

By: Senator(s) Doxey

To: Judiciary, Division A

SENATE BILL NO. 2787

1 AN ACT TO ENACT THE MISSISSIPPI UNIFORM UNCLAIMED PROPERTY
2 ACT; TO PROVIDE THAT THE STATE TREASURER SHALL BE THE
3 ADMINISTRATOR OF UNCLAIMED PROPERTY IN MISSISSIPPI; TO SET FORTH
4 DEFINITIONS; TO PROVIDE PRESUMPTIONS OF ABANDONMENT; TO PROVIDE
5 RULES FOR TAKING CUSTODY OF ABANDONED PROPERTY; TO ESTABLISH THE
6 BURDEN OF PROOF AS TO PROPERTY EVIDENCED BY RECORD OF CHECK OR
7 DRAFT; TO PROVIDE FOR THE REPORTING OF ABANDONED PROPERTY; TO
8 PROVIDE FOR THE PAYMENT OR DELIVERY OF ABANDONED PROPERTY; TO
9 PROVIDE FOR NOTICE AND PUBLICATION OF LISTS OF ABANDONED PROPERTY;
10 TO ESTABLISH CUSTODY OF ABANDONED PROPERTY IN THE STATE; TO
11 PROVIDE FOR RECOVERY OF ABANDONED PROPERTY BY THE HOLDER AND FOR
12 DEFENSES OF THE HOLDER; TO PROVIDE FOR THE CREDITING OF DIVIDENDS,
13 INTEREST AND INCREMENTS TO THE OWNER'S ACCOUNT; TO PROVIDE FOR
14 PUBLIC SALE OF ABANDONED PROPERTY; TO PROVIDE FOR THE DEPOSIT OF
15 FUNDS RECEIVED UNDER THIS ACT; TO PROVIDE FOR THE MANNER OF MAKING
16 A CLAIM OF ANOTHER STATE TO RECOVER PROPERTY; TO PROVIDE FOR THE
17 FILING AND HANDLING OF CLAIMS BY THE ADMINISTRATOR; TO CREATE AN
18 ACTION TO ESTABLISH A CLAIM; TO ALLOW THE ADMINISTRATOR TO ELECT
19 WHETHER TO TAKE PAYMENT OR DELIVERY OF UNCLAIMED PROPERTY; TO
20 PROVIDE IMMUNITY FROM LIABILITY FOR THE DESTRUCTION OR DISPOSITION
21 OF PROPERTY HAVING NO SUBSTANTIAL COMMERCIAL VALUE; TO PROVIDE
22 PERIODS OF LIMITATION FOR MAKING CLAIMS UNDER THIS ACT; TO PROVIDE
23 FOR THE PAYMENT OF INTEREST AND PENALTIES BY A HOLDER WHO FAILS TO
24 REPORT, PAY, OR DELIVER PROPERTY IN ACCORDANCE WITH THE PROVISIONS
25 OF THIS ACT; TO REPEAL SECTIONS 89-12-1 THROUGH 89-12-57,
26 MISSISSIPPI CODE OF 1972, WHICH CONSTITUTE THE UNIFORM DISPOSITION
27 OF UNCLAIMED 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 a fixed and certain interest in
92 intangible property that is held, issued, or owed in the course of
93 a holder's business, or by a government or governmental entity,
94 and all income or increments therefrom. The term includes
95 property that is referred to as or evidenced by:

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

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

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

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

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

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

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

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

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

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

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

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

132 (b) Money order, seven (7) years after issuance;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

236 **SECTION 3. Rules for taking custody.** Unless otherwise
237 provided in this act or by other statute of this state, property
238 that is presumed abandoned, whether located in this or another
239 state, is subject to the custody of this state if:

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

242 (b) The records of the holder do not reflect the
243 identity of the person entitled to the property and it is
244 established that the last known address of the person entitled to
245 the property is in the state;

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

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

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

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

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

264 (f) The transaction out of which the property arose
265 occurred in this state, the holder is a domiciliary of a state
266 that does not provide for the escheat or custodial taking of the

267 property, and the last known address of the apparent owner or
268 other person entitled to the property is unknown or is in a state
269 that does not provide for the escheat or custodial taking of the
270 property; or

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

278 **SECTION 4. Dormancy charge.** A holder may deduct from
279 property presumed abandoned a charge imposed by reason of the
280 owner's failure to claim the property within a specified time only
281 if there is a valid and enforceable written contract between the
282 holder and the owner pursuant to which the holder may impose the
283 charge and the holder regularly imposes the charge, which is not
284 regularly reversed or otherwise canceled. The amount of the
285 deduction is limited to an amount that is not unconscionable.

286 **SECTION 5. Burden of proof as to property evidenced by**
287 **record of check or draft.** A record of the issuance of a check,
288 draft, or similar instrument is prima facie evidence of an
289 obligation. In claiming property from a holder who is also the
290 issuer, the administrator's burden of proof as to the existence
291 and amount of the property and its abandonment is satisfied by
292 showing issuance of the instrument and passage of the requisite
293 period of abandonment. Defenses of payment, satisfaction,
294 discharge, and want of consideration are affirmative defenses that
295 must be established by the holder.

296 **SECTION 6. Report of abandoned property.** (1) A holder of
297 property presumed abandoned shall make a report to the
298 administrator concerning the property.

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

300 (a) A description of the property;

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

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

308 (d) In the case of money amounting to Fifty Dollars
309 (\$50.00) or more held or owing under any annuity or life or
310 endowment insurance policy, the full name and last known address
311 of the insured or annuitant and of the beneficiary;

312 (e) The date, if any, on which the property became
313 payable, demandable, or returnable, and the date of the last
314 transaction with the apparent owner with respect to the property;
315 and

316 (f) Other information that the administrator by rule
317 prescribes as necessary for the administration of this act.

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

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

329 (5) The holder of property presumed abandoned shall send
330 written notice to the apparent owner, not more than one hundred
331 twenty (120) days or less than sixty (60) days before filing the

332 report required by this section, stating that the holder is in
333 possession of property subject to this act if:

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

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

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

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

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

351 **SECTION 7. Payment or delivery of abandoned property.** (1)

352 Upon filing the report required by Section 6 of this act, the
353 holder of property presumed abandoned shall pay, transfer, or
354 cause to be paid or transferred to the administrator the property
355 described in the report as unclaimed, but if the property is an
356 automatically renewable deposit, and a penalty or forfeiture in
357 the payment of interest would result, the time for compliance is
358 extended until a penalty or forfeiture would no longer result.

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

365 intermediary to transfer or dispose of the security or the
366 security entitlement in accordance with Section 75-8-101 et seq.
367 (Article 8 of the Uniform Commercial Code).

368 (3) If the holder of property reported to the administrator
369 is the issuer of a certificated security, the administrator has
370 the right to obtain a replacement certificate pursuant to Section
371 75-8-101 et seq. (Article 8 of the Uniform Commercial Code), but
372 an indemnity bond is not required.

373 (4) An issuer, the holder and any transfer agent or other
374 person acting pursuant to the instructions of and on behalf of the
375 issuer or holder in accordance with this section is not liable to
376 the apparent owner and must be indemnified against claims of any
377 person in accordance with Section 9 of this act.

378 **SECTION 8. Notice and publication of lists of abandoned**
379 **property.** (1) The administrator shall publish a notice not later
380 than November 30 of the year next following the year in which
381 abandoned property has been paid or delivered to the
382 administrator. The notice must be published in a newspaper of
383 general circulation in the county of this state in which is
384 located the last known address of any person named in the notice.
385 If a holder does not report an address for the apparent owner, or
386 the address is outside this state, the notice must be published in
387 the county in which the holder has its principal place of business
388 within this state or another county that the administrator
389 reasonably selects. The advertisement must be in a form that, in
390 the judgment of the administrator, is likely to attract the
391 attention of the apparent owner of the unclaimed property. The
392 form must contain the following information:

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

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

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

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

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

409 **SECTION 9. Custody by state; recovery by holder; defense of**
410 **holder.** (1) In this section, payment or delivery is made in
411 "good faith" if:

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

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

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

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

426 (3) A holder who has paid money to the administrator
427 pursuant to this act may subsequently make payment to a person
428 reasonably appearing to the holder to be entitled to payment.
429 Upon a filing by the holder of proof of payment and proof that the
430 payee was entitled to the payment, the administrator shall

431 promptly reimburse the holder for the payment without imposing a
432 fee or other charge. If reimbursement is sought for a payment
433 made on a negotiable instrument, including a travelers check or
434 money order, the holder must be reimbursed upon filing proof that
435 the instrument was duly presented and that payment was made to a
436 person who reasonably appeared to be entitled to payment. The
437 holder must be reimbursed for payment made even if the payment was
438 made to a person whose claim was barred under Section 18(1) of
439 this act.

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

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

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

456 **SECTION 10. Crediting of dividends, interest and increments**
457 **to owner's account.** If property other than money is paid,
458 delivered, or transferred to the administrator under this act, the
459 owner is entitled to receive from the administrator any income or
460 gain realized or accruing on the property at or before liquidation
461 or conversion of the property into money. If the property was an
462 interest-bearing demand, savings, or time deposit, including a
463 deposit that is automatically renewable, the administrator shall

464 pay interest at a rate of eight percent (8%) a year or any lesser
465 rate the property earned while in the possession of the holder.
466 Interest begins to accrue when the property is delivered to the
467 administrator and ceases on the earlier of the expiration of ten
468 (10) years after delivery or the date on which payment is made to
469 the owner. Interest on interest-bearing property is not payable
470 for any period before the effective date of this act, unless
471 authorized by law not superseded by this act.

472 **SECTION 11. Public sale of abandoned property.** (1) Except
473 as otherwise provided in this section, the administrator, within
474 three (3) years after the receipt of abandoned property, shall
475 sell it to the highest bidder at public sale at a location in the
476 state which in the judgment of the administrator affords the most
477 favorable market for the property. The administrator may decline
478 the highest bid and reoffer the property for sale if the
479 administrator considers the bid to be insufficient. The
480 administrator need not offer the property for sale if the
481 administrator considers that the probable cost of sale will exceed
482 the proceeds of the sale. A sale held under this section must be
483 preceded by a single publication of notice, at least three (3)
484 weeks before sale, in a newspaper of general circulation in the
485 county in which the property is to be sold.

486 (2) Securities listed on an established stock exchange must
487 be sold at prices prevailing on the exchange at the time of sale.
488 Other securities may be sold over the counter at prices prevailing
489 at the time of sale or by any reasonable method selected by the
490 administrator. If securities are sold by the administrator before
491 the expiration of three (3) years from their delivery to the
492 administrator, a person making a claim under this act before the
493 end of the three-year period is entitled to the proceeds of the
494 sale of the securities or the market value of the securities at
495 the time the claim is made, whichever is greater, plus dividends,
496 interest or other increments thereon up to the time the claim is

497 made, less any deduction for expenses of sale. A person making a
498 claim under this act after the expiration of the three-year period
499 is entitled to receive the securities delivered to the
500 administrator by the holder, if they still remain in the custody
501 of the administrator, or the net proceeds received from sale, and
502 is not entitled to receive any appreciation in the value of the
503 property occurring after delivery to the administrator, except in
504 a case of intentional misconduct or malfeasance by the
505 administrator.

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

511 **SECTION 12. Deposit of funds.** (1) All funds received under
512 the provisions of Sections 1 through 30 of this act shall
513 forthwith be deposited by the treasurer in a special fund hereby
514 established in the State Treasury to be designated the "Abandoned
515 Property Claims Payment Fund" an amount not exceeding One Hundred
516 Thousand Dollars (\$100,000.00) from which he shall make prompt
517 payment of claims duly allowed by him as hereinafter provided.
518 The administrator shall record the name and last known address of
519 each person appearing from the holders' reports to be entitled to
520 the abandoned property and the name and last known address of each
521 insured person or annuitant and beneficiary and, with respect to
522 each policy or contract listed in the report of an insurance
523 company, its number, the name of the corporation and the amount
524 due. The record shall be available for public inspection at all
525 reasonable business hours.

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

528 (a) Expenses of sale of abandoned property;

529 (b) Costs of mailing and publication in connection with
530 abandoned property;

531 (c) Reasonable service charges; and

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

534 **SECTION 13. Claim of another state to recover property.** (1)

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

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

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

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

555 (d) The property was subjected to custody by this state
556 under Section 3(a) (place of transaction) and under the laws of
557 the state of domicile of the holder the property has escheated or
558 become subject to a claim of abandonment by that state; or

559 (e) The property is a sum payable on a travelers check,
560 money order or similar instrument that was purchased in the other
561 state and delivered into the custody of this state under Section

562 3(g), and under the laws of the other state the property has
563 escheated or become subject to a claim of abandonment by that
564 state.

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

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

575 **SECTION 14. Filing claim with administrator; handling of**
576 **claims by administrator.** (1) A person, excluding another state,
577 claiming an interest in property paid or delivered to the
578 administrator may file a claim on a form prescribed by the
579 administrator and verified by the claimant.

580 (2) Within ninety (90) days after a claim is filed, the
581 administrator shall allow or deny the claim and give written
582 notice of the decision to the claimant. If the claim is denied,
583 the administrator shall inform the claimant of the reasons for the
584 denial and specify what additional evidence is required before the
585 claim will be allowed. The claimant may then file a new claim
586 with the administrator or maintain an action under Section 15 of
587 this act.

588 (3) Within thirty (30) days after a claim is allowed, the
589 property or the net proceeds of a sale of the property shall be
590 delivered or paid by the administrator to the claimant, together
591 with any additional amount to which the claimant is entitled under
592 Sections 10 and 11 of this act.

593 (4) A holder who pays the owner for property that has been
594 delivered to the state and which, if claimed from the

595 administrator by the owner would be subject to an increment under
596 Sections 10 and 11 of this act, may recover from the administrator
597 the amount of the increment.

598 **SECTION 15. Action to establish claim.** A person aggrieved
599 by a decision of the administrator or whose claim has not been
600 acted upon within ninety (90) days after its filing may maintain
601 an original action to establish the claim in circuit court, naming
602 the administrator as a defendant. If the aggrieved person
603 establishes the claim in an action against the administrator, the
604 court may award the claimant reasonable attorney's fees.

605 **SECTION 16. Election to take payment or delivery.** (1) The
606 administrator may decline to receive property reported under this
607 act which the administrator considers to have a value less than
608 the expenses of notice and sale.

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

615 **SECTION 17. Destruction or disposition of property having no**
616 **substantial commercial value; immunity from liability.** If the
617 administrator determines after investigation that property
618 delivered under this act has no substantial commercial value, the
619 administrator may destroy or otherwise dispose of the property at
620 any time. An action or proceeding may not be maintained against
621 the state or any officer or against the holder for or on account
622 of any acts taken by the administrator under this section, except
623 for acts constituting intentional misconduct.

624 **SECTION 18. Periods of limitation.** (1) The expiration,
625 before or after the effective date of this act, of a period of
626 limitation on the owner's right to receive or recover property,
627 whether specified by contract, statute or court order, does not

628 preclude the property from being presumed abandoned or affect a
629 duty to file a report or to pay or deliver or transfer property to
630 the administrator as required by this act.

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

638 **SECTION 19. Requests for reports and examination of records.**

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

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

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

661 (4) Documents and working papers obtained or compiled by the
662 administrator, or the administrator's agents, employees or
663 designated representatives in the course of conducting an
664 examination are confidential and are not public records but the
665 documents and papers may be:

666 (a) Used by the administrator in the course of an
667 action to collect unclaimed property or otherwise enforce this
668 act;

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

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

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

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

686 (6) If a holder fails after the effective date of this act
687 to maintain the records required by Section 20 of this act and the
688 records of the holder available for the periods subject to this
689 act are insufficient to permit the preparation of a report, the
690 administrator may require the holder to report and pay the amount
691 the administrator may reasonably estimate on the basis of any
692 available records of the holder or on the basis of any other
693 reasonable method of estimation that the administrator may select.

694 **SECTION 20. Retention of records.** (1) A holder required to
695 file a report under Section 6 of this act shall maintain its
696 records containing the information required to be included in the
697 report until the holder files the report and for ten (10) years
698 after the date of filing, unless a shorter time is provided in
699 subsection (2) or by rule of the administrator.

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

707 **SECTION 21. Enforcement.** The administrator may maintain an
708 action in this or another state to enforce this act. The court
709 may award reasonable attorney's fees to the prevailing party.

710 **SECTION 22. Interstate agreements and cooperation; joint and**
711 **reciprocal actions with other states.** (1) The administrator may
712 enter into an agreement with another state to exchange information
713 relating to abandoned property or its possible existence. The
714 agreement may permit the other state, or another person acting on
715 behalf of a state, to examine records as authorized in Section 19
716 of this act. The administrator by rule may require the reporting
717 of information needed to enable compliance with an agreement made
718 under this section and prescribe the form.

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

722 (3) At the request of another state, the Attorney General of
723 this state may maintain an action on behalf of the other state to
724 enforce, in this state, the unclaimed property laws of the other
725 state against a holder of property subject to escheat or a claim
726 of abandonment by the other state, if the other state has agreed

727 to pay expenses incurred by the Attorney General in maintaining
728 the action.

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

743 **SECTION 23. Interest and penalties.** (1) A holder who fails
744 to report, pay or deliver property within the time prescribed by
745 this act shall pay to the administrator interest at the annual
746 rate of twelve percent (12%) on the property or value thereof from
747 the date the property should have been reported, paid or
748 delivered.

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

757 (3) A holder who willfully fails to report, pay or deliver
758 property within the time prescribed by this act or willfully fails
759 to perform other duties imposed by this act, shall pay to the

760 administrator, in addition to interest as provided in subsection
761 (1), a civil penalty of One Thousand Dollars (\$1,000.00) for each
762 day the report, payment, or delivery is withheld, or the duty is
763 not performed, up to a maximum of Twenty-five Thousand Dollars
764 (\$25,000.00), plus twenty-five percent (25%) of the value of any
765 property that should have been but was not reported.

766 (4) A holder who renders a fraudulent report shall pay to
767 the administrator, in addition to interest as provided in
768 subsection (1), a civil penalty of One Thousand Dollars
769 (\$1,000.00) for each day from the date a report under this act was
770 due, up to a maximum of Twenty-five Thousand Dollars (\$25,000.00),
771 plus twenty-five percent (25%) of the value of any property that
772 should have been but was not reported.

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

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

787 (2) Any agreement by an owner, the primary purpose of which
788 is to locate, deliver, recover or assist in the recovery of
789 property is enforceable only if the agreement is in writing,
790 clearly sets forth the nature of the property and the services to
791 be rendered, is signed by the apparent owner and states the value

792 of the property before and after the fee or other compensation has
793 been deducted.

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

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

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

807 **SECTION 25. Foreign transactions.** This act does not apply
808 to property held, due and owing in a foreign country and arising
809 out of a foreign transaction.

810 **SECTION 26. Applicability of act.** (1) An initial report
811 filed under this act for property that was not required to be
812 reported before the effective date of this act but which is
813 subject to this act must include all items of property that would
814 have been presumed abandoned during the ten-year period next
815 preceding the effective date of this act as if this act had been
816 in effect during that period.

817 (2) This act does not relieve a holder of a duty that arose
818 before the effective date of this act to report, pay or deliver
819 property. Except as otherwise provided in Section 18(2), a holder
820 who did not comply with the law in effect before the effective
821 date of this act is subject to the applicable provisions for
822 enforcement and penalties which then existed, which are continued
823 in effect for the purpose of this section.

824 **SECTION 27. Rules.** The administrator may adopt necessary
825 rules to carry out this act.

826 **SECTION 28. Uniformity of application and construction.**
827 This act shall be applied and construed to effectuate its general
828 purpose to make uniform the law with respect to the subject of
829 this act among states enacting it.

830 **SECTION 29. Short title.** This act may be cited as the
831 Mississippi Uniform Unclaimed Property Act.

832 **SECTION 30. Severability clause.** If any provision of this
833 act or the application thereof to any person or circumstance is
834 held invalid, the invalidity does not affect other provisions or
835 applications of this act which can be given effect without the
836 invalid provision or application, and to this end the provisions
837 of this act are severable.

838 **SECTION 31.** Sections 89-12-1, 89-12-3, 89-12-5, 89-12-7,
839 89-12-9, 89-12-11, 89-12-13, 89-12-15, 89-12-17, 89-12-19,
840 89-12-21, 89-12-23, 89-12-25, 89-12-27, 89-12-29, 89-12-31,
841 89-12-33, 89-12-35, 89-12-37, 89-12-39, 89-12-41, 89-12-43,
842 89-12-45, 89-12-47, 89-12-49, 89-12-53, 89-12-55 and 89-12-57,
843 Mississippi Code of 1972, which constitute the Uniform Disposition
844 of Unclaimed Property Act, are repealed.

845 **SECTION 32.** This act shall take effect and be in force from
846 and after July 1, 2006.