

By: Representative Watson

To: Judiciary A

HOUSE BILL NO. 991

1 AN ACT TO ENACT THE UNIFORM UNCLAIMED PROPERTY ACT OF 2003;
 2 TO PROVIDE THAT THE STATE TREASURER SHALL BE THE ADMINISTRATOR OF
 3 UNCLAIMED PROPERTY IN MISSISSIPPI; TO SET FORTH DEFINITIONS; TO
 4 PROVIDE PRESUMPTIONS OF ABANDONMENT; TO PROVIDE RULES FOR TAKING
 5 CUSTODY OF ABANDONED PROPERTY; TO ESTABLISH THE BURDEN OF PROOF AS
 6 TO PROPERTY EVIDENCED BY RECORD OF CHECK OR DRAFT; TO PROVIDE FOR
 7 THE REPORTING OF ABANDONED PROPERTY; TO PROVIDE FOR THE PAYMENT OR
 8 DELIVERY OF ABANDONED PROPERTY; TO PROVIDE FOR NOTICE AND
 9 PUBLICATION OF LISTS OF ABANDONED PROPERTY; TO ESTABLISH CUSTODY
 10 OF ABANDONED PROPERTY IN THE STATE; TO PROVIDE FOR RECOVERY OF
 11 ABANDONED PROPERTY BY THE HOLDER AND FOR DEFENSES OF THE HOLDER;
 12 TO PROVIDE FOR THE CREDITING OF DIVIDENDS, INTEREST AND INCREMENTS
 13 TO THE OWNER'S ACCOUNT; TO PROVIDE FOR PUBLIC SALE OF ABANDONED
 14 PROPERTY; TO PROVIDE FOR THE DEPOSIT OF FUNDS RECEIVED UNDER THIS
 15 ACT; TO PROVIDE FOR THE MANNER OF MAKING A CLAIM OF ANOTHER STATE
 16 TO RECOVER PROPERTY; TO PROVIDE FOR THE FILING AND HANDLING OF
 17 CLAIMS BY THE ADMINISTRATOR; TO CREATE AN ACTION TO ESTABLISH A
 18 CLAIM; TO ALLOW THE ADMINISTRATOR TO ELECT WHETHER TO TAKE PAYMENT
 19 OR DELIVERY OF UNCLAIMED PROPERTY; TO PROVIDE IMMUNITY FROM
 20 LIABILITY FOR THE DESTRUCTION OR DISPOSITION OF PROPERTY HAVING NO
 21 SUBSTANTIAL COMMERCIAL VALUE; TO PROVIDE PERIODS OF LIMITATION FOR
 22 MAKING CLAIMS UNDER THIS ACT; TO PROVIDE FOR THE PAYMENT OF
 23 INTEREST AND PENALTIES BY A HOLDER WHO FAILS TO REPORT, PAY, OR
 24 DELIVER PROPERTY IN ACCORDANCE WITH THE PROVISIONS OF THIS ACT; TO
 25 REPEAL SECTIONS 89-12-1 THROUGH 89-12-57, MISSISSIPPI CODE OF
 26 1972, WHICH CONSTITUTE THE UNIFORM DISPOSITION OF UNCLAIMED
 27 PROPERTY ACT; AND FOR RELATED PURPOSES.

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

29 **SECTION 1. Definitions.** In this act:

30 (a) "Administrator" means the State Treasurer.

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

34 (c) "Business association" means a corporation, joint
 35 stock company, investment company, partnership, unincorporated
 36 association, joint venture, limited liability company, business
 37 trust, trust company, savings and loan association, building and
 38 loan association, savings bank, industrial bank, land bank, safe
 39 deposit company, safekeeping depository, bank, banking

40 organization, financial organization, insurance company, mutual
41 fund, credit union, utility, or other business entity consisting
42 of one or more persons, whether or not for profit.

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

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

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

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

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

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

70 (ii) For the extraction, production, or sale of
71 minerals, including net revenue interests, royalties, overriding
72 royalties, extraction payments, and production payments; and

73 (iii) Resulting from an agreement or option,
74 including a joint operating agreement, unit agreement, pooling
75 agreement and farm-out agreement.

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

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

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

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

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

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

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

104 (iv) A bond, debenture, note, or other evidence of
105 indebtedness;

106 (v) Money deposited to redeem stocks, bonds,
107 coupons, or other securities or to make distributions;

108 (vi) An amount due and payable under the terms of
109 an annuity or insurance policy, including policies providing life
110 insurance, property and casualty insurance, workers' compensation
111 insurance, or health and disability insurance; and

112 (vii) An amount distributable from a trust or
113 custodial fund established under a plan to provide health,
114 welfare, pension, vacation, severance, retirement, death, stock
115 purchase, profit sharing, employee savings, supplemental
116 unemployment insurance, or similar benefits.

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

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

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

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

132 (a) Travelers check, fifteen (15) years after issuance;

133 (b) Money order, seven years after issuance;

134 (c) Stock or other equity interest in a business
135 association, including a security entitlement under Section
136 75-5-101 et seq. (Article 8 of the Uniform Commercial Code), five
137 (5) years after the earlier of (i) the date of the most recent
138 dividend, stock split, or other distribution unclaimed by the

139 apparent owner, or (ii) the date of the second mailing of a
140 statement of account or other notification or communication that
141 was returned as undeliverable or after the holder discontinued
142 mailings, notifications or communications to the apparent owner;

143 (d) Debt obligation of a business association, other
144 than a bearer bond or an original issue discount bond, five (5)
145 years after the date of the most recent interest payment unclaimed
146 by the apparent owner;

147 (e) A demand, savings, or time deposit, including a
148 deposit that is automatically renewable, five (5) years after the
149 earlier of maturity or the date of the last indication by the
150 owner of interest in the property; however, property that is
151 automatically renewable is deemed matured for purposes of this
152 section upon its initial date of maturity, unless the owner has
153 consented to a renewal at or about the time of the renewal and the
154 consent is in writing or is evidenced by a memorandum or other
155 record on file with the holder;

156 (f) Money or credits owed to a customer as a result of
157 a retail business transaction, three (3) years after the
158 obligation accrued;

159 (g) Gift certificate, three (3) years after December 31
160 of the year in which the certificate was sold, but if redeemable
161 in merchandise only, the amount abandoned is deemed to be sixty
162 percent (60%) of the certificate's face value;

163 (h) Amount owed by an insurer on a life or endowment
164 insurance policy or annuity contract that has matured or
165 terminated, three (3) years after the obligation to pay arose or,
166 in the case of a policy or contract payable upon proof of death,
167 three (3) years after the insured has attained, or would have
168 attained if living, the limiting age under the mortality table on
169 which the reserve is based;

170 (i) Property distributable by a business association in
171 a course of dissolution, one (1) year after the property becomes
172 distributable;

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

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

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

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

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

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

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

201 (3) Property is unclaimed if, for the applicable period of
202 time set forth in subsection (1), the apparent owner has not

203 communicated in writing or by other means reflected in a
204 contemporaneous record prepared by or on behalf of the holder,
205 with the holder concerning the property or the account in which
206 the property is held, and has not otherwise indicated an interest
207 in the property. A communication with an owner by a person other
208 than the holder or its representative who has not in writing
209 identified the property to the owner is not an indication of
210 interest in the property by the owner.

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

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

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

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

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

233 (5) Property is payable or distributable for purposes of
234 this act notwithstanding the owner's failure to make demand or

235 present an instrument or document otherwise required to obtain
236 payment.

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

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

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

251 (b) The records of the holder do not reflect the
252 identity of the person entitled to the property and it is
253 established that the last known address of the person entitled to
254 the property is in the state;

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

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

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

264 (d) The last known address of the apparent owner, as
265 shown on the records of the holder, is in a state that does not
266 provide for the escheat or custodial taking of the property and

267 the holder is a domiciliary or a government or governmental
268 subdivision or agency of this state;

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

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

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

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

295 **SECTION 6. Burden of proof as to property evidenced by**
296 **record of check or draft.** A record of the issuance of a check,
297 draft, or similar instrument is prima facie evidence of an
298 obligation. In claiming property from a holder who is also the
299 issuer, the administrator's burden of proof as to the existence

300 and amount of the property and its abandonment is satisfied by
301 showing issuance of the instrument and passage of the requisite
302 period of abandonment. Defenses of payment, satisfaction,
303 discharge, and want of consideration are affirmative defenses that
304 must be established by the holder.

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

308 (2) The report must be verified and must include:

309 (a) A description of the property;

310 (b) Except with respect to a travelers check or money
311 order, the name, if known, and last known address, if any, and the
312 Social Security number or taxpayer identification number, if
313 readily ascertainable, of the apparent owner of property of the
314 value of Fifty Dollars (\$50.00) or more;

315 (c) An aggregated amount of items valued under Fifty
316 Dollars (\$50.00) each;

317 (d) In the case of money amounting to Fifty Dollars
318 (\$50.00) or more held or owing under any annuity or life or
319 endowment insurance policy, the full name and last known address
320 of the insured or annuitant and of the beneficiary;

321 (e) In the case of property held in a safe deposit box
322 or other safekeeping depository, the place where it is held and
323 where it may be inspected by the administrator, and any amounts
324 owing to the holder;

325 (f) The date, if any, on which the property became
326 payable, demandable, or returnable, and the date of the last
327 transaction with the apparent owner with respect to the property;
328 and

329 (g) Other information that the administrator by rule
330 prescribes as necessary for the administration of this act.

331 (3) If a holder of property presumed abandoned is a
332 successor to another person who previously held the property for

333 the apparent owner or the holder has changed its name while
334 holding the property, the holder shall file with the report its
335 former names, if any, and the known names and addresses of all
336 previous holders of the property.

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

342 (5) The holder of property presumed abandoned shall send
343 written notice to the apparent owner, not more than one hundred
344 twenty (120) days or less than sixty (60) days before filing the
345 report required by this section, stating that the holder is in
346 possession of property subject to this act if:

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

350 (b) The claim of the apparent owner is not barred by
351 the statute of limitations; and

352 (c) The value of the property is Fifty Dollars (\$50.00)
353 or more.

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

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

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

365 Except for property held in a safe deposit box, upon filing the

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

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

385 (3) If the holder of property reported to the administrator
386 is the issuer of a certificated security, the administrator has
387 the right to obtain a replacement certificate pursuant to Section
388 75-8-101 et seq. (Article 8 of the Uniform Commercial Code), but
389 an indemnity bond is not required.

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

395 **SECTION 9. Notice and publication of lists of abandoned**
396 **property.** (1) The administrator shall publish a notice not later
397 than November 30 of the year next following the year in which
398 abandoned property has been paid or delivered to the

399 administrator. The notice must be published in a newspaper of
400 general circulation in the county of this state in which is
401 located the last known address of any person named in the notice.
402 If a holder does not report an address for the apparent owner, or
403 the address is outside this state, the notice must be published in
404 the county in which the holder has its principal place of business
405 within this state or another county that the administrator
406 reasonably selects. The advertisement must be in a form that, in
407 the judgment of the administrator, is likely to attract the
408 attention of the apparent owner of the unclaimed property. The
409 form must contain the following information:

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

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

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

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

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

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

429 (a) Payment or delivery was made in a reasonable
430 attempt to comply with this act;

431 (b) The holder was not then in breach of a fiduciary
432 obligation with respect to the property and had a reasonable basis
433 for believing, based on the facts then known, that the property
434 was presumed abandoned; and

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

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

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

457 (4) A holder who has delivered property other than money to
458 the administrator pursuant to this act may reclaim the property if
459 it is still in the possession of the administrator, without paying
460 any fee or other charge, upon filing proof that the apparent owner
461 has claimed the property from the holder.

462 (5) The administrator may accept a holder's affidavit as
463 sufficient proof of the holder's right to recover money and
464 property under this section.

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

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

481 **SECTION 11. Crediting of dividends, interest and increments**
482 **to owner's account.** If property other than money is paid,
483 delivered, or transferred to the administrator under this act, the
484 owner is entitled to receive from the administrator any income or
485 gain realized or accruing on the property at or before liquidation
486 or conversion of the property into money. If the property was an
487 interest-bearing demand, savings, or time deposit, including a
488 deposit that is automatically renewable, the administrator shall
489 pay interest at a rate of eight percent (8%) a year or any lesser
490 rate the property earned while in the possession of the holder.
491 Interest begins to accrue when the property is delivered to the
492 administrator and ceases on the earlier of the expiration of ten
493 (10) years after delivery or the date on which payment is made to
494 the owner. Interest on interest-bearing property is not payable

495 for any period before the effective date of this act, unless
496 authorized by law not superseded by this act.

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

511 (2) Securities listed on an established stock exchange must
512 be sold at prices prevailing on the exchange at the time of sale.
513 Other securities may be sold over the counter at prices prevailing
514 at the time of sale or by any reasonable method selected by the
515 administrator. If securities are sold by the administrator before
516 the expiration of three (3) years from their delivery to the
517 administrator, a person making a claim under this act before the
518 end of the three-year period is entitled to the proceeds of the
519 sale of the securities or the market value of the securities at
520 the time the claim is made, whichever is greater, plus dividends,
521 interest or other increments thereon up to the time the claim is
522 made, less any deduction for expenses of sale. A person making a
523 claim under this act after the expiration of the three-year period
524 is entitled to receive the securities delivered to the
525 administrator by the holder, if they still remain in the custody
526 of the administrator, or the net proceeds received from sale, and
527 is not entitled to receive any appreciation in the value of the

528 property occurring after delivery to the administrator, except in
529 a case of intentional misconduct or malfeasance by the
530 administrator.

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

536 **SECTION 13. Deposit of funds.** (1) All funds received under
537 the provisions of Sections 1 through 31 of this act shall
538 forthwith be deposited by the treasurer in a special fund hereby
539 established in the State Treasury to be designated the "Abandoned
540 Property Claims Payment Fund" an amount not exceeding One Hundred
541 Thousand Dollars (\$100,000.00) from which he shall make prompt
542 payment of claims duly allowed by him as hereinafter provided.
543 The administrator shall record the name and last-known address of
544 each person appearing from the holders' reports to be entitled to
545 the abandoned property and the name and last-known address of each
546 insured person or annuitant and beneficiary and, with respect to
547 each policy or contract listed in the report of an insurance
548 company, its number, the name of the corporation and the amount
549 due. The record shall be available for public inspection at all
550 reasonable business hours.

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

- 553 (a) Expenses of sale of abandoned property;
554 (b) Costs of mailing and publication in connection with
555 abandoned property;
556 (c) Reasonable service charges; and
557 (d) Expenses incurred in examining records of holders
558 of property and in collecting the property from those holders.

559 **SECTION 14. Claim of another state to recover property.** (1)

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

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

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

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

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

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

590 (2) A claim of another state to recover escheated or
591 abandoned property must be presented in a form prescribed by the

592 administrator who shall decide the claim within ninety (90) days
593 after it is presented. The administrator shall allow the claim
594 upon determining that the other state is entitled to the abandoned
595 property under subsection (1).

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

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

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

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

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

623 **SECTION 16. Action to establish claim.** A person aggrieved
624 by a decision of the administrator or whose claim has not been

625 acted upon within ninety (90) days after its filing may maintain
626 an original action to establish the claim in circuit court, naming
627 the administrator as a defendant. If the aggrieved person
628 establishes the claim in an action against the administrator, the
629 court may award the claimant reasonable attorney's fees.

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

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

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

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

656 (2) An action or proceeding may not be maintained by the
657 administrator to enforce this act more than ten (10) years after

658 the holder specifically identified the property reported to the
659 administrator or gave express notice to the administrator of a
660 dispute regarding the property. In the absence of a report, the
661 period of limitation is tolled. The period of limitation is also
662 tolled by the filing of a report that is fraudulent.

663 **SECTION 20. Requests for reports and examination of records.**

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

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

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

686 (4) Documents and working papers obtained or compiled by the
687 administrator, or the administrator's agents, employees or
688 designated representatives in the course of conducting an
689 examination are confidential and are not public records but the
690 documents and papers may be:

691 (a) Used by the administrator in the course of an
692 action to collect unclaimed property or otherwise enforce this
693 act;

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

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

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

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

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

719 **SECTION 21. Retention of records.** (1) A holder required to
720 file a report under Section 7 of this act shall maintain its
721 records containing the information required to be included in the
722 report until the holder files the report and for ten (10) years

723 after the date of filing, unless a shorter time is provided in
724 subsection (2) or by rule of the administrator.

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

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

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

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

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

754 (4) The administrator may request that the Attorney General
755 of another state or another attorney commence an action in the

756 other state on behalf of the administrator. With the approval of
757 the Attorney General of this state, the administrator may retain
758 any other attorney to commence an action in this state on behalf
759 of the administrator. This state shall pay all expenses,
760 including attorney's fees, in maintaining an action under this
761 subsection. With the administrator's approval, the expenses and
762 attorney's fees may be paid from money received under this act.
763 The administrator may agree to pay expenses and attorney's fees
764 based in whole or in part on a percentage of the value of any
765 property recovered in the action. Any expenses or attorney's fees
766 paid under this subsection may not be deducted from the amount
767 that is subject to the claim by the owner under this act.

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

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

782 (3) A holder who willfully fails to report, pay or deliver
783 property within the time prescribed by this act or willfully fails
784 to perform other duties imposed by this act, shall pay to the
785 administrator, in addition to interest as provided in subsection
786 (1), a civil penalty of One Thousand Dollars (\$1,000.00) for each
787 day the report, payment, or delivery is withheld, or the duty is
788 not performed, up to a maximum of Twenty-five Thousand Dollars

789 (\$25,000.00), plus twenty-five percent (25%) of the value of any
790 property that should have been but was not reported.

791 (4) A holder who renders a fraudulent report shall pay to
792 the administrator, in addition to interest as provided in
793 subsection (1), a civil penalty of One Thousand Dollars
794 (\$1,000.00) for each day from the date a report under this act was
795 due, up to a maximum of Twenty-five Thousand Dollars (\$25,000.00),
796 plus twenty-five percent (25%) of the value of any property that
797 should have been but was not reported.

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

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

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

819 (3) If an agreement covered by this section is applicable to
820 mineral proceeds and the agreement contains a provision to pay
821 compensation that includes a portion of the underlying minerals or

822 any production payment, overriding royalty, compensatory royalty,
823 or similar payment, the provision is void and unenforceable.

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

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

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

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

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

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

851 **SECTION 29. Uniformity of application and construction.**
852 This act shall be applied and construed to effectuate its general
853 purpose to make uniform the law with respect to the subject of
854 this act among states enacting it.

855 **SECTION 30.** **Short title.** This act may be cited as the
856 Uniform Unclaimed Property Act of 2004.

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

863 **SECTION 32.** Sections 89-12-1, 89-12-3, 89-12-5, 89-12-7,
864 89-12-9, 89-12-11, 89-12-13, 89-12-15, 89-12-17, 89-12-19,
865 89-12-21, 89-12-23, 89-12-25, 89-12-27, 89-12-29, 89-12-31,
866 89-12-33, 89-12-35, 89-12-37, 89-12-39, 89-12-41, 89-12-43,
867 89-12-45, 89-12-47, 89-12-49, 89-12-51, 89-12-53, 89-12-55 and
868 89-12-57, Mississippi Code of 1972, which constitute the Uniform
869 Disposition of Unclaimed Property Act, are repealed.

870 **SECTION 33.** This act shall take effect and be in force from
871 and after July 1, 2004.