

By: Representative Watson

To: Judiciary A

## HOUSE BILL NO. 556

1 AN ACT TO ENACT THE UNIFORM UNCLAIMED PROPERTY ACT OF 2005;  
 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,  
 35 joint-stock company, investment company, partnership,  
 36 unincorporated association, joint venture, limited liability  
 37 company, business trust, trust company, savings and loan  
 38 association, building and loan association, savings bank,  
 39 industrial bank, land bank, safe deposit company, safekeeping

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

135           (c) Stock or other equity interest in a business  
136 association, including a security entitlement under Section  
137 75-5-101 et seq. (Article 8 of the Uniform Commercial Code), five  
138 (5) years after the earlier of (i) the date of the most recent  
139 dividend, stock split or other distribution unclaimed by the  
140 apparent owner, or (ii) the date of the second mailing of a  
141 statement of account or other notification or communication that  
142 was returned as undeliverable or after the holder discontinued  
143 mailings, notifications or communications to the apparent owner;

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

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

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

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

164           (h) Amount owed by an insurer on a life or endowment  
165 insurance policy or annuity contract that has matured or  
166 terminated, three (3) years after the obligation to pay arose or,  
167 in the case of a policy or contract payable upon proof of death,

168 three (3) years after the insured has attained, or would have  
169 attained if living, the limiting age under the mortality table on  
170 which the reserve is based;

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

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

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

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

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

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

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

198 (2) At the time that an interest is presumed abandoned under  
199 subsection (1), any other property right accrued or accruing to

200 the owner as a result of the interest, and not previously presumed  
201 abandoned, is also presumed abandoned.

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

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

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

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

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

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

232 proceeds before the depletion of the cash surrender value of a  
233 policy by the application of those provisions.

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

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

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

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

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

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

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

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



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

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

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

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

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

296 **SECTION 6. Burden of proof as to property evidenced by**  
297 **record of check or draft.** A record of the issuance of a check,

298 draft, or similar instrument is prima facie evidence of an  
299 obligation. In claiming property from a holder who is also the  
300 issuer, the administrator's burden of proof as to the existence  
301 and amount of the property and its abandonment is satisfied by  
302 showing issuance of the instrument and passage of the requisite  
303 period of abandonment. Defenses of payment, satisfaction,  
304 discharge, and want of consideration are affirmative defenses that  
305 must be established by the holder.

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

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

310 (a) A description of the property;

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

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

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

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

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

329 and

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

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

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

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

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

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

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

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

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

365 **SECTION 8. Payment or delivery of abandoned property.** (1)  
366 Except for property held in a safe deposit box, upon filing the  
367 report required by Section 7 of this act, the holder of property  
368 presumed abandoned shall pay, transfer, or cause to be paid or  
369 transferred to the administrator the property described in the  
370 report as unclaimed, but if the property is an automatically  
371 renewable deposit, and a penalty or forfeiture in the payment of  
372 interest would result, the time for compliance is extended until a  
373 penalty or forfeiture would no longer result. Property held in a  
374 safe deposit box shall not be transferred to the administrator  
375 until one hundred twenty (120) days after filing the report  
376 required by Section 7 of this act.

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

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

391 (4) An issuer, the holder and any transfer agent or other  
392 person acting pursuant to the instructions of and on behalf of the  
393 issuer or holder in accordance with this section is not liable to

394 the apparent owner and must be indemnified against claims of any  
395 person in accordance with Section 10 of this act.

396 **SECTION 9. Notice and publication of lists of abandoned**

397 **property.** (1) The administrator shall publish a notice not later  
398 than November 30 of the year next following the year in which  
399 abandoned property has been paid or delivered to the  
400 administrator. The notice must be published in a newspaper of  
401 general circulation in the county of this state in which is  
402 located the last known address of any person named in the notice.  
403 If a holder does not report an address for the apparent owner, or  
404 the address is outside this state, the notice must be published in  
405 the county in which the holder has its principal place of business  
406 within this state or another county that the administrator  
407 reasonably selects. The advertisement must be in a form that, in  
408 the judgment of the administrator, is likely to attract the  
409 attention of the apparent owner of the unclaimed property. The  
410 form must contain the following information:

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

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

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

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

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

427           **SECTION 10. Custody by state; recovery by holder; defense of**

428 **holder.** (1) In this section, payment or delivery is made in  
429 "good faith" if:

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

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

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

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

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

458           (4) A holder who has delivered property other than money to  
459 the administrator pursuant to this act may reclaim the property if

460 it is still in the possession of the administrator, without paying  
461 any fee or other charge, upon filing proof that the apparent owner  
462 has claimed the property from the holder.

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

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

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

482 **SECTION 11. Crediting of dividends, interest and increments**  
483 **to owner's account.** If property other than money is paid,  
484 delivered, or transferred to the administrator under this act, the  
485 owner is entitled to receive from the administrator any income or  
486 gain realized or accruing on the property at or before liquidation  
487 or conversion of the property into money. If the property was an  
488 interest-bearing demand, savings, or time deposit, including a  
489 deposit that is automatically renewable, the administrator shall  
490 pay interest at a rate of eight percent (8%) a year or any lesser  
491 rate the property earned while in the possession of the holder.  
492 Interest begins to accrue when the property is delivered to the

493 administrator and ceases on the earlier of the expiration of ten  
494 (10) years after delivery or the date on which payment is made to  
495 the owner. Interest on interest-bearing property is not payable  
496 for any period before the effective date of this act, unless  
497 authorized by law not superseded by this act.

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

512       (2) Securities listed on an established stock exchange must  
513 be sold at prices prevailing on the exchange at the time of sale.  
514 Other securities may be sold over the counter at prices prevailing  
515 at the time of sale or by any reasonable method selected by the  
516 administrator. If securities are sold by the administrator before  
517 the expiration of three (3) years from their delivery to the  
518 administrator, a person making a claim under this act before the  
519 end of the three-year period is entitled to the proceeds of the  
520 sale of the securities or the market value of the securities at  
521 the time the claim is made, whichever is greater, plus dividends,  
522 interest or other increments thereon up to the time the claim is  
523 made, less any deduction for expenses of sale. A person making a  
524 claim under this act after the expiration of the three-year period  
525 is entitled to receive the securities delivered to the



526 administrator by the holder, if they still remain in the custody  
527 of the administrator, or the net proceeds received from sale, and  
528 is not entitled to receive any appreciation in the value of the  
529 property occurring after delivery to the administrator, except in  
530 a case of intentional misconduct or malfeasance by the  
531 administrator.

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

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

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

554 (a) Expenses of sale of abandoned property;

555 (b) Costs of mailing and publication in connection with  
556 abandoned property;

557 (c) Reasonable service charges; and

558 (d) Expenses incurred in examining records of holders  
559 of property and in collecting the property from those holders.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

687 (4) Documents and working papers obtained or compiled by the  
688 administrator, or the administrator's agents, employees or  
689 designated representatives in the course of conducting an

690 examination are confidential and are not public records but the  
691 documents and papers may be:

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

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

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

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

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

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

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

723 report until the holder files the report and for ten (10) years  
724 after the date of filing, unless a shorter time is provided in  
725 subsection (2) or by rule of the administrator.

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

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

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

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

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

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

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

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

783 (3) A holder who willfully fails to report, pay or deliver  
784 property within the time prescribed by this act or willfully fails  
785 to perform other duties imposed by this act, shall pay to the  
786 administrator, in addition to interest as provided in subsection  
787 (1), a civil penalty of One Thousand Dollars (\$1,000.00) for each



788 day the report, payment or delivery is withheld, or the duty is  
789 not performed, up to a maximum of Twenty-five Thousand Dollars  
790 (\$25,000.00), plus twenty-five percent (25%) of the value of any  
791 property that should have been but was not reported.

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

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

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

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

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

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

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

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

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

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

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

852           **SECTION 29. Uniformity of application and construction.**

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

856           **SECTION 30. Short title.** This act may be cited as the  
857 Uniform Unclaimed Property Act of 2005.

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

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

871           **SECTION 33.** This act shall take effect and be in force from  
872 and after July 1, 2005.