accurately reflect the actual owner of the property and the last known address of the actual owner is in the other state, and under the laws of that state the property escheated to or became subject to a claim of abandonment by that state;

(d) The property was subjected to custody by this state under Subsection 78-44-4(6), and under the laws of the state of domicile of the holder the property escheated to or became subject to a claim of abandonment by that state; or

(e) The property is the sum payable on a travelers check, money order, or other similar instrument that was subjected to custody by this state under § 78-44-5, and the instrument was purchased in the other state, and under the laws of that state the property escheated to or became subject to a claim of abandonment by that state.

(2) The claim of another state to recover escheated or abandoned property shall be presented in a form prescribed by the administrator, who shall decide the claim within 90 days after it is presented. The administrator shall allow the claim upon determining that the other state is entitled to the abandoned property under Subsection (1).

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

History: C. 1953, 78-44-26, enacted by L. 1983, ch. 164, § 1.

COLLATERAL REFERENCES

Am. Jur. 2d. — 27 Am. Jur. 2d Escheat § 30 et seq.

C.J.S. — 30A C.J.S. Escheat § 21.
Key Numbers. — Escheat ☞ 5.

78-44-27. Action on claim denied or not acted on — Limitation — Costs and attorney fees [Effective until January 1, 1988].

A person aggrieved by a decision of the administrator or whose claim has not been acted upon within 90 days after its filing may bring an action to establish the claim in the district court, naming the administrator as a defendant. The action must be brought within 90 days after the decision of the administrator or within 180 days after the filing of the claim if the administrator fails to act on it. If the aggrieved person establishes the claim in an action against the administrator, the court shall award that person costs and reasonable attorney's fees.

Judicial review [Effective January 1, 1988].

Any person aggrieved by a decision of the administrator may obtain judicial review.

History: C. 1953, 78-44-27, enacted by L. 1983, ch. 164, § 1; 1987, ch. 161, § 308.

Amended effective January 1, 1988. — Laws 1987, ch. 161, § 308 amends this section effective January 1, 1988. See catchline "Amendment Notes," below.

Amendment Notes. — The 1987 amendment, effective January 1, 1988, substituted the present provisions for the former provisions as enacted by Laws 1983, ch. 164, § 1.

78-44-28. Administrator may refuse to receive property — Delivery of property before it is presumed abandoned.

(1) The administrator may decline to receive any property reported under this chapter which he or she considers to have a value less than the expense of giving notice and of sale. If the administrator elects not to receive custody of the property, the holder shall be notified within 120 days after filing the report required under § 78-44-18.

(2) A holder, with the written consent of and upon conditions and terms prescribed by the administrator, may report and deliver property before the property is presumed abandoned. Property delivered under this subsection shall be held by the administrator and is not presumed abandoned until such time as it otherwise would be presumed abandoned under this chapter.

History: C. 1953, 78-44-28, enacted by L. 1983, ch. 164, § 1.

78-44-29. Disposition of property of insubstantial value.

If the administrator determines after investigation that any property delivered under this chapter has insubstantial commercial value, the administrator may destroy or otherwise dispose of the property at any time. No action or proceeding may be maintained against the state or any officer or against the holder for or on account of any action taken by the administrator under this section.

History: C. 1953, 78-44-29, enacted by L. 1983, ch. 164, § 1.

78-44-30. Contract periods not affecting presumption or duties — Limitation of actions by administrator — Circumvention of chapter prohibited.

(1) The expiration, before or after the effective date of this chapter, of any period of time specified by contract, statute, or court order, during which a claim for money or property can be made or during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or to recover property, does not prevent the money or property from being presumed abandoned or affect any duty to file a report or to pay or deliver abandoned property to the administrator as required by this chapter.

(2) The administrator may commence an action or proceeding with respect to any duty of a holder under this chapter at any time within ten years after the duty arises, notwithstanding any other statute of limitation which may apply to the rights or obligations affecting a holder.

(3) No corporation or business may act through amendment of articles of incorporation, amendment of by-laws, by private agreement, or otherwise, to circumvent the unclaimed property process by making a private escheat which would take or divert funds or personal property into income, or divide it among locatable patrons or stockholders, or place it in education or other funds, or divert such funds or personal property by any other type of appropriation. All of such unclaimed funds or personal property shall be turned over to the state treasurer's office for the benefit of the Uniform School Fund at the end of the lawful dormancy period.

History: C. 1953, 78-44-30, enacted by L. 1983, ch. 164, § 1.

"Effective date of this chapter". — The

term "effective date of this chapter," referred to in this section, means July 1, 1983, the effective date of Laws 1983, Chapter 164.

78-44-31. Requiring reports — Examination of records — Costs assessed — Failure to maintain records.

(1) The administrator may require any person who has not filed a report to file a verified report stating whether or not the person is holding any unclaimed property reportable or deliverable under this chapter.

(2) The administrator, if he or she has reason to believe that any person has failed to report unclaimed property, may examine at reasonable times and upon reasonable notice, the records pertaining to unclaimed property of any person to determine whether the person has complied with the provisions of this chapter. The administrator may conduct the examination even if the

person believes it is not in possession of any unclaimed property reportable or deliverable under this chapter.

(3) If a person is treated under § 78-44-13 as the holder of the property only insofar as the interest of the business association in the property is concerned, the administrator, under Subsection (2), may examine the records of that person. The administrator shall, however, give the notice required by Subsection (2) to both that person and the business association at least 90 days before the examination.

(4) If two consecutive annual unclaimed property reports are not filed, or if an annual unclaimed property report is filed containing a fraudulent or intentionally misleading statement of fact, and an examination of the records of a person results in the disclosure of property reportable and deliverable under this chapter and the unreported amount is in excess of \$12,500, the administrator may assess the cost of the examination against the holder at the rate of up to \$200 a day for each examiner, but in no case may the charges exceed \$5,000 or 10% of the value of the property found to be reportable and deliverable, whichever is greater. The cost of examination made pursuant to Subsection (3) may be imposed only against the business association.

(5) If a holder fails after June 30, 1983, to maintain the records required by § 78-44-32 and the records of the holder available for the periods subject to this chapter are insufficient to permit the preparation of the report required by § 78-44-18, the administrator may require the holder to report and pay such amounts as may reasonably be estimated from any available records.

History: C. 1953, 78-44-31, enacted by L. 1983, ch. 164, § 1.

78-44-32. Retention period for holders' records.

(1) Every holder required to file a report under § 78-44-18, as to any property for which it has obtained the last known address of the owner, shall maintain a record of the name and last known address of the owner for ten years after the property becomes reportable, except to the extent that a shorter time is provided in Subsection (2) or by rule of the administrator. This ten-year record retention shall not be required for names and addresses contained in reports properly filed with the administrator.

(2) Any business association that sells in this state its travelers checks, money orders, or other similar written instruments, other than third-party bank or business checks on which the business association is directly liable, or that provides such instruments to others for sale in this state, shall maintain a record of those instruments while they remain outstanding, indicating the state and date of issue for three years after the date the property becomes reportable.

History: C. 1953, 78-44-32, enacted by L. 1983, ch. 164, § 1.

78-44-33. Enforcement action.

The administrator may bring an action in a court of competent jurisdiction to enforce this chapter.

History: C. 1953, 78-44-33, enacted by L. 1983, ch. 164, § 1.

COLLATERAL REFERENCES

Am. Jur. 2d. — 27 Am. Jur. 2d Escheat § 30.

C.J.S. — 30A C.J.S. Escheat § 6.
Key Numbers. — Escheat ☞ 6.

78-44-34. Rules.

The administrator may adopt necessary rules to carry out the provisions of this chapter.

History: C. 1953, 78-44-34, enacted by L. 1983, ch. 164, § 1.

COLLATERAL REFERENCES

Am. Jur. 2d. — 27 Am. Jur. 2d Escheat § 30.

C.J.S. — 30A C.J.S. Escheat § 6.
Key Numbers. — Escheat ☞ 6.

78-44-35. Cooperation with other states.

(1) The administrator may enter into agreements with other states to exchange information needed to empower this or another state to audit or otherwise determine whether property is unclaimed and subject to a claim of custody. The administrator by regulation may require the reporting of information needed to put into effect the terms of agreements made under this section and prescribe the form.

(2) To avoid conflicts between the administrator's procedures and the procedures of administrators in other jurisdictions that enact the Uniform Unclaimed Property Act, the administrator, before adopting, amending or repealing regulations, shall consult with administrators in such other jurisdictions and shall take into consideration the regulations of administrators in such other jurisdictions, but shall not adopt any regulation inconsistent with this chapter.

(3) The administrator may join with other states to seek enforcement of this chapter against any person who is or may be holding property reportable under this chapter.

(4) At the request of another state, the attorney general of this state may bring an action in the name of the administrator of the other state in any court of competent jurisdiction to enforce the unclaimed property laws of the other state against a holder in this state of property subject to escheat or a claim of abandonment by the other state, if the other state has agreed to pay expenses incurred by the attorney general in bringing the action.

(5) The administrator may request that the attorney general of another state or any other person bring an action in the name of the administrator in the other state to enforce the unclaimed property laws of this state. This state

shall pay all expenses including attorney's fees in any action under this subsection. The administrator may agree to pay the person bringing the action attorney's fees based in whole or in part on a percentage of the value of any property recovered in the action.

History: C. 1953, 78-44-35, enacted by L. 1983, ch. 164, § 1.

78-44-36. Interest on delinquent delivery — Civil penalties — Criminal penalties.

(1) A person who fails to pay or deliver property within the time prescribed by this chapter shall pay to the administrator interest at the annual rate of 2% above the local prime lending rate on the property or value thereof from the date the property should have been paid or delivered.

(2) A person who willfully fails to file any report, or perform a duty required under this chapter, or to pay or deliver property to the administrator as required under this chapter shall pay a civil penalty equal to 20% of the value of the property that should have been paid or delivered.

(3) A person who willfully refuses after written demand by the administrator to pay or deliver property to the administrator as required under this chapter is guilty of a class B misdemeanor and upon conviction may be punished by a fine of not more than \$2,000.

History: C. 1953, 78-44-36, enacted by L. 1983, ch. 164, § 1.

Cross-References. — Sentencing for misdemeanors, §§ 76-3-201, 76-3-204, 76-3-301.

78-44-37. Agreement to pay compensation to recover reported property unenforceable.

All agreements to pay compensation to recover or assist in the recovery of property reported under § 78-44-18, made within 24 months after the date payment or delivery is made under § 78-44-20, are unenforceable.

History: C. 1953, 78-44-37, enacted by L. 1983, ch. 164, § 1.

78-44-38. Property in foreign country or from foreign transaction exempt.

This chapter does not apply to any property held in a foreign country and arising out of a foreign transaction.

History: C. 1953, 78-44-38, enacted by L. 1983, ch. 164, § 1.

78-44-39. Duties under prior law — Property to be included in initial report.

(1) This chapter does not relieve a holder of a duty to report, pay, or deliver property arising before July 1, 1983. Such holder who fails to comply before that date is subject to the applicable enforcement and penalty provisions in existence at that time and those provisions are continued in effect for the purpose of this subsection, subject to Subsection 78-44-30(2).

(2) The initial report to be filed under this chapter for property that was not required to be reported before July 1, 1983, but which is subject to this chapter shall include all items of property that would have been presumed abandoned during the ten-year period prior to July 1, 1983, as if this chapter had been in effect during that period.

History: C. 1953, 78-44-39, enacted by L. 1983, ch. 164, § 1.

78-44-40. Application and construction of chapter.

This chapter shall be applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

History: C. 1953, 78-44-40, enacted by L. 1983, ch. 164, § 1.

Severability Clauses. — Section 2 of Laws 1983, ch. 164 provided: "If any provision of this chapter or the application of any provision to any person or circumstance is held invalid, the invalidity shall not affect other provisions or

applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable."

Effective Dates. — Section 3 of Laws 1983, ch. 164 provided: "This act shall take effect July 1, 1983."

CHAPTER 45

UNIFORM CIVIL LIABILITY FOR SUPPORT ACT

| Section | | Section | |
|------------|---|------------|--|
| 78-45-1. | Short title. | | port — Assessment formula for temporary support. |
| 78-45-2. | Definitions. | | |
| 78-45-3. | Duty of man. | 78-45-7.1. | Medical and dental expenses of dependent children — Assigning responsibility for payment — Insurance coverage. |
| 78-45-4. | Duty of woman. | | |
| 78-45-4.1. | Duty of stepparent to support stepchild — Effect of termination of marriage or common law relationship. | 78-45-8. | Continuing jurisdiction. |
| | | 78-45-9. | Enforcement of right of support. |
| 78-45-4.2. | Natural or adoptive parent has primary obligation of support — Right of stepparent to recover support. | 78-45-9.1. | Repealed. |
| | | 78-45-9.2. | County attorney to assist obligee. |
| 78-45-4.3. | Ward of state — Primary obligation to support. | 78-45-10. | Appeals. |
| 78-45-5. | Duty of obligor regardless of presence or residence of obligee. | 78-45-11. | Husband and wife privileged communication inapplicable — Competency of spouses. |
| 78-45-6. | District court jurisdiction. | 78-45-12. | Rights are in addition to those presently existing. |
| 78-45-7. | Determination of amount of sup- | 78-45-13. | Interpretation and construction. |