

NO. 161. AN ACT RELATING TO THE DISPOSITION OF UNCLAIMED PROPERTY BY THE STATE.

(S.158)

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 27 V.S.A. chapter 14 is added to read:

CHAPTER 14. UNCLAIMED PROPERTY

§ 1241. DEFINITIONS

As used in this chapter, unless the context otherwise requires:

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

(2) "Asset locator" means a person who enters into an agreement with an owner the primary purpose of which is to locate, deliver, recover, or assist for compensation in the recovery of property that is presumed abandoned.

(3) "Business association" means any corporation, joint stock company, investment company, business trust, partnership, unincorporated association, joint venture, limited liability company, trust company, safe deposit company, financial organization, insurance company, mutual fund, utility, or other business entity consisting of one or more persons, whether or not for profit.

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

(5) "Financial organization" means any savings and loan association, savings bank, bank, banking organization, or credit union.

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

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

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

(9) "Mineral proceeds" means amounts payable for the extraction, production, or sale of minerals, or, upon the

abandonment of those payments, all payments that become payable thereafter. The term includes amounts payable:

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

(B) for the extraction, production, or sale of minerals, including net revenue interests, royalties, overriding royalties, extraction payments, and production payments; and

(C) under an agreement or option, including a joint operating agreement, unit agreement, pooling agreement, and farm-out agreement.

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

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

(12) "Person" means an individual, business association, financial organization, estate, trust, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(13) "Property" means tangible property described in section 1243 of this title or a fixed and certain interest in intangible property that is held, issued, or owed in the course of a holder's business, or by a government, governmental subdivision, agency, or instrumentality, and all income or increments therefrom. The term includes property that is referred to as or evidenced by:

(A) money, a check, draft, deposit, interest, or dividend;

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

(C) stock or other evidence of ownership of an interest in a business association or financial organization;

(D) a bond, debenture, note, or other evidence of indebtedness;

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

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

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

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

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

(16) "Treasurer" means the treasurer of the state of Vermont or a designee of the treasurer.

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

§ 1242. PRESUMPTIONS OF ABANDONMENT

(a) Property is presumed abandoned if it is unclaimed by the apparent owner during the time set forth below for the particular property:

(1) traveler's check, 15 years after issuance;

(2) money order, seven years after issuance;

(3) all forms of checks, or any similar instrument, three years after issuance;

(4) stock or other equity interest in a business association or financial organization, including a security entitlement under article 8 of Title 9A, three years after the earlier of:

(A) the date of the most recent dividend, stock split, or other distribution unclaimed by the apparent owner; or

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

(5) debt of a business association or financial organization, other than a bearer bond or an original issue discount bond, three years after the date of the most recent interest payment unclaimed by the apparent owner;

(6) a demand, savings, bank money order or time deposit, including a deposit that is automatically renewable, three years after the earlier of the maturity or the date of the last indication by the owner of interest in the property; however, a deposit that is automatically renewable is deemed matured for purposes of this section upon its initial date of maturity;

(7) money or credits owed to a customer as a result of a retail business transaction, three years after the obligation accrued;

(8) amount owed by an insurer on a life or endowment insurance policy or an annuity that has matured or terminated, three years after the obligation to pay arose or, in the case of a policy or annuity payable upon proof of death, three years after the insured has attained, or would have attained if living, the limiting age under the mortality table on which the reserve is based;

(9) property distributable by a business association or financial organization in a course of dissolution, one year after the property becomes distributable;

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

(11) property held by a court, government, or governmental subdivision, agency, or instrumentality, one year after the property becomes distributable;

(12) wages or other compensation for personal services, one year after the compensation becomes payable;

(13) deposit or refund owed to a subscriber by a utility, three years after the deposit or refund becomes payable;

(14) property in an individual retirement account, defined benefit plan, or other account or plan that is qualified for tax deferral under the income tax laws of the United States, three years after the earliest of the following dates:

(A) the date of the distribution or attempted distribution of the property;

(B) the date of the required distribution as stated in the plan or trust agreement governing the plan; or

(C) the date, if determinable by the holder, specified in the income tax laws of the United States by which distribution of the property must begin in order to avoid a tax penalty; and

(15) all other property, three years after the owner's right to demand the property or after the obligation to pay or distribute the property arises, whichever occurs first.

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

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

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

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

(2) owner-directed activity in the account in which the property is held, or in another account of the owner's held by the same business association or financial organization, including a direction by the owner to increase, decrease, or change the amount or type of property held in the account;

(3) the making of a deposit to or withdrawal from a bank account;

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

(5) in the case of any demand, savings, or matured time deposits with a banking or financial organization, including deposits that are automatically renewable, the holder has sent the owner by first class mail a statement of account or other associated mailing from the bank or financial institution, which has not been returned by the postal service as undeliverable. In the event the mailing was returned as undeliverable, the property shall be considered abandoned three years after the return, unless the owner during that three years takes any action described in subdivisions (1), (2), (3), or (4) of this subsection; and

(6) an electronic record of an internet account inquiry or action, when made via the use of the owner's unique personal identification information, may establish an indication of the owner's interest in the property, provided that the inquiry or action is traceable to the owner and not to a third party and was not caused by an event within the electronic system.

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

§ 1243. CONTENTS OF SAFE DEPOSIT BOX OR OTHER SAFEKEEPING DEPOSITORY

Tangible property held in a safe deposit box or other safekeeping depository in this state in the ordinary course of the holder's business and proceeds resulting from the sale of the property permitted by other law are presumed abandoned if the property remains unclaimed by the owner for more than five years after expiration of the lease or rental period on the box or other depository.

§ 1244. UNCLAIMED DEMUTUALIZATION PROCEEDS

(a) Property distributable in the course of a demutualization, rehabilitation, or related reorganization of an insurance company is deemed abandoned two years after the date the property is first distributable if, at the time of the first distribution, the last known address of the owner on the books and records of the holder is known to be incorrect, or the distribution or statements are returned by the post office as undeliverable; and the owner has not:

(1) communicated in writing with the holder or its agent regarding the property; or

(2) otherwise communicated with the holder regarding the property as evidenced by a memorandum or other record on file with the holder or its agent.

(b) Property distributable in the course of a demutualization, rehabilitation, or related reorganization of a mutual insurance company that is not subject to subsection (a) of this section shall be reportable as otherwise provided by this chapter.

(c) Property subject to subsection (a) of this section shall be reported and delivered pursuant to this chapter no later than May 1 of the calendar year following the calendar year that the property is deemed abandoned.

§ 1245. RULES FOR TAKING CUSTODY

Except as otherwise provided in this chapter or by other statute of this state, property that is presumed abandoned, whether located in this or another state, is subject to the custody of this state if:

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

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

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

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

(B) the holder is domiciled in this state or is a government or governmental subdivision, agency, or instrumentality of this state and has not previously paid or delivered the property to the state of the last known address of the apparent owner or other person entitled to the property;

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

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

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

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

§ 1246. BURDEN OF PROOF AS TO PROPERTY EVIDENCED BY RECORD OF CHECK OR DRAFT

A record of the issuance of a check, draft, or similar instrument is prima facie evidence of an obligation. In claiming property from a holder who is also the issuer, the treasurer's burden of proof as to the existence and amount of the property and its abandonment is satisfied by

showing issuance of the instrument and passage of the requisite period of abandonment. Defenses of payment, satisfaction, discharge, and want of consideration are affirmative defenses that shall be established by the holder.

§ 1247. REPORT OF UNCLAIMED PROPERTY

(a) A holder of property presumed abandoned shall make a report to the treasurer concerning the property.

(b) The report shall be verified and shall contain:

(1) a description of the property;

(2) except with respect to a traveler's check or money order, the name, if known, and last known address, if any, and the Social Security number or taxpayer identification number, if readily ascertainable, of the apparent owner of property of the value of \$50.00 or more;

(3) an aggregated amount of items valued under \$25.00 each;

(4) in the case of an amount of \$50.00 or more held or owing under an annuity or a life or endowment insurance policy, the full name and last known address of the annuitant or insured and of the beneficiary;

(5) in the case of property held in a safe deposit box or other safekeeping depository, an indication of the place where it is held and where it may be inspected by the treasurer, and any amounts owing to the holder;

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

(7) other information that the treasurer prescribes as necessary by rule for the administration of this chapter.

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

(d) The report shall be filed before May 1 of each year and cover the preceding calendar year.

(e) The holder of property presumed abandoned shall send written notice to the apparent owner, at no cost to the apparent owner, not more than 120 days or less than 60 days before filing the report, stating that the holder is in possession of property subject to this chapter, if:

(1) the holder has in its records an address for the apparent owner that the holder's records do not reveal to be inaccurate;

(2) the claim of the apparent owner is not barred by a statute of limitations; and

(3) the value of the property is \$50.00 or more.

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

(g) The holder of property presumed abandoned shall file with the report an affidavit stating that the holder has complied with subsection (e) of this section.

(h) Verification and affidavit, if made by a partnership, shall be executed by a partner; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer or his or her designee.

§ 1248. PAYMENT OR DELIVERY OF UNCLAIMED PROPERTY

(a) Except for property held in a safe deposit box or other safekeeping depository, upon filing the report required by section 1247 of this title, the holder of property presumed abandoned shall pay, deliver, or cause to be paid or delivered to the treasurer the property described in the report as unclaimed. However, if the property is an automatically renewable deposit, and a penalty or forfeiture in the payment of interest would result, the time for compliance is extended until a penalty or forfeiture would no longer result. Tangible property held in a safe deposit box or other safekeeping depository may not be delivered to the treasurer until 120 days after filing the report required by section 1247 of this title.

(b) If the property reported to the treasurer is a security or security entitlement under article 8 of Title 9A, the treasurer is an appropriate person to make an endorsement, instruction, or entitlement order on behalf of the apparent owner to invoke the duty of the issuer or its transfer agent or the securities intermediary to transfer or dispose of the security or the security entitlement in accordance with article 8 of Title 9A.

(c) If the holder of property reported to the treasurer is the issuer of a certificated security, the treasurer has the right to obtain a replacement certificate pursuant to section 8-405 of Title 9A, but an indemnity bond is not required.

(d) An issuer, the holder, or a transfer agent or other person acting pursuant to the instructions of and on behalf of the issuer or holder in accordance with this section shall not be liable to the apparent owner in accordance with section 1250 of this title.

(e) A holder may deduct from that property a charge imposed by reason of the owner's failure to claim the property within a specified time only if there is a valid and enforceable written contract between the holder and the owner under which the holder may impose the charge and the holder regularly imposes the charge, which is not regularly reversed or otherwise cancelled. The amount of the charge shall be limited to an amount that is not unconscionable.

(f) The treasurer may require holders of unclaimed mutual funds to liquidate the mutual fund shares and remit the cash proceeds of the sale.

§ 1249. NOTICE AND PUBLICATION OF LISTS OF UNCLAIMED PROPERTY

(a) The treasurer shall notify apparent owners of unclaimed property under this chapter in the manner and method set out in subsection (b) of this section.

In deciding whether to use an additional method specified in subdivision (b)(2) of this section, and which of those methods to use, the treasurer shall employ the method he or she deems to be the most cost-effective method available within its appropriations, while also giving consideration to the effectiveness of the method.

(b) The treasurer:

(1) shall notify all apparent owners of unclaimed property in accordance with this section by means of posting on the treasurer's website on the internet;

(2) may use any of the following to provide additional notice to the apparent owners:

(A) publication in a newspaper of general circulation:

(i) in the area of the state in which the last known address of a person to be named in the notice is located;

(ii) in the area in which the holder has its principal place of business in the state; or

(iii) in the area the treasurer deems to provide the best opportunity to reach the apparent owner;

(B) individual contact by regular or electronic mail, or by telephone, if the treasurer has current contact information on file;

(C) any other manner and method that the treasurer considers effective for providing notice and publication.

(c) In the notice and publication under subsection (b) of this section, the treasurer shall provide the names of the apparent owners of the property and information regarding recovery of the unclaimed property.

(d) The treasurer is not required to publish in the notice an item of less than \$100.00 in value.

§ 1250. CUSTODY BY STATE; RECOVERY BY HOLDER; RELIEF OF HOLDER FROM LIABILITY

(a) In this section, payment or delivery is made in "good faith" if: (1) payment or delivery was made in a reasonable attempt to comply with this chapter;

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

(3) there is no showing that the records under which the payment or delivery was made did not meet reasonable commercial standards of practice.

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

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

1259(a) of this title. Once the holder is reimbursed, the holder shall reassume liability with respect to the property.

(d) A holder who has delivered property other than money to the treasurer pursuant to this chapter may reclaim the property if it is still in the possession of the treasurer, without paying any fee or other charge, upon filing proof that the apparent owner has claimed the property from the holder. Upon recovering the property, the holder shall reassume custody, responsibility for the safekeeping of the property, and liability with respect to the property.

(e) The treasurer may accept a holder's affidavit, sworn under oath, as sufficient proof of the holder's right to recover money and property under this

section.

(f) If a holder pays or delivers property to the treasurer in good faith and, thereafter, another person claims the property from the holder or another state claims the money or property under its laws relating to escheat or abandoned or unclaimed property, no lawsuit may be maintained against the holder.

(g) Property removed from a safe deposit box or other safekeeping depository shall be received by the treasurer subject to the holder's right to be reimbursed for the cost of the opening and to any valid lien or contract providing for the holder to be reimbursed for unpaid rent or storage charges.

The treasurer shall reimburse the holder out of the proceeds remaining after deducting the expense incurred by the treasurer in selling the property.

§ 1251. INCOME ACCRUING AFTER PAYMENT OR DELIVERY

If property other than money is delivered to the treasurer under this chapter, the owner is entitled to receive from the treasurer any income, gain, or other increments identifiable to the owner realized or accruing on the property at or before liquidation or conversion of the property into money, but the owner is not entitled to any income, gain, or other increments realized or accruing on the money after liquidation. When money is paid or delivered to the treasurer under this chapter, the owner is not entitled to receive income, gain, or other increments accruing thereafter.

§ 1252. PUBLIC SALE OF UNCLAIMED PROPERTY

(a) The treasurer shall, within one year, sell abandoned property, other than securities, to the highest bidder at public sale at a location which in the judgment of the treasurer affords the most favorable market for the sale of the property. The treasurer may decline any bid as insufficient. The treasurer need not offer the property for sale if the treasurer considers that the probable cost of sale will exceed the proceeds of the sale, or if the treasurer considers the abandoned property to have little or no value. A sale held under this subsection shall be preceded by a single publication of notice, at least three weeks before the sale, in a newspaper of general circulation in the county in which the property is to be sold, or by such other methods as the treasurer determines will best advertise the sale.

(b) The treasurer shall, within one year after receipt, sell all abandoned securities. Securities

listed on an established stock exchange shall be sold at prices prevailing on the exchange at the time of sale. Other securities may be sold over the counter at prices prevailing at the time of sale or by any reasonable method selected by the treasurer. A person making a claim under this chapter is entitled to the proceeds of the sale of the securities less any deduction for expenses of this sale. A person making a claim under this chapter before the securities are sold is entitled to receive the securities without additional cost.

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

(d) Notwithstanding the other provisions of this chapter, the treasurer is authorized to use discretion in selling abandoned property. The treasurer may delay a sale if, in his or her judgment, market conditions are unfavorable. The treasurer may determine that certain types of abandoned property are not appropriate for public sale and withhold those items from sale.

§ 1253. DEPOSIT OF FUNDS; INFORMATION CONCERNING OWNER

(a) All funds received under this chapter, including the proceeds from the sale of unclaimed property under section 1252 of this title, shall forthwith be received by the treasurer, except that the treasurer shall retain in a separate fund an amount not exceeding \$100,000.00 or 50 percent of the funds received during the previous year, whichever is greater, from which he or she shall make prompt payment of claims duly allowed by him or her as provided in this section. The treasurer shall record the name and last known address of each owner appearing on the holder's reports and the names and last known address of each insured person or annuitant and beneficiary, and with respect to each policy or annuity listed in the report of an insurance company its number, the name of the company, and the amount due. The record shall be available for public inspection at all reasonable hours.

(b) Before making a deposit to the credit of the general fund, the treasurer may deduct:

- (1) expenses of a sale of unclaimed property;
- (2) costs of mailing and publication in connection with unclaimed property;
- (3) reasonable service charges;
- (4) expenses incurred in examining records of holders of property and in collecting the property from those holders; and

(5) money for which a claim may no longer be made pursuant to subsection 1259(c) of this title and which shall be paid by the treasurer into the higher education endowment trust fund created by section 2885 of Title 16 under authority of this subsection.

(c) Notwithstanding any other provision of this chapter, or of subchapter 3 of chapter 5 of Title 1, the treasurer may withhold information concerning an individual, or specific abandoned property, when in the treasurer's judgment it is necessary to assure that abandoned property is returned to the rightful owner, or to otherwise protect the owner. In addition, the treasurer may withhold information concerning individuals and abandoned property until notice has been provided in accordance with section 1249 of this title and deny requests for lists of owners in any format for 24 months after the date the property is paid or delivered to the treasurer.

§ 1254. CLAIM OF ANOTHER STATE TO RECOVER PROPERTY

(a) After property has been paid or delivered to the treasurer under this chapter, another state may recover the property if:

- (1) the property was paid or delivered to the custody of this state because the records of the holder did not reflect a last known location of the apparent owner within the borders of the state, and the other state establishes that the apparent owner or other person entitled to the property was last known to be located within the borders of that state and, under laws of that state, the property has escheated or become subject to a claim of abandonment by that state;
- (2) the property was paid or delivered to the custody of this state because the laws of the other state did not provide for the escheat or custodial taking of the property, and, under the laws of that state, subsequently enacted, the property has escheated or become subject to a claim of abandonment by that state;
- (3) the records of the holder were erroneous in that they did not accurately identify the owner of the property and the last known location of the owner within the borders of another state and, under the laws of that state, the property has escheated or become subject to a claim of abandonment by that state;
- (4) the property was subjected to custody by this state under subsection 1245(f) of this title, and under the laws of the state of domicile of the holder, the property has escheated or become subject to a claim of abandonment by that state; or

(5) the property is a sum payable on a traveler's check, money order, or similar instrument that was purchased in the other state and delivered into the custody of this state under subsection 1245(g) of this title, and under the laws of the other state, the property has escheated or become subject to a claim of abandonment by that state.

(b) A claim of another state to recover escheated or abandoned property shall be presented in a form prescribed by the treasurer, who shall decide the claim within 90 days after it is presented. The treasurer shall allow the claim upon determining that the other state is entitled to the unclaimed property under subsection (a) of this section.

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

§ 1255. FILING CLAIM WITH TREASURER; HANDLING OF CLAIMS BY TREASURER

(a) A person, excluding another state, claiming property paid or delivered to the treasurer may file a claim on a form prescribed by the treasurer and sworn under oath by the claimant.

(b) The treasurer shall review every abandoned property claim filed and determine whether to allow or deny the claim as promptly as possible, consistent with the need to determine the accuracy of the claim. The treasurer may request additional information from a claimant in order to make a determination of the claim. The treasurer shall give written notice of the decision to the claimant. If the claim is denied, the treasurer shall inform the claimant of the reasons for the denial and specify what additional evidence is required before the claim will be allowed. The claimant may then file a new claim with the treasurer or maintain an appeal under section 1256 of this title.

(c) The property or the net proceeds of a sale of the property shall be delivered or paid by the treasurer to the claimant as promptly as possible, provided that the treasurer has sufficient funds under section 1253 of this title.

(d) Any obligation to reimburse payment to the state treasurer under this chapter shall be the obligation of this state. Any amount payable pursuant to the reimbursement provisions of this chapter or payable under any judgment against the state pursuant to this chapter, shall be paid from the separate trust fund established by this chapter or, if the separate trust fund is insufficient, from state taxes levied upon all taxable property or income. If the judgment remains unsatisfied 90 days following the date of entry thereof and the conclusion of any appeal of the judgment, the amount of the judgment may be used as a

credit against any taxes then due or thereafter becoming due to the state by the person in whose favor judgment was rendered.

§ 1256. APPEAL

A person aggrieved by a decision of the treasurer on a claim may appeal to the Washington superior court which may review the claim de novo.

§ 1257. ELECTION TO TAKE PAYMENT OR DELIVERY

(a) The treasurer may decline to receive property reported or delivered under this chapter.

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

§ 1258. DESTRUCTION OR DISPOSITION OF PROPERTY HAVING NO SUBSTANTIAL COMMERCIAL VALUE; IMMUNITY FROM LIABILITY

If the treasurer determines after investigation that property delivered under this chapter has no substantial commercial value, the treasurer may destroy or otherwise dispose of the property at any time. An action or proceeding may not be maintained against the state or any officer or against the holder for or on account of an act of the treasurer under this section, except for intentional misconduct or malfeasance.

§ 1259. PERIODS OF LIMITATION

(a) The expiration of a period of limitation on the owner's right to receive or recover property, whether specified by contract, statute, or court order, shall not preclude the property from being presumed abandoned or affect a duty to file a report or to pay or deliver or transfer property to the treasurer as required by this chapter.

(b) An action or proceeding may not be maintained by the treasurer to enforce this chapter in regard to the reporting, delivery, or payment of property more than 10 years after the holder specifically identified the property in a report filed with the treasurer or gave notice to the treasurer of a dispute regarding the property. In the absence of such a report or other express notice, the period of limitation shall be tolled. The period of limitation shall also be tolled by the filing of a report that is fraudulent.

(c) A claim may not be made, an appeal may not be taken under section 1256 of this title, nor may an

action or proceeding be maintained concerning abandoned property valued at \$100.00, or less, more than 10 years after the abandoned property was received from the holder under section 1248 of this title. For purposes of this subsection, the value of the abandoned property shall be that value as of the date the property was received from the holder by the treasurer.

§ 1260. REQUESTS FOR REPORTS AND EXAMINATION OF RECORDS

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

(b) The treasurer, at reasonable times and upon reasonable notice, may examine the records of any person to determine whether the person has complied with this chapter. The treasurer may conduct the examination even if the person believes it is not in possession of any property that shall be reported, paid, or delivered under this chapter. The treasurer may contract with any other person to conduct the examination on behalf of the treasurer.

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

(d) Documents and working papers obtained or compiled by the treasurer, or the treasurer's agent, employee, or designated representative, in the course of conducting an examination are confidential and are not public records, but the documents and papers may be:

(1) used by the treasurer in the course of an action to collect unclaimed property or otherwise enforce this chapter;

(2) used in joint examinations conducted with or pursuant to an agreement with another state, the federal government, or any other governmental subdivision, agency, or instrumentality;

(3) produced pursuant to subpoena or court order; or

(4) disclosed to the unclaimed property office of another state for that state's use in circumstances equivalent to those described in this subdivision, if the other state is bound to keep the documents and papers confidential.

(e) If an examination of the records of a person results in the disclosure of property reportable under this chapter, the treasurer may assess the cost of the examination against the holder at the rate of \$200.00 per day for each examiner, or a greater amount that is reasonable and was incurred, but the assessment may not exceed the value of the property found to be reportable. The cost of an examination made pursuant to subsection (c) of this section may be assessed only against the business association or financial organization.

(f) If a holder does not maintain the records required by section 1261 of this title and the records of the holder available for the periods subject to this chapter are insufficient to permit the preparation of a report, the treasurer may require the holder to report to and pay the treasurer the amount the treasurer reasonably estimates, on the basis of any available records of the holder or by any other reasonable method of estimation, should have been but was not reported.

§ 1261. RETENTION OF RECORDS

(a) Except as otherwise provided in subsection (b) of this section, a holder required to file a report under section 1247 of this title shall maintain the records containing the information required to be included in the report for 10 years after the holder files the report, unless a shorter period is provided by the treasurer by rule.

(b) A business association or financial organization that sells, issues, or provides to others for sale or issues in this state traveler's checks, money orders, or similar instruments other than third-party bank checks, for which the business association or financial organization is directly liable, shall maintain a record of the instruments while they remain outstanding, indicating the state and date of issue, for three years after the holder files the report.

§ 1262. ENFORCEMENT

The treasurer may, through the attorney general, maintain an action in this or another state to enforce this chapter. The court may award reasonable attorney's fees to the prevailing party.

§ 1263. INTERSTATE AGREEMENTS AND COOPERATION; JOINT AND RECIPROCAL ACTIONS WITH OTHER STATES

(a) The treasurer may enter into an agreement with another state to exchange information relating to unclaimed property or its possible existence. The agreement may permit the other state, or another person acting on behalf of that state, to examine

records as authorized in section 1260 of this title. The treasurer by rule may require the reporting of information needed to enable compliance with an agreement made under this section and prescribe the form.

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

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

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

§ 1264. INTEREST AND PENALTIES

(a) In addition to any other penalty provided by law:

(1) A holder who fails to report, pay, or deliver property within the time prescribed by this chapter shall pay to the treasurer interest on the property or value thereof from the date the property should have been reported, paid, or delivered. Interest shall be assessed at the prime rate as reported in the Money Rates section of the Wall Street Journal on the day the invoice for interest is issued by the treasurer's office.

(2) Except as otherwise provided in subdivision (3) of this subsection

(a), a holder who fails to report, pay, or deliver property within the time prescribed by this chapter, or fails to perform other duties imposed by this chapter, shall pay to the treasurer, in addition to interest as provided in this subsection, a civil penalty of \$200.00 for each day the report, payment, or delivery is withheld, or the duty is not performed, up to a maximum of \$5,000.00.

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

chapter, shall pay to the treasurer, in addition to interest as provided in this subsection, a civil penalty of \$1,000.00 for each day the report, payment, or delivery is withheld, or the duty is not performed, up to a maximum of \$25,000.00, plus 25 percent of the value of any property that should have been but was not reported.

(4) A holder who knowingly makes a false representation shall pay to the treasurer, in addition to interest as provided in this subsection, a civil penalty of \$1,000.00 for each, false representation up to a maximum of \$25,000.00, plus 25 percent of the value of any property that should have been but was not reported.

(5) The treasurer for good cause may waive, in whole or in part, interest and penalties under this subsection (a), and shall waive penalties if the holder acted in good faith and without negligence.

(6) Civil penalties under this section may be imposed by a court of competent jurisdiction.

(b) The treasurer, through the attorney general, may seek and obtain an injunction from a court of competent jurisdiction to require compliance with any provision of this chapter.

§ 1265. AGREEMENT TO LOCATE PROPERTY; ASSET LOCATORS

(a) All asset locators seeking to interact with the treasurer's office on behalf of owners shall first register with the office on forms prescribed by the treasurer. Registration information shall include, but not be limited to, an asset locator's previous business experience and whether the asset locator has a criminal record. In order to obtain and maintain registered status, all asset locators shall post a performance bond of not less than \$10,000.00 to insure the treasurer's office against any fraudulent or mistaken claims that may arise as a result of an heir finder's representation of an owner. A copy of any agreement, or contract, between an asset locator and an owner shall be filed with the treasurer's office, together with a signed by the owner and notarized "notice to claimant" form, as prescribed by the treasurer, describing the rights of the owner under this section.

(b) An agreement between an owner and an asset locator, the primary purpose of which is to locate, deliver, recover or assist in the recovery of property that is presumed abandoned, shall be void and unenforceable if it was entered into during the period commencing on the date the property was presumed abandoned and extending to a time that is

24 months after the date the property is paid or delivered to the treasurer. This subsection shall not apply to an agreement between an owner and a Vermont licensed attorney to file a claim as to identified property or contest the treasurer's denial of a claim.

(c) An agreement between an owner and an asset locator, the primary purpose of which is to locate, deliver, recover or assist in the recovery of property that is presumed abandoned, shall be enforceable only if the agreement is in writing in a form acceptable to the treasurer, clearly sets forth the nature of the property and the services to be rendered, is signed by the apparent owner, and states the value of the property before and after the fee or other compensation has been deducted.

(d) If an agreement covered by this section applies to mineral proceeds, and the agreement contains a provision to pay compensation that includes a portion of the underlying minerals or any mineral proceeds not then presumed abandoned, the provision is void and unenforceable.

(e) An agreement between an owner and an asset locator, the primary purpose of which is to locate, deliver, recover or assist in the recovery of property that is presumed abandoned and that provides for compensation that exceeds 10 percent of the value of the unclaimed property, shall be unenforceable.

(f) This section does not preclude an owner from asserting that an agreement covered by this section is invalid on grounds other than excessive compensation.

(g) No claim form may be sent to an asset locator without the prior written permission of the owner, or the owner's legal representative. Payments of all claims made to an owner who has been assisted by an asset locator shall be made to the owner, and not to the asset locator.

(h) An owner may not assign his or her rights, or property interests, under this chapter to an asset locator. No power of attorney containing provisions contrary to this section shall be enforceable.

§ 1266. FOREIGN TRANSACTIONS

This chapter shall not apply to property held, due, and owing in a foreign country and arising out of a foreign transaction.

§ 1267. RULES

The treasurer may adopt, pursuant to chapter 25 of Title 3, rules necessary to carry out this chapter.

§ 1268. UNIFORMITY OF APPLICATION AND CONSTRUCTION

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

§ 1269. SEVERABILITY CLAUSE

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

§ 1270. DECEASED OWNERS; MULTIPLE CLAIMANTS

(a) If the treasurer holds unclaimed property in the name of a deceased owner, the treasurer may deliver the property as follows:

(1) In the case of an open estate, to the administrator or executor.

(2) In the case of a closed estate and the unclaimed property is valued at less than \$2,500.00, in accordance with the probate court decree of distribution.

(3) In the absence of an open estate or probate court decree of distribution, and the unclaimed property is valued at less than \$2,500.00 to the surviving spouse of the deceased owner, or, if there is no surviving spouse, then to the next of kin according to section 551 of Title 14.

(4) In all other cases where the treasurer holds property in the name of a deceased owner, a probate estate shall be opened by the claimant, or other interested party, in order to determine the appropriate distribution of the unclaimed property. Where an estate is opened solely to distribute unclaimed property under this section, the probate court may waive any filing fees.

(b) If the treasurer holds unclaimed property valued at \$100.00 or less which more than one person owns, the treasurer may deliver the property as follows:

(1) If the property has been listed on the treasurer's website for less than one year, a proportionate share to each of the persons who owns the property and who files a claim.

(2) If the property has been listed on the treasurer's website for a year or more, to the first person who files a claim and who owns at least a share of the property.

Sec. 2. REPEAL

27 V.S.A. chapter 13 (unclaimed property) is repealed.

Sec. 2a. SUNSET; REPORT

(a) 27 V.S.A. § 1270(b) (multiple claimants of unclaimed property valued at \$100.00 or less) shall be repealed on July 1, 2009.

(b) On or before January 15, 2009, the state treasurer shall file a report with the House and Senate committees on government operations which describes the unclaimed property division's experience with the operation of 27 V.S.A.

§ 1270(b) and which recommends whether that subsection should be made permanent or should be repealed.

Sec. 3. APPLICATION; TRANSITIONAL PROVISIONS

(a) No income or gain shall be realized or accrued under 27 V.S.A. § 1251 prior to the effective date of this act.

(b) The expiration of a period of limitation on the owner's right to receive or recover property, whether specified by contract, statute, or court order, and whether before or after the effective date of this act, shall not preclude the property from being presumed abandoned or affect a duty to file a report or to pay or deliver or transfer property to the treasurer as required by chapter 14 of Title 27.

(c) If, after the effective date of this act, or as required by former chapter 13 of this title prior to enactment of this act, a holder does not maintain the records required by section 1261 of Title 27 as required by this act, and the records of the holder available for the periods subject to this chapter are insufficient to permit the preparation of a report, the treasurer may require the holder to report to and pay the treasurer the amount the treasurer reasonably estimates, on the basis of any available records of the holder or by any other reasonable method of estimation, should have been but was not reported.

(d) An initial report that was not required to be filed before the effective date of this act but which is subject to chapter 14 of Title 27 shall include all items of property that would have been presumed unclaimed during the 10-year period next preceding the effective date of this act as if chapter 14 of Title 27 had been in effect during that period.

(e) This act shall not relieve a holder of a duty that arose before the effective date of this act to report, pay, or deliver property as required by chapter 14 of Title 27. Except as otherwise provided in subsection 1259(b) of Title 27, a holder who did not comply with Vermont law in effect prior to the effective date of this act shall be subject to the applicable provisions for enforcement and penalties which then existed and which are continued in effect for the purpose of this section.

(f) The provisions of subsection 1248(e) of this title shall apply to contracts entered into after the effective date of this act.

(g) The money paid by the treasurer into the higher education trust fund pursuant to 27 V.S.A. § 1253(b)(5) for fiscal year 2007 shall not exceed \$600,000.00.

Approved: May 18, 2006