HOUSE BILL NO. 809

AN ACT TO ENACT THE UNIFORM UNCLAIMED PROPERTY ACT OF 2001;
TO PROVIDE THAT THE STATE TREASURER SHALL BE THE ADMINISTRATOR OF
UNCLAIMED PROPERTY IN MISSISSIPPI; TO SET FORTH DEFINITIONS; TO
PROVIDE PRESUMPTIONS OF ABANDONMENT; TO PROVIDE RULES FOR TAKING
CUSTODY OF ABANDONED PROPERTY; TO ESTABLISH THE BURDEN OF PROOF AS
TO PROPERTY EVIDENCED BY RECORD OF CHECK OR DRAFT; TO PROVIDE FOR
THE REPORTING OF ABANDONED PROPERTY; TO PROVIDE FOR THE PAYMENT OR
DELIVERY OF ABANDONED PROPERTY; TO PROVIDE FOR NOTICE AND
PUBLICATION OF LISTS OF ABANDONED PROPERTY; TO ESTABLISH CUSTODY
OF ABANDONED PROPERTY IN THE STATE; TO PROVIDE FOR RECOVERY OF
ABANDONED PROPERTY BY THE HOLDER AND FOR DEFENSES OF THE HOLDER;
TO PROVIDE FOR THE CREDITING OF DIVIDENDS, INTEREST AND INCREMENTS
TO THE OWNER'S ACCOUNT; TO PROVIDE FOR PUBLIC SALE OF ABANDONED
PROPERTY; TO PROVIDE FOR THE DEPOSIT OF FUNDS RECEIVED UNDER THIS
ACT; TO PROVIDE FOR THE MANNER OF MAKING A CLAIM OF ANOTHER STATE
TO RECOVER PROPERTY; TO PROVIDE FOR THE FILING AND HANDLING OF
CLAIMS BY THE ADMINISTRATOR; TO CREATE AN ACTION TO ESTABLISH A
CLAIM; TO ALLOW THE ADMINISTRATOR TO ELECT WHETHER TO TAKE PAYMENT
OR DELIVERY OF UNCLAIMED PROPERTY; TO PROVIDE IMMUNITY FROM
LIABILITY FOR THE DESTRUCTION OR DISPOSITION OF PROPERTY HAVING NO
SUBSTANTIAL COMMERCIAL VALUE; TO PROVIDE PERIODS OF LIMITATION FOR
MAKING CLAIMS UNDER THIS ACT; TO PROVIDE FOR THE PAYMENT OF
INTEREST AND PENALTIES BY A HOLDER WHO FAILS TO REPORT, PAY, OR
DELIVER PROPERTY IN ACCORDANCE WITH THE PROVISIONS OF THIS ACT; TO
REPEAL SECTIONS 89-12-1 THROUGH 89-12-57, MISSISSIPPI CODE OF
1972, WHICH CONSTITUTE THE UNIFORM DISPOSITION OF UNCLAIMED
PROPERTY ACT; AND FOR RELATED PURPOSES.

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

SECTION 1. Definitions. In this act:
(a) "Administrator" means the State Treasurer.
(b) "Apparent owner" means a person whose name appears
on the records of a holder as the person entitled to property
held, issued, or owing by the holder.
(c) "Business association" means a corporation, joint
stock company, investment company, partnership, unincorporated
association, joint venture, limited liability company, business
trust, trust company, savings and loan association, building and
loan association, savings bank, industrial bank, land bank, safe
deposit company, safekeeping depository, bank, banking
organization, financial organization, insurance company, mutual
fund, credit union, utility, or other business entity consisting
of one or more persons, whether or not for profit.

(d) "Domicile" means the state of incorporation of a
corporation and the state of the principal place of business of a
holder other than a corporation.

(e) "Holder" means a person obligated to hold for the
account of, or deliver or pay to, the owner property that is
subject to this act.

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

(g) "Mineral" means gas; oil; coal; other gaseous,
liquid, and solid hydrocarbons; oil shale; cement material; sand
and gravel; road material; building stone; chemical raw material;
gemstone; fissionable and nonfissionable ores; colloidal and other
clay; steam and other geothermal resource; or any other substance
defined as a mineral by the law of this state.

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

(i) For the acquisition and retention of a mineral
lease, including bonuses, royalties, compensatory royalties,
shut-in royalties, minimum royalties, and delay rentals;

(ii) For the extraction, production, or sale of
minerals, including net revenue interests, royalties, overriding
royalties, extraction payments, and production payments; and
(iii) Resulting from an agreement or option, including a joint operating agreement, unit agreement, pooling agreement and farm-out agreement.

(i) "Money order" includes an express money order and a personal money order, on which the remitter is the purchaser. The term does not include a bank money order or any other instrument sold by a banking or financial organization if the seller has obtained the name and address of the payee.

(j) "Owner" means a person who has a legal or equitable interest in property subject to this act or the person's legal representative. The term includes a depositor in the case of a deposit, a beneficiary in the case of a trust other than a deposit in trust, and a creditor, claimant, or payee in the case of other property.

(k) "Person" means an individual, business association, estate, trust, partnership, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

(l) "Property" means tangible property described in Section 3 of this act or a fixed and certain interest in intangible property that is held, issued, or owed in the course of a holder's business, or by a government or governmental entity, and all income or increments therefrom. The term includes property that is referred to as or evidenced by:

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

(ii) Credit balance, customer's overpayment, gift certificate, security deposit, refund, credit memorandum, unpaid wage, unused ticket, mineral proceeds, or unidentified remittance;

(iii) Stock or other evidence of ownership of an interest in a business association;

(iv) A bond, debenture, note, or other evidence of indebtedness;
(v) Money deposited to redeem stocks, bonds, coupons, or other securities or to make distributions;
(vi) An amount due and payable under the terms of an annuity or insurance policy, including policies providing life insurance, property and casualty insurance, workers' compensation insurance, or health and disability insurance; and
(vii) An amount distributable from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefits.

(m) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(n) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

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

SECTION 2. Presumptions of abandonment. (1) Property is presumed abandoned if it is unclaimed by the apparent owner during the time set forth below for the particular property:

(a) Travelers check, fifteen (15) years after issuance;
(b) Money order, seven years after issuance;
(c) Stock or other equity interest in a business association, including a security entitlement under Section 75-5-101 et seq. (Article 8 of the Uniform Commercial Code), five years after the earlier of (i) the date of the most recent dividend, stock split, or other distribution unclaimed by the
apparent owner, or (ii) the date of the second mailing of a
statement of account or other notification or communication that
was returned as undeliverable or after the holder discontinued
mailings, notifications or communications to the apparent owner;
(d) Debt obligation of a business association, other
than a bearer bond or an original issue discount bond, five (5)
years after the date of the most recent interest payment unclaimed
by the apparent owner;
(e) A demand, savings, or time deposit, including a
deposit that is automatically renewable, five (5) years after the
erlier of maturity or the date of the last indication by the
owner of interest in the property; however, property that is
automatically renewable is deemed matured for purposes of this
section upon its initial date of maturity, unless the owner has
consented to a renewal at or about the time of the renewal and the
consent is in writing or is evidenced by a memorandum or other
record on file with the holder;
(f) Money or credits owed to a customer as a result of
a retail business transaction, three (3) years after the
obligation accrued;
(g) Gift certificate, three (3) years after December 31
of the year in which the certificate was sold, but if redeemable
in merchandise only, the amount abandoned is deemed to be sixty
percent (60%) of the certificate's face value;
(h) Amount owed by an insurer on a life or endowment
insurance policy or annuity contract that has matured or
terminated, three (3) years after the obligation to pay arose or,
in the case of a policy or contract payable upon proof of death,
three (3) years after the insured has attained, or would have
attained if living, the limiting age under the mortality table on
which the reserve is based;
(i) Property distributable by a business association in a course of dissolution, one (1) year after the property becomes distributable;

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

(k) Property held by a court, state or other government, governmental subdivision or agency, public corporation or other public authority, one (1) year after the property becomes distributable;

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

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

(n) Property in an individual retirement account, defined benefit plan, or other account or plan that is qualified for tax deferral under the income tax laws of the United States, three (3) years after the earliest of the date of the distribution or attempted distribution of the property, the date of the required distribution as stated in the plan or trust agreement governing the plan, or the date, if determinable by the holder, specified in the income tax laws of the United States by which distribution of the property must begin in order to avoid a tax penalty; and

(o) All other property, five (5) years after the owner's right to demand the property or after the obligation to pay or distribute the property arises, whichever first occurs.

(2) At the time that an interest is presumed abandoned under subsection (1), any other property right accrued or accruing to the owner as a result of the interest, and not previously presumed abandoned, is also presumed abandoned.

(3) Property is unclaimed if, for the applicable period of time set forth in subsection (1), the apparent owner has not...
communicated in writing or by other means reflected in a contemporaneous record prepared by or on behalf of the holder, with the holder concerning the property or the account in which the property is held, and has not otherwise indicated an interest in the property. A communication with an owner by a person other than the holder or its representative who has not in writing identified the property to the owner is not an indication of interest in the property by the owner.

(4) An indication of an owner's interest in property includes:

(a) The presentment of a check or other instrument of payment of a dividend or other distribution made with respect to an account or underlying stock or other interest in a business association or, in the case of a distribution made by electronic or similar means, evidence that the distribution has been received;

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

(c) The making of a deposit to or withdrawal from a bank account; and

(d) The payment of a premium with respect to a property interest in an insurance policy; however, the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent a policy from maturing or terminating if the insured has died or the insured or the beneficiary of the policy has otherwise become entitled to the proceeds before the depletion of the cash surrender value of a policy by the application of those provisions.

(5) Property is payable or distributable for purposes of this act notwithstanding the owner's failure to make demand or
present an instrument or document otherwise required to obtain
payment.

SECTION 3. Contents of safe deposit box or other safekeeping
depository. Property held in a safe deposit box or other
safekeeping depository in this state in the ordinary course of the
holder's business and proceeds resulting from the sale of the
property permitted by other law, is presumed abandoned if it
remains unclaimed by the owner for more than five (5) years after
expiration of the lease or rental period on the box or other
depository.

SECTION 4. Rules for taking custody. Unless otherwise
provided in this act or by other statute of this state, property
that is presumed abandoned, whether located in this or another
state, is subject to the custody of this state if:

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

(b) 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 the state;

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

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

(ii) The holder is a domiciliary or a government
or governmental subdivision or agency of this state and has not
previously paid or delivered the property to the state of the last
known address of the apparent owner or other person entitled to
the property;

(d) The last known address of the apparent owner, as
shown on the records of the holder, is in a state that does not
provide for the escheat or custodial taking of the property and
the holder is a domiciliary or a government or governmental subdivision or agency of this state;

(e) The last known address of the apparent owner, as shown on the records of the holder, is in a foreign country and the holder is a domiciliary or a government or governmental subdivision or agency of this state;

(f) The transaction out of which the property arose occurred in this state, the holder is a domiciliary of a state that does not provide for the escheat or custodial taking of the property, and the last known address of the apparent owner or other person entitled to the property is unknown or is in a state that does not provide for the escheat or custodial taking of the property; or

(g) The property is a travelers check or money order purchased in this state, or the issuer of the travelers check or money order has its principal place of business in this state and the issuer's records do not show the state in which the instrument was purchased or show that the instrument was purchased in a state that does not provide for the escheat or custodial taking of the property.

SECTION 5. Dormancy charge. A holder may deduct from property presumed abandoned a charge imposed by reason of the owner's failure to claim the property within a specified time only if there is a valid and enforceable written contract between the holder and the owner pursuant to which the holder may impose the charge and the holder regularly imposes the charge, which is not regularly reversed or otherwise canceled. The amount of the deduction is limited to an amount that is not unconscionable.

SECTION 6. Burden of proof as to property evidenced by record of check or draft. A record of the issuance of a check, draft, or similar instrument is prima facie evidence of an obligation. In claiming property from a holder who is also the issuer, the administrator's burden of proof as to the existence
and amount of the property and its abandonment is satisfied by showing issuance of the instrument and passage of the requisite period of abandonment. Defenses of payment, satisfaction, discharge, and want of consideration are affirmative defenses that must be established by the holder.

SECTION 7. Report of abandoned property. (1) A holder of property presumed abandoned shall make a report to the administrator concerning the property.

(2) The report must be verified and must include:
   (a) A description of the property;
   (b) Except with respect to a traveler’s check or money order, the name, if known, and last known address, if any, and the Social Security number or taxpayer identification number, if readily ascertainable, of the apparent owner of property of the value of Fifty Dollars ($50.00) or more;
   (c) An aggregated amount of items valued under Fifty Dollars ($50.00) each;
   (d) In the case of money amounting to Fifty Dollars ($50.00) or more held or owing under any annuity or life or endowment insurance policy, the full name and last known address of the insured or annuitant and of the beneficiary;
   (e) In the case of property held in a safe deposit box or other safekeeping depository, the place where it is held and where it may be inspected by the administrator, and any amounts owing to the holder;
   (f) The date, if any, on which the property became payable, demandable, or returnable, and the date of the last transaction with the apparent owner with respect to the property;
   (g) Other information that the administrator by rule prescribes as necessary for the administration of this act.

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

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

(5) The holder of property presumed abandoned shall send written notice to the apparent owner, not more than one hundred twenty (120) days or less than sixty (60) days before filing the report required by this section, stating that the holder is in possession of property subject to this act 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;
(b) The claim of the apparent owner is not barred by the statute of limitations; and
(c) The value of the property is Fifty Dollars ($50.00) or more.

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

(7) The holder of property presumed abandoned shall file with the report an affidavit stating that the holder has complied with subsection (5).

SECTION 8. Payment or delivery of abandoned property. (1)

Except for property held in a safe deposit box, upon filing the
report required by Section 7 of this act, the holder of property
presumed abandoned shall pay, transfer, or cause to be paid or
transferred to the administrator the property described in the
report as unclaimed, but if the property is an automatically
renewable deposit, and a penalty or forfeiture in the payment of
interest would result, the time for compliance is extended until a
penalty or forfeiture would no longer result. Property held in a
safe deposit box shall not be transferred to the administrator
until one hundred twenty (120) days after filing the report
required by Section 7 of this act.

(2) If the property reported to the administrator is a
security or security entitlement under Section 75-8-101 et seq.
(Article 8 of the Uniform Commercial Code), the administrator is
an appropriate person to make an endorsement, instruction, or
entitlement order on behalf of the apparent owner to invoke the
duty of the issuer or its transfer agent or the securities
intermediary to transfer or dispose of the security or the
security entitlement in accordance with Section 75-8-101 et seq.
(Article 8 of the Uniform Commercial Code).

(3) If the holder of property reported to the administrator
is the issuer of a certificated security, the administrator has
the right to obtain a replacement certificate pursuant to Section
75-8-101 et seq. (Article 8 of the Uniform Commercial Code), but
an indemnity bond is not required.

(4) An issuer, the holder and any transfer agent or other
person acting pursuant to the instructions of and on behalf of the
issuer or holder in accordance with this section is not liable to
the apparent owner and must be indemnified against claims of any
person in accordance with Section 10 of this act.

SECTION 9. Notice and publication of lists of abandoned
property. (1) The administrator shall publish a notice not later
than November 30 of the year next following the year in which
abandoned property has been paid or delivered to the
administrator. The notice must be published in a newspaper of general circulation in the county of this state in which is located the last known address of any person named in the notice. If a holder does not report an address for the apparent owner, or the address is outside this state, the notice must be published in the county in which the holder has its principal place of business within this state or another county that the administrator reasonably selects. The advertisement must be in a form that, in the judgment of the administrator, is likely to attract the attention of the apparent owner of the unclaimed property. The form must contain the following information:

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

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

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

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

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

SECTION 10. Custody by state; recovery by holder; defense of holder. (1) In this section, payment or delivery is made in "good faith" if:

(a) Payment or delivery was made in a reasonable attempt to comply with this act;
(b) The holder was not then in breach of a fiduciary obligation with respect to the property and had a reasonable basis for believing, based on the facts then known, that the property was presumed abandoned; and

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

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

(3) A holder who has paid money to the administrator pursuant to this act may subsequently make payment to a person reasonably appearing to the holder to be entitled to payment. Upon a filing by the holder of proof of payment and proof that the payee was entitled to the payment, the administrator shall promptly reimburse the holder for the payment without imposing a fee or other charge. If reimbursement is sought for a payment made on a negotiable instrument, including a traveler's check or money order, the holder must be reimbursed upon filing proof that the instrument was duly presented and that payment was made to a person who reasonably appeared to be entitled to payment. The holder must be reimbursed for payment made even if the payment was made to a person whose claim was barred under Section 19 (1) of this act.

(4) A holder who has delivered property other than money to the administrator pursuant to this act may reclaim the property if it is still in the possession of the administrator, without paying any fee or other charge, upon filing proof that the apparent owner has claimed the property from the holder.
(5) The administrator may accept a holder's affidavit as sufficient proof of the holder's right to recover money and property under this section.

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

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

SECTION 11. Crediting of dividends, interest and increments to owner's account. If property other than money is paid, delivered, or transferred to the administrator under this act, the owner is entitled to receive from the administrator any income or gain realized or accruing on the property at or before liquidation or conversion of the property into money. If the property was an interest-bearing demand, savings, or time deposit, including a deposit that is automatically renewable, the administrator shall pay interest at a rate of eight percent (8%) 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 (10) years after delivery or the date on which payment is made to the owner. Interest on interest-bearing property is not payable.
for any period before the effective date of this act, unless

authorized by law not superseded by this act.

SECTION 12. Public sale of abandoned property. (1) Except
as otherwise provided in this section, the administrator, within
three (3) years after the receipt of abandoned property, shall
sell it to the highest bidder at public sale at a location in the
state which in the judgment of the administrator affords the most
favorable market for the property. The administrator may decline
the highest bid and reoffer the property for sale if the
administrator considers the bid to be insufficient. The
administrator need not offer the property for sale if the
administrator considers that the probable cost of sale will exceed
the proceeds of the sale. A sale held under this section must be
preceded by a single publication of notice, at least three (3)
weeks before sale, in a newspaper of general circulation in the
county in which the property is to be sold.

(2) Securities listed on an established stock exchange must
be sold at prices prevailing on the exchange at the time of sale.
Other securities may be sold over the counter at prices prevailing
at the time of sale or by any reasonable method selected by the
administrator. If securities are sold by the administrator before
the expiration of three (3) years from their delivery to the
administrator, a person making a claim under this act before the
end of the three-year period is entitled to the proceeds of the
sale of the securities or the market value of the securities at
the time the claim is made, whichever is greater, plus dividends,
interest or other increments thereon up to the time the claim is
made, less any deduction for expenses of sale. A person making a
claim under this act after the expiration of the three-year period
is entitled to receive the securities delivered to the
administrator by the holder, if they still remain in the custody
of the administrator, or the net proceeds received from sale, and
is not entitled to receive any appreciation in the value of the
property occurring after delivery to the administrator, except in
a case of intentional misconduct or malfeasance by the
administrator.

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

SECTION 13. Deposit of funds. (1) All funds received under
the provisions of Sections 1 through 31 of this act shall
forthwith be deposited by the treasurer in a special fund hereby
established in the State Treasury to be designated the "Abandoned
Property Claims Payment Fund" an amount not exceeding One Hundred
Thousand Dollars ($100,000.00) from which he shall make prompt
payment of claims duly allowed by him as hereinafter provided.
The administrator shall record the name and last-known address of
each person appearing from the holders' reports to be entitled to
the abandoned 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 corporation and the amount
due. The record shall be available for public inspection at all
reasonable business hours.

(2) Before making a deposit to the credit of the "Abandoned
Property Fund," the administrator may deduct:

(a) Expenses of sale of abandoned property;
(b) Costs of mailing and publication in connection with
abandoned property;
(c) Reasonable service charges; and
(d) Expenses incurred in examining records of holders
of property and in collecting the property from those holders.
SECTION 14. Claim of another state to recover property. (1)

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

(a) The property was delivered to the custody of this state because the records of the holder did not reflect a last-known location of the apparent owner within the borders of the other state and the other state establishes that the apparent owner or other person entitled to the property was last known to be located within the borders of that state and under the laws of that state the property has escheated or become subject to a claim of abandonment by that state;

(b) The property was delivered to the custody of this state because the laws of the other state did not provide for the escheat or custodial taking of the property, and under the laws of that state subsequently enacted the property has escheated or become subject to a claim of abandonment by that state;

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

(d) The property was subjected to custody by this state under Section 4 (a) (place of transaction) and under the laws of the state of domicile of the holder the property has escheated or become subject to a claim of abandonment by that state; or

(e) The property is a sum payable on a traveler's check, money order or similar instrument that was purchased in the other state and delivered into the custody of this state under Section 4 (g), and under the laws of the other state the property has escheated or become subject to a claim of abandonment by that state.

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

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

SECTION 15. Filing claim with administrator; handling of claims by administrator. (1) A person, excluding another state, claiming an interest in property paid or delivered to the administrator may file a claim on a form prescribed by the administrator and verified by the claimant.

(2) Within ninety (90) days after a claim is filed, the administrator shall allow or deny the claim and give written notice of the decision to the claimant. If the claim is denied, the administrator shall inform the claimant of the reasons for the denial and specify what additional evidence is required before the claim will be allowed. The claimant may then file a new claim with the administrator or maintain an action under Section 16 of this act.

(3) Within thirty (30) days after a claim is allowed, the property or the net proceeds of a sale of the property shall be delivered or paid by the administrator to the claimant, together with any additional amount to which the claimant is entitled under Sections 11 and 12 of this act.

(4) A holder who pays the owner for property that has been delivered to the state and which, if claimed from the administrator by the owner would be subject to an increment under Sections 11 and 12 of this act, may recover from the administrator the amount of the increment.

SECTION 16. Action to establish claim. A person aggrieved by a decision of the administrator or whose claim has not been
acted upon within ninety (90) days after its filing may maintain
an original action to establish the claim in circuit court, naming
the administrator as a defendant. If the aggrieved person
establishes the claim in an action against the administrator, the
court may award the claimant reasonable attorney's fees.

SECTION 17. Election to take payment or delivery. (1) The
administrator may decline to receive property reported under this
act which the administrator considers to have a value less than
the expenses of notice and sale.

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

SECTION 18. Destruction or disposition of property having no
substantial commercial value; immunity from liability. If the
administrator determines after investigation that property
delivered under this act has no substantial commercial value, the
administrator may destroy or otherwise dispose of the property at
any time. An action or proceeding may not be maintained against
the state or any officer or against the holder for or on account
of any acts taken by the administrator under this section, except
for acts constituting intentional misconduct.

SECTION 19. Periods of limitation. (1) The expiration,
before or after the effective date of this act, of a period of
limitation on the owner's right to receive or recover property,
whether specified by contract, statute or court order, does not
preclude the property from being presumed abandoned or affect a
duty to file a report or to pay or deliver or transfer property to
the administrator as required by this act.

(2) An action or proceeding may not be maintained by the
administrator to enforce this act more than ten (10) years after
the holder specifically identified the property reported to the administrator or gave express notice to the administrator of a dispute regarding the property. In the absence of a report, the period of limitation is tolled. The period of limitation is also tolled by the filing of a report that is fraudulent.

SECTION 20. Requests for reports and examination of records.

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

(2) The administrator, at reasonable times and upon reasonable notice, may examine the records of any person to determine whether the person has complied with this act. The administrator may conduct the examination even if the person believes it is not in possession of any property reportable or deliverable under this act. The administrator may contract with any other person to conduct the examination on behalf of the administrator.

(3) The administrator at reasonable times may examine the records of an agent, including a dividend disbursing agent or transfer agent, of a business association that is the holder of property presumed abandoned if the administrator has given the notice required by subsection (2) to both the association and the agent at least ninety (90) days before the examination.

(4) Documents and working papers obtained or compiled by the administrator, or the administrator's agents, employees or designated representatives in the course of conducting an examination are confidential and are not public records but the documents and papers may be:
(a) Used by the administrator in the course of an action to collect unclaimed property or otherwise enforce this act;

(b) Used in joint examinations conducted with or pursuant to an agreement with another state, the federal government, or any other governmental entity;

(c) Produced pursuant to subpoena or court order; or

(d) Disclosed to the abandoned property office of another state for that state's use in circumstances equivalent to those described in paragraphs (a), (b) and (c), if the other state is bound to keep the documents and papers confidential.

(5) If an examination of the records of a person results in the disclosure of property reportable under this act, the administrator may assess the cost of the examination against the holder at the rate of Two Hundred Dollars ($200.00) a day for each examiner, or a greater amount that is reasonable and was actually incurred, but the assessment may not exceed the value of the property found to be reportable. The cost of examination made pursuant to subsection (3) may be assessed only against the business association.

(6) If a holder fails after the effective date of this act to maintain the records required by Section 21 of this act and the records of the holder available for the periods subject to this act are insufficient to permit the preparation of a report, the administrator may require the holder to report and pay the amount the administrator may reasonably estimate on the basis of any available records of the holder or on the basis of any other reasonable method of estimation that the administrator may select.

SECTION 21. Retention of records. (1) A holder required to file a report under Section 7 of this act shall maintain its records containing the information required to be included in the report until the holder files the report and for ten (10) years...
after the date of filing, unless a shorter time is provided in subsection (2) or by rule of the administrator.

(2) A business association that sells, issues, or provides to others for sale or issue in this state, travelers checks, money orders, or similar written instruments other than third-party bank checks, on which the business association is directly liable, shall maintain a record of the instruments while they remain outstanding, indicating the state and date of issue, for three (3) years after the date the property becomes reportable.

SECTION 22. Enforcement. The administrator may maintain an action in this or another state to enforce this act. The court may award reasonable attorney's fees to the prevailing party.

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

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

(3) At the request of another state, the Attorney General of this state may maintain an action on behalf of the other state to enforce, in this state, the unclaimed property laws of the other state against a holder of property subject to escheat or a claim of abandonment by the other state, if the other state has agreed to pay expenses incurred by the Attorney General in maintaining the action.

(4) The administrator may request that the Attorney General of another state or another attorney commence an action in the
other state on behalf of the administrator. With the approval of
the Attorney General of this state, the administrator may retain
any other attorney to commence an action in this state on behalf
of the administrator. This state shall pay all expenses,
including attorney's fees, in maintaining an action under this
subsection. With the administrator's approval, the expenses and
attorney's fees may be paid from money received under this act.
The administrator may agree to pay expenses and attorney's fees
based in whole or in part on a percentage of the value of any
property recovered in the action. Any expenses or attorney's fees
paid under this subsection may not be deducted from the amount
that is subject to the claim by the owner under this act.

SECTION 24. Interest and penalties. (1) A holder who fails
to report, pay or deliver property within the time prescribed by
this act shall pay to the administrator interest at the annual
rate of twelve percent (12%) on the property or value thereof from
the date the property should have been reported, paid or
delivered.

(2) Except as otherwise provided in subsection (3), a holder
who fails to report, pay or deliver property within the time
prescribed by this act, or fails to perform other duties imposed
by this act, shall pay to the administrator, in addition to
interest as provided in subsection (1), a civil penalty of Two
Hundred Dollars ($200.00) for each day the report, payment or
delivery is withheld, or the duty is not performed, up to a
maximum of Five Thousand Dollars ($5,000.00).

(3) A holder who willfully fails to report, pay or deliver
property within the time prescribed by this act or willfully fails
to perform other duties imposed by this act, shall pay to the
administrator, in addition to interest as provided in subsection
(1), a civil penalty of One Thousand Dollars ($1,000.00) for each
day the report, payment, or delivery is withheld, or the duty is
not performed, up to a maximum of Twenty-five Thousand Dollars
($25,000.00), plus twenty-five percent (25%) of the value of any
property that should have been but was not reported.

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

(5) Upon good cause shown the administrator may waive, in
whole or in part, interest under subsection (1) and penalties
under subsections (2) and (3), and shall waive penalties if the
holder acted in good faith and without negligence.

SECTION 25. Agreement to locate property. (1) An agreement
by an owner, the primary purpose of which is to locate, deliver,
recover or assist in the recovery of property that is presumed
abandoned is void and unenforceable if it was entered into during
the period commencing on the date the property was presumed
abandoned and extending to a time that is twenty-four (24) months
after the date the property is paid or delivered to the
administrator. This subsection does not apply to an owner's
agreement with an attorney to file a claim as to identified
property or contest the administrator's denial of a claim.

(2) Any agreement by an owner, the primary purpose of which
is to locate, deliver, recover or assist in the recovery of
property is enforceable only if the agreement is in writing,
clearly sets forth the nature of the property and the services to
be rendered, is signed by the apparent owner and states the value
of the property before and after the fee or other compensation has
been deducted.

(3) If an agreement covered by this section is applicable to
mineral proceeds and the agreement contains a provision to pay
compensation that includes a portion of the underlying minerals or
any production payment, overriding royalty, compensatory royalty, or similar payment, the provision is void and unenforceable.

(4) An agreement covered by this section may not provide for compensation that is unconscionable. An owner who has agreed to pay compensation that is unconscionable, or the administrator on behalf of the owner, may maintain an action to reduce the compensation to a conscionable amount. The court may award reasonable attorney's fees to an owner who prevails in the action.

(5) An owner may at any time assert that an agreement covered by this section is otherwise invalid.

SECTION 26. Foreign transactions. This act does not apply to property held, due and owing in a foreign country and arising out of a foreign transaction.

SECTION 27. Applicability of act. (1) An initial report filed under this act for property that was not required to be reported before the effective date of this act but which is subject to this act must include all items of property that would have been presumed abandoned during the ten-year period next preceding the effective date of this act as if this act had been in effect during that period.

(2) This act does not relieve a holder of a duty that arose before the effective date of this act to report, pay or deliver property. Except as otherwise provided in Section 19 (2), a holder who did not comply with the law in effect before the effective date of this act is subject to the applicable provisions for enforcement and penalties which then existed, which are continued in effect for the purpose of this section.

SECTION 28. Rules. The administrator may adopt necessary rules to carry out this act.

SECTION 29. Uniformity of application and construction. This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it.
SECTION 30. Short title. This act may be cited as the Uniform Unclaimed Property Act of 2001.

SECTION 31. Severability clause. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

SECTION 32. Sections 89-12-1, 89-12-3, 89-12-5, 89-12-7, 89-12-9, 89-12-11, 89-12-13, 89-12-15, 89-12-17, 89-12-19, 89-12-21, 89-12-23, 89-12-25, 89-12-27, 89-12-29, 89-12-31, 89-12-33, 89-12-35, 89-12-37, 89-12-39, 89-12-41, 89-12-43, 89-12-45, 89-12-47, 89-12-49, 89-12-51, 89-12-53, 89-12-55 and 89-12-57, Mississippi Code of 1972, which constitute the Uniform Disposition of Unclaimed Property Act, are repealed.

SECTION 33. This act shall take effect and be in force from and after July 1, 2001.