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Revisions in Abandoned and Unclaimed Property Legislation: A Look at the 1981 Uniform Unclaimed Property Act and West Virginia's Revised Uniform Act

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REVISIONS IN ABANDONED AND UNCLAIMED PROPERTY LEGISLATION: A LOOK AT THE 1981 UNIFORM UNCLAIMED PROPERTY ACT AND WEST VIRGINIA'S REVISED UNIFORM ACT

I. INTRODUCTION

High interest rates, inflation and unemployment have prompted many states to more vigorously pursue nontax sources of revenue. One such plentiful source of income is available to states through statutory custody of abandoned and unclaimed property. Most legislation dealing with such custody has taken the form of the Uniform Disposition of Unclaimed Property Act (hereinafter "Uniform Act"). The Uniform Act, which was originally drafted in 1954 and has been adopted by thirty-one states and the District of Columbia (including West Virginia), contains a comprehensive set of provisions which enable a state to acquire custody of abandoned property when the owner cannot be located and does not appear to be aware of its existence.

The Uniform Act is being used by states to generate substantial amounts of revenue. In the past two years alone West Virginia has received $1,496,757.24 through the Treasurer's administration of the State's abandoned property statute. New York collected over $38,000,000 in the first thirteen years of its act, and Massachusetts collected $2,500,000 in its first year. California has projected that over $5,000,000 each year can be collected from its statute. As these figures indicate, the potential of collecting significant amounts of abandoned property provides states with a strong incentive to actively enforce their abandoned property statutes.

The high amount of revenue generated compared to the cost of collecting the property is an additional incentive to encourage West Virginia to more

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1 Unif. Disposition of Unclaimed Property Act, 8 U.L.A. 115-56 (1972) (1954 version) (Minor revisions were made to the Uniform Act in 1966, primarily affording different treatment to money orders and traveler's checks). See infra note 67.

2 The 1954 version of the Uniform Act was adopted by the West Virginia Legislature on February 8, 1966 and became effective on July 1, 1987. W. Va. Code § 36-8-1 to § 36-8-31 (1982).

3 The following figures were recently released by the State Treasurer's Office of West Virginia. They include total receipts in unclaimed property, claims paid to owners, net receipts, operating expenses in maintaining the abandoned property division and net available to the general fund of the state.

<table>
<thead>
<tr>
<th></th>
<th>Fiscal Year 1981</th>
<th>Fiscal Year 1982</th>
</tr>
</thead>
<tbody>
<tr>
<td>Receipts</td>
<td>$638,087.80</td>
<td>$858,699.44</td>
</tr>
<tr>
<td>Claims</td>
<td>10,527.36</td>
<td>21,133.31</td>
</tr>
<tr>
<td>Net Receipts</td>
<td>$627,560.44</td>
<td>$837,536.13</td>
</tr>
<tr>
<td>Operating Expenses</td>
<td>65,334.44</td>
<td>86,055.45</td>
</tr>
<tr>
<td>Net Available to General Revenue</td>
<td>$562,226.00</td>
<td>$751,480.68</td>
</tr>
</tbody>
</table>


vigorously pursue the collection of abandoned property. The Internal Revenue Service makes a similar argument when it contends that for every dollar spent in enforcing the tax laws, many more dollars are collected in taxes that would otherwise remain unpaid. Keeping in mind there is a point at which the dollars-expended versus dollars-returned ratio is no longer profitable, it makes good business sense for a state to maintain an adequately qualified and staffed abandoned property division.

In 1981 the National Conference of Commissioners on Uniform State Laws adopted the third version of the Uniform Act. It represents a major effort to conform the Act with judicial and legislative developments that have occurred since 1954. In addition the 1981 Act incorporates many changes recommended by Uniform Act states which should improve the Act’s effectiveness. On March 12, 1983, the West Virginia Legislature adopted revisions in its abandoned

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8 See States Information Center, The Council of State Governments, CSG Backgrounder, Unclaimed Property (May 1982). At least 13 states have auditing programs for unclaimed property. They are: Alabama, California, Illinois, Indiana, Maryland, Massachusetts, Minnesota, Nebraska, New York, Oregon, Rhode Island and South Carolina. A survey completed in early 1982 by the Wisconsin Office of State Treasurer produced the following results:

<table>
<thead>
<tr>
<th>STATE</th>
<th>NUMBER OF AUDITORS</th>
<th>SEPARATE BUDGET</th>
<th>AVERAGE AUDITOR WAGE</th>
<th>DOLLAR RETURNED FOR DOLLAR EXPENDED</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>5</td>
<td>No</td>
<td>$11.23/hr</td>
<td>1981 produced $2.99 for each dollar expended</td>
</tr>
<tr>
<td>California</td>
<td>25</td>
<td>Yes $1,000,000</td>
<td>$15.00/hr</td>
<td>8 to 1</td>
</tr>
<tr>
<td>Florida</td>
<td>1 part-time*</td>
<td>No</td>
<td>$7.13 to 9.46/hr</td>
<td>“Should be four times the dollar expended”</td>
</tr>
<tr>
<td>Illinois</td>
<td>7</td>
<td>No</td>
<td>$6.25 to 9.38/hr</td>
<td>Indeterminable</td>
</tr>
<tr>
<td>Maryland</td>
<td>1</td>
<td>No</td>
<td>$9.19/hr</td>
<td>$7 to $8 per dollar expended</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>3</td>
<td>No</td>
<td>$8.00 to 9.00/hr</td>
<td>For FY 1980-81 each auditor returned the cost of salary and benefits over 73 times during the year</td>
</tr>
<tr>
<td>Minnesota</td>
<td>3</td>
<td>No</td>
<td>$9.35/hr</td>
<td>“Cannot estimate”</td>
</tr>
<tr>
<td>New York</td>
<td>32</td>
<td>No</td>
<td>$8.13 to 9.23/hr</td>
<td>8 to 10 times auditors’ salaries</td>
</tr>
<tr>
<td>Oregon</td>
<td>1</td>
<td>No</td>
<td>$7.27 to 9.19/hr</td>
<td>10 audits in 1981 produced $70,500</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>2</td>
<td>No</td>
<td>$10.15/hr</td>
<td>$500,000 since September 1981</td>
</tr>
</tbody>
</table>

*Florida utilizes the assistance of State Banking Examiners, State Credit Union Examiners, Federal Credit Union Examiners, Insurance Credit Union Examiners and Department of Revenue Examiners who complete a cursory examination form and submit it to the Florida Abandoned Property Section. If a more in-depth examination is needed, the Financial Examiners will do the examination.

property statute which incorporate some of the changes from the 1981 Uniform Act, but ignore many others. These revisions make West Virginia one of the first states to enact portions of the 1981 Act.

The purpose of this Note is to provide increased awareness of the tremendous source of revenue available through more stringent enforcement of existing abandoned property legislation, and to discuss in a considerable degree of detail the 1981 version of the Uniform Act and the revisions adopted by the West Virginia Legislature. The Note will briefly discuss the development of abandoned property legislation and then will examine a few of the important provisions of the 1954 version of the Uniform Act as they relate to the changes adopted in the 1981 Uniform Act and those enacted in West Virginia’s abandoned property statute. Finally, the substantial portion of the Note will explore the 1981 Uniform Act and West Virginia’s legislation.

II. THE DEVELOPMENT OF ABANDONED PROPERTY LEGISLATION

A. The Historical Concept

Escheat is a procedure with ancient origins whereby the sovereign acquired title to abandoned property if after a number of years no rightful owner appeared. The concept of escheat is known to have existed in England as early as the twelfth century. At common law, escheat was only applicable to real property and was considered an incident of tenure whereby the feudal lord had the right to take the land in the absence of a tenant. Upon the occurrence of some unforeseen contingency, real property reverted to the grantor. Bona vacanti was the term which applied to personal property passing to the Crown.

In the United States, escheat has been regarded as the sovereign right of the state over all its property, both real and personal. The sovereign power of the state exists because it either has actual dominion over the property, or because it has power over the last owner of the property. Although escheat of corporate intangibles arose from the common law doctrine of bona vacanti, the common law distinction between escheat and bona vacanti no longer ex-

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7 Enrolled Comm. Sub., H.B. 1454 (1983). (The revisions passed by the legislature were signed by Governor Rockefeller on March 19, 1983. The effective date of the revised Act is June 10, 1983).
8 Escheat is defined as the reversion of property to the state in consequence of the absence of any individual competent to inherit. The state is deemed to occupy the place and hold the rights of the feudal lord. BLACKS LAW DICTIONARY 640 (rev. 4th ed. 1961). The word itself is originally French or Norman, in which language it signifies chance or accident. In re Ohlsen’s Estate, 158 Or. 197, 75 P.2d 6 (1938).
11 W. HOLDSWORTH, HISTORY OF ENGLISH LAW 353 (2d ed. 1936).
13 Although personal property technically did not escheat, the Crown took it because it was without an owner, or was bona vacanti. W. HOLDSWORTH, supra note 11.
ists\textsuperscript{16} and both apply to real and personal property.\textsuperscript{17}

B. Justifications For and Types of Modern Escheat Statutes

In more modern times many explanations are given to justify abandoned property legislation. These rationalizations include, \textit{inter alia}, protecting the rights of owners; preventing windfalls to corporations; and the economic advantage of returning funds to commerce.\textsuperscript{18} Although there is arguably some merit to each of these justifications, the real underlying reason for passage of abandoned property legislation appears to be the state's desire to collect revenue.\textsuperscript{19} The tremendous potential for nontax revenue has prompted almost every state to pass some type of abandoned property statute.\textsuperscript{20}

The Uniform Act and the overwhelming majority of modern escheat statutes are custodial as opposed to permanent escheat statutes. The custodial statutes treat the state as the custodian of the abandoned property. The true owner keeps title to the property and retains the right to present a claim to the state and recover the property at any time in the future.\textsuperscript{21} The permanent escheat statutes, like their feudal predecessors, vest title in the state upon the passage of a certain amount of time, after which the true owner's claim is barred.\textsuperscript{22} While the distinctions between custodial and permanent escheat statutes appear significant, the significance of the distinction is diminished because even though the true owner retains title to the property under custodial statutes, rarely does the owner ever present a claim for recovery of his property.\textsuperscript{23}

III. The 1954 Version of the Uniform Act

Before 1954 holders\textsuperscript{24} of abandoned property frequently faced problems of


\textsuperscript{18} For an excellent discussion of the rationales for escheat see Comment, Modern Rationales of Escheat, U. Pa. L. Rev. 95 (1963).


\textsuperscript{20} Forty-eight states and the District of Columbia have some form of escheat or abandoned property legislation. UNIF. UNCLAIMED PROPERTY ACT, 8 U.L.A. 335 (Supp. 1983) (1981 version).

\textsuperscript{21} See Comment, Modern Rationales of Escheat, supra note 18; Comment, Unclaimed Property—A Potential Source of Non-Tax Revenue, supra note 17.

\textsuperscript{22} See N.J. STAT. ANN. § 2A: 37-38 (West 1952) (the lawful owner has two years to make a claim); C.G.S.A. § 50 (1978) (the lawful owner has twenty years to make a claim).

\textsuperscript{23} Only a very small percentage of the property paid to the state is ever claimed by its owner. Mr. John McCabe, Research Director for the National Conference of Commissioners on Uniform State Laws estimates that for every dollar of unclaimed property collected by the state, only a few cents are ever claimed by the owner. CSG BACKGROUNDER, supra note 5.

\textsuperscript{24} The term "holder" is defined as a person who is in possession of property subject to this Act belonging to another, or who is a trustee in case of a trust, or is indebted to another on an
exceedingly diverse state statutes and the possibility of multiple liability. Many state laws had contrary provisions and often were not well formulated. These statutes commonly applied to different types of property and required a holder to comply with varying procedures. This lack of symmetry created problems for public corporations who were often faced with the onerous burden of complying with many different statutes. In addition they were faced with the possibility of multiple liability. The United States Supreme Court opinions, Standard Oil Co. v. New Jersey and Connecticut Mutual Life Insurance Co. v. Moore, demonstrated this serious problem.

In Moore, the Court held that the state of New York could take possession of unclaimed money due on insurance policies issued to persons in New York even though the holder, the insurance company, was domiciled in another state. The Court found that New York could properly assert jurisdiction over the insurance company because of the relationship of the policyholders to the state. In Standard Oil Co. the Court held that New Jersey, the domicile of the holder, could claim stock and stock dividends belonging to residents who lived in New York. The Court found that New Jersey could assert jurisdiction over the holder because of the holder's domicile in that state. By showing that the state of the owner and the state of the holder could each collect the abandoned property, together, these decisions demonstrated the possibility that a holder could be subject to multiple liability for the same property when two or more states, each having a valid jurisdiction over the abandoned property, exercised that jurisdiction.

The inevitable remedy for the possibility of multiple liability and other problems presented by diverse state statutes was uniform legislation. The 1954 Uniform Act contains thirty-two provisions which may be described in several general areas. It contains definitions and provisions defining and describing the circumstances under which various classes of property are presumed abandoned. A catch-all provision subjects "[a]ll intangible personal property, not

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obligation subject to this Act. Unif. Disposition of Unclaimed Property Act, 8 U.L.A. § 1(d) at 121 (1972) (1954 version). The 1981 version of the Uniform Act expressly provides that the term "[h]older means a person wherever organized or domiciled. . . ." Unif. Unclaimed Property Act, 8 U.L.A. § 1(b) at 339 (Supp. 1983). The definition is significant because it makes it clear the Act applies to "persons wherever organized or domiciled," notwithstanding the fact that the escheating state may have difficulty asserting personal jurisdiction over the holder. See infra notes 44-66 and accompanying text. The term "person" is defined to include any legal or commercial entity. Unif. Unclaimed Property Act, 8 U.L.A. § 1(13) at 340.

27 333 U.S. 541 (1947).
28 Id. at 548-51.
29 341 U.S. at 348-49.
31 Id. § 1 at 123.
32 Classes of property subject to the Uniform Act include the following: Property held by banking or financial organizations or by business associations, section 2; unclaimed funds held by life insurance corporations, section 3; deposits and refunds held by utilities, section 4; undistrib-
otherwise covered by this Act . . . ,” to the presumption of abandonment if not claimed by the owner for more than seven years after it first became payable or distributable.\(^{33}\)

The real heart of the 1954 version of the Uniform Act is contained in section 10. It was drafted specifically to alleviate the problems of multiple liability presented by Moore and Standard Oil Co. It provides:

If specific property which is subject to the provisions of [several of the previous sections which presume various classes of property abandoned and] is held for or owed or distributable to an owner whose last known address is in another state by a holder who is subjected to the jurisdiction of that state, the specific property is not presumed abandoned in this state and subject to this act if:

(a) It may be claimed as abandoned or escheated under the laws of such other state; and

(b) The laws of such other state make reciprocal provision that similar specific property is not presumed abandoned or escheatable by such other state when held for or owed or distributable to an owner whose last known address is within this state by the holder who is subject to the jurisdiction of this state.\(^{34}\)

If we assume, in Standard Oil Co., that both New Jersey and New York had the reciprocal provision required by section 10(b), and that both states had escheat statutes applicable to the property, then pursuant to section 10, only New York could have validly asserted its jurisdiction and collected the property as the state of the last known address of the owner. The ability of section 10 to prevent multiple liability, therefore, was dependent upon each involved state enacting the reciprocal provision required by section 10(b).

Most of the remaining sections of the 1954 Uniform Act cover a broad range of procedures necessary to administer the Act.\(^{35}\) One of these relieves the holder of all liability to the extent of the value of the property paid or delivered to the state.\(^{36}\) Any subsequent claims the owner makes after the property is paid to the state must be made to the state. The final seven sections of the Act provide general rules of construction.\(^{37}\)

IV. Problems Remaining After the 1954 Uniform Act

Although section 10 eliminated multiple liability where each state attempting to assert jurisdiction over the holder had a section 10(b) reciprocal provision, the possibility of multiple liability persisted in the event a state at-
tempting to assert jurisdiction did not have such a provision. Finally, in *Western Union v. Pennsylvania* the Supreme Court eliminated any chance that a holder could be subject to multiple liability for the same property. Pennsylvania sought to recover unclaimed money orders purchased in Pennsylvania, but some of these had already been collected by New York, the state of the holder's domicile. The Court held that due process required the holder to be protected against liability in another state before being required to pay the abandoned property to any state. *Western Union* did not consider which state is entitled to priority when different states presented claims for the same property.

The most celebrated decision involving abandoned property was rendered in 1965. In the landmark decision of *Texas v. New Jersey*, the Court finally decided which state had priority when more than one state attempted to collect the same property. Four different states asserted the right to collect abandoned property held by Sun Oil Company. Texas claimed the property because it was located there, New Jersey because it was Sun Oil Company's domicile, Pennsylvania because Sun Oil maintained its principle office there and Florida because it was the state of the owner's last known address on the corporation's books. The Court adopted the rule proposed by Florida for the following reasons:

The rule recommended by the Master will tend to distribute escheats among the States in the proportion of the commercial activities of their residents. And by using a standard of last known address, rather than technical legal concepts of residence and domicile, administration and application of escheat laws should be simplified. It may well be that some addresses left by vanished creditors will be in States other than those in which they lived at the time the obligation arose or at the time of the escheat. But such situations probably will be the exception and any errors thus created, if indeed they could be called errors, probably will tend to a large extent to cancel each other out.

Although the Supreme Court adopted a rule which is easy to administer and tends to distribute escheats to states in proportion of the commercial activities of their residents, it left several questions unanswered. It did not consider what happens when the holder's records do not contain the owner's address. This often occurs with money orders because the holder's records normally disclose only where the money order was sold, not the owner's address. It also did not consider a much more serious problem, that the state of the last known address of the owner may not be able to assert personal jurisdiction over the holder. Where that is the case, the right given by *Texas v.*

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41 Id. at 679.
42 See, e.g., Comment, Escheat of Corporate Intangibles: Will the State of the Stockholder's Last Known Address be Able to Enforce Its Right?, supra note 17 at 568.
44 See supra note 42 and accompanying text.
New Jersey appears to be meaningless. The question of jurisdiction was neither argued nor briefed in Texas v. New Jersey.

The problem presented with money orders was solved in 1974 by federal legislation which modified the rule in Texas v. New Jersey as it relates to money orders, traveler’s checks and similar written instruments. Since addresses of purchasers were not generally retained and most purchasers resided in the state of purchase, the legislation provides that only the state of purchase is entitled to escheat such property.

The most perplexing problem facing states which compel the escheat of abandoned property, however, is the question of personal jurisdiction sufficient to satisfy due process. Escheat is conditioned on the state’s power to claim jurisdiction over the property or persons having an interest in the property. With respect to tangible property, real and personal, the rule in all jurisdictions is only the state in which the property is located may escheat. The difficulty arises with respect to intangible property which has no definite situs. There are no jurisdictional problems when all the parties having an interest in the property reside in the same state, but when more than one state is involved, control over intangible property can “only arise from control or power over the persons whose relationships are the source of the rights and obligations.”

There are two main jurisdictional hurdles that confront a state which attempts to collect abandoned property from a holder. The state must have jurisdiction to compel reports in order to discover the existence of the property and jurisdiction to sue for payment of the property.

The ability of a state to compel a corporation (holder) to file abandoned property reports is contingent upon that state’s jurisdiction to regulate the corporation. A state clearly has such jurisdiction over domestic corporations, but the question is much more complex when a foreign corporation is involved. Each act of the foreign corporation must be considered in determining whether it may be regulated. It is unlikely, however, under any theory of regulation based on “doing business” or “contacts” that a state could obtain jurisdiction over a foreign corporation if its only contact with the state was that one of its shareholders lived there at one time, or that it solicited subscriptions to its capital stock or sold or exchanged its shares of stock in that state.

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46 Id.
49 See supra note 42.
52 Intangible property is not a physical matter which can be easily located in one state. The creditor may live in one state and the debtor in another. If the debtor is a corporation with connections in many states, the problem is compounded. Id.
54 See supra note 42.
56 See supra note 42 at 569.
57 This is the majority rule. See, e.g., Payson v. Withers, 19 F. Cas. 29 (C.C.D. Ind. 1873) (No.
Virginia Supreme Court of Appeals has indicated that a foreign corporation which has not been admitted to hold property and transact business within the state is nevertheless not prohibited from selling its shares of capital stock in the state, nor from maintaining suits for enforcement of its contracts for such sales, and that "[h]olding property and doing business relates to the ordinary purposes for which the corporation was formed; hence the sale of its capital stock is not within the meaning of the statute and does not constitute doing business."\(^8\)

It is also clear that the due process clause does not permit a state to make a binding judgment against an individual or corporate defendant with which the state has "no contacts, ties or relations."\(^6\) The relationship between the defendant and the forum must be such that it is "reasonable" to require the corporation to defend the particular suit which is brought there.\(^6\) The burden on the defendant is a primary concern, but it must be considered in light of other factors, including the following: the forum state's interest in adjudicating the dispute;\(^3\) the plaintiff's interest in obtaining convenient and effective relief;\(^2\) the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and the shared interest of the several states in furthering substantive policies.\(^3\) In order for a state to sue a foreign corporation in its own courts to compel the payment of abandoned property to such state, it must obtain personal jurisdiction over the foreign corporation. Essentially, the corporation must satisfy the "minimum contacts" of International Shoe v. Washington\(^4\) before it is subject to suit in a particular state.

Although the state of the last known address of the owner may have difficulty compelling a foreign corporation to file reports and pay abandoned property when its only contact with the state is the sale of stock to a shareholder who once lived there, the right given that state as the first priority claimant in Texas v. New Jersey is not meaningless. Many foreign corporations will have sufficient contacts with the escheating state to subject them to that state's jurisdiction. Also, the threat of suit in the corporation's own state may be sufficient incentive for it to comply. It has also been argued that footnote eight in

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\(^{6}\) See International Shoe v. Washington, 326 U.S. 310 (1945) ("due process requires only that in order to subject a defendant to a judgment in personam, if he not be present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend the 'traditional notions of fair play and substantial justice.'") Id. at 316.

\(^{6}\) Id. at 317; World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 292 (1980).


\(^{4}\) Kulko v. California Superior Court, 436 U.S. at 93, 98.

\(^{4}\) 326 U.S. 310 (1945).
Texas v. New Jersey implies that the state has legislative power to compel reports from a foreign corporation. Finally, it is possible that the state of the last known address of the shareholder can compel the reports and collect abandoned property from a foreign corporation through “succession analysis.”

V. The 1981 Version of the Uniform Act

A. Introduction

Although the Uniform Act has existed since 1954, there have been no major revisions. Meanwhile, the decision in Texas v. New Jersey has caused holders considerable uncertainty in determining the current status of abandoned property legislation. In some instances, holders feel they do not know what is required of them. More importantly, the uncertain status and ineffective penalty provisions helped cause the high degree of noncompliance. The

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63 Unif. Unclaimed Property Act, 8 U.L.A. 335, n.2 (Supp. 1983) (1981 version) (However, it is unclear how this legislative power exists because the Constitution requires personal jurisdiction sufficient to satisfy due process).

64 The Commissioners’ Prefatory Note to the 1981 version of the Uniform Act suggests that the state of the last known address of the shareholder can compel the foreign corporation to submit reports and pay abandoned property through “succession analysis.” In Texas v. New Jersey, the Court adopted Florida’s rule that an intangible debt is property of the creditor and not the debtor. The Court noted that the Florida rule is a variation of the concept of mobilia sequitor personam, which says that intangible property is found at the domicile of its owner and the law of the state of domicile of the intestate owner determines the right of succession to personal property. The succession analysis rationale which permits the state of the last known address of the owner to compel a foreign corporation to submit reports and pay abandoned property is “[t]he state in which the owner last resided is a rough indicator of domicile, and that state is entitled to provide by legislation for succession. The state of last known address, succeeding to the right of the owner, is entitled to compel a holder to disclose the existence of property which belongs to the owner in the same manner that a conservator of an estate of an incompetent or the administrator of the estate of a missing person or decedent can compel the holder of that person’s property to account for it.” Id. at 335.

65 The Uniform Act was amended in 1966, but its provisions are substantially the same as the 1954 version. The Commissioners’ Prefatory Note to the 1966 version of the Uniform Act explains the revisions that were made. “In the operation of the Uniform Disposition of Unclaimed Property Act of 1954 and similar acts, special problems have arisen concerning money orders and traveler’s checks, particularly those issued by an organization not properly classified as a ‘banking or financial institution.’ The Act was revised, therefore, to take care of these problems. Section 2 has been amended by adding to the persons covered by the section, the phrase ‘a business association.’ In subsection (c) the phrase ‘money orders’ is added to the types of sums payable and a special rule concerning the time at which abandonment is presumed is established for traveler’s checks. For all property subject to the section, other than traveler’s checks, seven years from the date payable raises the presumption of abandonment but a longer period, 15 years from the date of issuance is established for traveler’s checks. Section 11 of the original Act, requiring a report by the holder of abandoned property, is amended to eliminate the requirement of reporting the name and address of the owner with respect to ‘traveler’s checks and money orders.’ Section 12 of the Act which required notice and publication of lists of abandoned property is also amended to eliminate traveler’s checks and money orders from the requirement of publication of a list. Both of these amendments are necessary because of the inability of the issuer of money orders and traveler’s checks to know who the holder is in most cases.” Unif. Disposition of Unclaimed Property Act, 8 U.L.A. 74 (1972) (1966 version).

consequences of these and other shortcomings of the original Uniform Act, discovered primarily through the experience of Uniform Act states, has resulted in the substantial changes contained in the 1981 version. The primary objectives of the 1981 Uniform Act which contains nine novel provisions, are to obtain compliance and to maximize the ability of states to collect abandoned property, thereby increasing state revenues.

B. Definitions

Section 1 contains a much more comprehensive list of definitions and terms than the definitional section in the earlier Act. The term “holder” is defined to expressly include a “person” wherever organized or domiciled. This eliminates any requirement that this person be actually engaged in business in the enacting state as implied by the earlier versions. The term “apparent owner” is added to make it clear that the person whose name and address appears on the holder’s records is to be referred to in determining which state is entitled to claim the abandoned property. If the person whose name appears in the holder’s records has transferred his interest to a person in another state, the transferee state is entitled to claim the property pursuant to section 25. The definition of “business associations” is amended to expressly include nonprofit corporations. The definition of “insurance company” is expanded to include nearly every conceivable type of entity providing insurance coverage. The term “intangible property” is added to make holders aware of a variety of items which are covered by the Act. This more comprehensive defi-

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61 These provisions are as follows: General Rules for Taking Custody of Intangible Unclaimed Property, section 3; Crediting of Dividends, Interest or Increments to Owner’s Account, section 21; Claim of Another State to Recover Property; Procedure, section 25; Destruction or Disposition of Property Having Insubstantial Commercial Value, section 28; Retention of Records, section 31; Interstate Agreements and Cooperation; Joint and Rec. Actions with Other States, section 33; Agreements to Locate Reported Property, section 35; Foreign Transactions, section 36; and Effect of New Provisions, section 37. Id.
62 Id.
63 Id. § 1 at 339-40.
64 Id.
65 See infra note 117 and accompanying text.
67 Id.
68 The term “intangible property” includes the following:
   (i) monies, checks, drafts, deposits, interest, dividends, and income;
   (ii) credit balances, customer overpayments, gift certificates, security unidentified remittances;
   (iii) stocks and other intangible ownership interests in business associations;
   (iv) monies deposited to redeem stocks, bonds, coupons, and other securities, or to make distributions;
   (v) amounts due and payable under the terms of insurance policies; and
   (vi) amounts 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.
69 Id. § 1(10) at 340.
nitional section is unquestionably important in enhancing compliance. It defines with more precision the various institutions covered by the Act. Improved definitions make it much less likely a holder could successfully argue that it, or a particular item of intangible property it holds, is not subject to the Act.

C. The Omnibus Provision

Section 2 is the catch-all counterpart of section 9 of the earlier Act. It provides that all intangible property, including income from such property less lawful charges, which is held, issued or owing in the holder's ordinary course of business and remains unclaimed for more than five years is presumed abandoned under the Act. Significantly, section 2 reduces the previous general dormancy period from seven years to five years. The Commissioners' rationale for this reduction is the greater mobility of the population as compared with almost thirty years ago, and the fact that states with shorter dormancy periods have been able to return to owners a substantially higher percentage of property reported as abandoned. A shorter dormancy period will logically increase the amount of abandoned property which is collected by the states because the longer a state must wait before collecting abandoned property, the less likely it is that the state will actually collect the property. With longer dormancy periods holders might lose, dispose of, or otherwise fail to report the property. It is not likely, however, that shorter dormancy periods will be welcomed by holders because they will lose the benefit of the use of the property sooner.

D. Conforming With Texas v. New Jersey

The most significant change in the 1981 Uniform Act is the section 3 description of the general circumstances under which a state may claim abandoned intangible property. It is specifically written in response to, and is consistent with, the Supreme Court's decision in Texas v. New Jersey. It is jurisdictional in that it empowers the state to assert custody, but it also establishes a hierarchy of priorities consistent with Texas v. New Jersey, limiting the ability of certain states to assert jurisdiction. The state of the last known address of the owner is entitled to claim the abandoned property first. If that state

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78 Id. § 2(a) at 341.
79 Id. at Commissioners' Comment.
80 Id. § 3 at 342.
81 There are three different situations in which state X, the state of the last known address of the owner, is entitled to claim the property. The most common situation is where the holder's records show that the identity of the owner and the owner's last known address is in state X. Paragraph (2) permits state X to claim the property even if the owner's identity is not known, as long as it is shown, either through the holder's records or by some other means, that the property was owned by a person whose last known address was in state X. Paragraph (3) permits state X to claim the property, even though there is property owed to persons for whom there are no addresses, when it can be established that the last known address of the owner is in state X. Usually in such a situation, the state of the holder's domicile will collect the property, but once it is established the last known address of the owner in state X and not the state of the holder's domicile, then state X is entitled to recover the property pursuant to § 25 as the first priority claimant. Id. at 343 (Commissioners' Comment).
cannot claim the property, the state of the holder's domicile is entitled to it.\textsuperscript{62} Section 3 also provides an answer to a question not presented in \textit{Texas v. New Jersey}. If neither the state of the last known address of the owner nor the state of the holder's domicile can claim the property, the state in which the transaction out of which the property arose can.\textsuperscript{63} In essence, section 3 provides a three-tiered priority scheme to determine which state is entitled to claim the abandoned property.

\textbf{E. Classes of Property Subject to the Act}

Sections 4 through 16 describe in considerable detail the various classes of intangible property subject to the Act. Section 4 provides that any sum payable on a traveler's check or on a money order is presumed abandoned under the Act if the owner has not contacted the holder concerning it for the requisite period.\textsuperscript{64} The dormancy period is fifteen years for traveler's checks and seven years for money orders. The Commissioner's comment to section 4 indicates that statistical and economic evidence have shown the longer periods to be appropriate with respect to traveler's checks and money orders.\textsuperscript{65} Subsections (d) and (e) adopt the rules provided by congressional legislation and determine which state is entitled to claim the property described in section 4.\textsuperscript{66}

Sections 5 through 9 continue the original Act's coverage of sums payable on a check, draft or similar instruments,\textsuperscript{67} demand, savings or matured time deposits with a banking or financial organization,\textsuperscript{68} funds held or owing under life or endowment insurance policies,\textsuperscript{69} deposits held by utilities,\textsuperscript{70} and refunds held by business associations.\textsuperscript{71} Although these sections are substantially the same as sections 2 through 4 of the earlier Uniform Act, significantly, they shorten the dormancy periods for such property.

\textsuperscript{61} The state of the last known address of the owner cannot assert its jurisdiction over the property if it does not have an escheat statute, or if its escheat statute is not applicable to the particular type of property. Subsection (5) permits the state of the holder's domicile to claim the property if the last known address of the owner is in a foreign nation. \textit{Id.} at § 3(5).

\textsuperscript{62} This is a situation that was never considered in \textit{Texas v. New Jersey}, presumably because it was thought to be so unlikely. The situation has, in fact, arisen in \textit{Sperry & Hutchinson, Co. v. O'Connor}, 412 A.2d 539 (Pa. 1980). Pennsylvania sought to escheat unredeemed trading stamps which were sold by a corporation domiciled in New Jersey to retailers located in Pennsylvania. There were no addresses of the trading stamp purchasers, so the first priority claimant in \textit{Texas v. New Jersey}, the state of the last known address of the owner, was not applicable. The second priority claimant was New Jersey, the state of the holder's domicile, but it was not permitted, under its law, to escheat trading stamps. Therefore, Pennsylvania's claim was upheld in the lower courts as the third priority claimant. \textit{Unif. Unclaimed Property Act}, 8 U.L.A. § 3 at 343 (Supp. 1983) (1981 version).

\textsuperscript{63} \textit{Id.} § 4 at 344.

\textsuperscript{64} \textit{Id.} at 345 (Commissioners' Comment).

\textsuperscript{65} See supra notes 47-48 and accompanying text.


\textsuperscript{67} \textit{Id.} § 6 at 346.

\textsuperscript{68} \textit{Id.} § 7 at 347-48.

\textsuperscript{69} \textit{Id.} § 8 at 349.

\textsuperscript{70} \textit{Id.} § 9 at 349-50.
Section 10 is a novel provision which expressly makes the Act applicable to shares of stock and principal amounts of debt securities which are in the possession of the apparent owner. It should be noted that section 10 differs from other sections governing classes of intangible property because it applies to property which is not in the actual possession of the holder. For this reason, before a presumption of abandonment takes effect, there must be at least seven years during which the owner has failed to claim a dividend or distribution or has not otherwise communicated with the holder concerning such ownership interest. During the seven year period, there must also have been at least seven dividends, distributions or other sums paid by the holder, none of which have been claimed by the owner. The extra protections afforded the owner in section 10 (requiring a longer dormancy period and at least seven unclaimed dividends) represent a desire by the drafters of the Uniform Act to protect the owner's rights and to make sure the stock certificates have been abandoned. Section 10 does not apply to any ownership interest which is enrolled in a dividend re-investment plan, unless the owner has other stock which is not in the plan and would otherwise be presumed abandoned under section 10. Although the 1966 version was technically applicable to underlying ownership interests, it was often assumed by holders that underlying shares were not subject to escheat unless the shares were in the actual possession of the holder. An explicit provision subjecting stock certificates to the Act is desirable because holders can no longer refuse, in good faith, to report such ownership interests.

Sections 11 through 13 subject intangible property distributable in the course of dissolution of a business association, and intangible property held by courts and public agencies, to the Act.

Under section 14 the holder must report gift certificates and credit memos which remain unclaimed for more than five years. Presumably, the omnibus provision (section 9 of the earlier Uniform Act) covered gift certificates and credit memos, but holders routinely failed to report such property. Much like section 10, section 14 makes holders aware that gift certificates and credit memos are explicitly covered by the Act, which should aid the administrator in obtaining compliance.

In section 15, unpaid wages owing in the ordinary course of the holder's

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92 Id. § 10 at 350.
93 Although the earlier Uniform Acts did not expressly provide for the escheat of shares of stock, section 5 arguably covered such shares, and the catch-all provision, section 9, was intended to extend its coverage to shares of stock. However, since no provision expressly applied, holders were uncertain of the Act's applicability to underlying shares and non-compliance often resulted. Several states have enacted specific statutory provisions making underlying shares subject to escheat to clear up any uncertainty. Id. at 351-52. (Commissioners' Comment).
94 Id. § 10(b).
95 Id. § 10(e).
96 Id. § 11 at 352 (reducing the dormancy period from two years to one year).
97 Id. §§ 12 and 13 at 352-53.
98 Id. § 14 at 353.
business are presumed abandoned if unclaimed for more than one year.\footnote{Id. § 15 at 354.} The chances of locating the missing owner of a wage check are much less than the chances of locating the owner of most other types of intangible property, so the dormancy period is reduced from seven years to only one year.\footnote{Id. (Commissioners' Comment).}

Section 16 makes the Act applicable to the contents of safety deposit boxes which remain unclaimed for more than five years after the owner’s lease or rental period has expired.\footnote{Id. § 16. Tangible property located in safety deposit boxes is difficult to collect. Intangible property is represented by some type of ownership interest and is usually recorded, but tangible property is the item itself. Whether tangible property abandoned in safety deposit boxes is ever reported depends on the good faith efforts of the holders in disclosing this information. There are very few, if any, ways to verify whether an empty safety deposit box contained abandoned property which was improperly removed.} The dormancy period for the contents of safety deposit boxes was seven years in the earlier Act. It is the only section of the Act which applies to both tangible and intangible property.

F. Procedures and Administration

Section 17 of the Act compels the holder of both tangible and intangible property, which is presumed abandoned by operation of the previous sections, to report such property to the state administrator.\footnote{Id. § 17 at 354-55. A holder should carefully check the statute of each state for which a report is to be filed. Some states require that a report be filed each year even if the holder has no property which is subject to the presumption of abandonment. West Virginia has no such requirement.} The report which must be filed is virtually identical to the report required by section 11 of the earlier Act.\footnote{The report required is peculiar to each state, but each requests similar kinds of information. The report must be verified by the holder’s chief fiscal officer, and must include the following: (1) the name, if known and last known address, if any, of each person appearing from the records to be the owner of any property of a minimum value or more presumed abandoned under the Act; (2) the nature and identifying number, if any, or description of the property, and the amount appearing from the holder’s records to be due, which may be reported in the aggregate if the value is less than a certain minimum amount; (3) the date when the property became payable, demandable, or returnable, and the date of the last transaction with the owner concerning the property; and (4) any other information which the administrator prescribes by rules as necessary.} However, the minimum value of property held for which the name and address of the owner must be reported is increased along with the value of items that may be reported in the aggregate.\footnote{The minimum value for which the name and last known address of each owner must be reported is increased from three dollars in the earlier Acts to twenty-five dollars in the 1981 Act. Likewise, the minimum value for which the nature and identifying number, or the description of the property may be reported in the aggregate is increased from three dollars to twenty-five dollars. Id.} This is justified because it minimizes the holder’s reporting expenses. Rather than the “due diligence” re-
quirement holders were previously forced to comply with in attempting to locate the owner, section 17(e) provides that the holder need only send written notice to the apparent owner's last known address within 120 days of filing the report. This provides the holder with a definite procedure to follow and relieves it from the uncertainty of knowing whether it satisfies the "due diligence" standard in attempting to locate the owner.

After the holder files the necessary report, section 18 requires the administrator to cause a notice to be published to attempt to notify the owner that his property will soon escheat to the state. The minimum value of items which must be advertised is higher to reflect the increased cost of advertising since the earlier Uniform Act. Pursuant to section 19, the holder is required to deliver the abandoned property to the state administrator within six months after reporting its existence.

Section 20, like section 14 of the earlier Act, is a critical provision which relieves the holder from liability, to the extent of the value of the property, for property paid or delivered to the state in "good faith." A "good faith" requirement prevents the holder from purposely delivering property to the state which is not subject to abandonment. Arguably, without such a "good faith" requirement, the owner would have no remedy against a holder who willfully disregarded the provisions of the Act.

Section 21 permits the owner to recover increments accruing on the property, other than money, before the property is liquidated (which occurs in section 22). This is an important provision for owners because section 15 of

106 This requires the holder to attempt to locate the owner and try to prevent abandonment. The holder is only required to send such written notice if, "(i) the holder has in its records an address for the apparent owner which the holder's records do not disclose to be inaccurate, (ii) the claim of the apparent owner is not barred by the statute of limitations, and (iii) the property has a value of $50 or more." Id.; see UNIF. DISPOSITION OF UNCLAIMED PROPERTY ACT, 8 U.L.A. § 11(c) at 97 (1972) (1966 version) ("Due diligence").

107 The six month period is designed to provide the owner with an opportunity to recover his property directly from the holder before the property is paid or delivered to the state administrator. Presumably, the attempts by the holder and the state administrator to contact the owner, pursuant to sections 17 and 18, will stimulate the owner to claim his property from the holder within such six month period. After the property is delivered to the state administrator, the owner must comply with section 24 and 26 to recover his property. Id. § 19 at 357.

108 If the holder pays or delivers property to the state administrator in "good faith" and the owner later claims the property, the state shall defend the holder against the claim and indemnify the holder against any liability arising on the claim. Id. § 20 at 358. Good faith means, "(1) payment or delivery was made in a reasonable attempt to comply with this Act; (2) the person delivering the property was not a fiduciary then in breach of trust in respect to the property and had a reasonable basis for believing, based on the facts then known to him, that the property was abandoned for the purposes of this Act; and (3) there is no showing that the records pursuant to which the delivery was made, did not meet reasonable commercial standards of practice in the industry." Id.

109 This includes any dividends, interest or any other interest realized or accruing on the property. Id. § 21 at 359.

110 For example, the state administrator will generally hold shares of stock, obtained pursuant to section 10, for three years before sale. In such event, the owner is entitled to dividends, interest or other increments accruing on the property during such time. Id. at 359.
the earlier Act did not entitle the owner to receive any increments accruing from the property once it was paid to the state. It was supposedly included because section 22 provides some substantial retention periods by the state administrator, but it also can encourage the administrator to sell the property more quickly so the state can deposit the money into the general treasury and not lose the time value of the money. The state administrator, in section 22, is required to sell the abandoned property to the highest bidder at a public sale within three years after receiving it. Significantly, the purchaser of property at the public sale takes free of all claims of the owner or previous holder. Generally, public sales are governed by the doctrine of caveat emptor. However, if a purchaser is certain he can take the property free of any encumbrances, both the ability of the administrator to sell abandoned property at public sales, and the revenue received from these sales should be considerably enhanced.

Section 23 requires the state administrator to deposit money received from holders and the proceeds of the public sales into the general treasury of the state. A separate trust fund, required to satisfy the claims of owners, is recommended to be maintained at 100,000 dollars. Because only a small percentage of owners ever claim their property once it is abandoned, good management suggests that the trust fund be based on a percentage of the total revenue collected rather than on a specific dollar amount. The provision also permits the administrator to deduct various costs incurred in connection with the property.

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111 Id. § 22 at 359-60. Special rules are included in section 22 for securities listed on an established stock exchange.

112 Id.

113 Id. § 23(a) at 360.

114 The West Virginia Code requires all revenue collected and proceeds generated to be deposited into the "trust and expense fund" unless that fund exceeds $150,000. Any excess shall be transferred to the general school fund. W. Va. Code § 36-8-18 (1982). Making the amount retained in the trust fund a fixed sum which does not vary with the amount of revenue collected does not make much sense, unless a state can predict with a reasonable degree of certainty how much revenue from abandoned property they will collect each year. A better approach is for the state to first determine an average percentage of the revenue claimed by owners which is sufficient to cover estimated claims. Then, instead of maintaining a specific dollar amount in the trust fund, the legislature should opt for a percentage which would more accurately estimate the necessary funds needed to pay claims. This would allow more money to be deposited into the general treasury. For example, in the 1981 fiscal year West Virginia collected approximately $840,000 in abandoned property and paid about $10,000 in claims. In the 1982 fiscal year almost $860,000 was collected and over $20,000 was paid in claims. See supra note 3. In these two years only about 2% of the owners ever collected their property. If the trust fund were based on that percentage only about $13,000 would have been needed in the trust fund in 1981 and about $17,000 should have been retained in 1982. This is substantially less than the $150,000 amount which must be maintained pursuant to W. Va. Code § 36-8-18. The remainder could then be paid into the general treasury or general school fund.

115 Before making any deposit into the general treasury the state administrator may deduct, "(1) any costs in connection with the sale of abandoned property; (2) costs of mailing and publication in connection with any abandoned property; (3) reasonable service charges; and (4) costs incurred in examining records of holders of property and in collecting the property from those holders." Id. at 360. Although no data was available to determine whether owners who later presented
Section 24 provides the procedure whereby persons, excluding other states, may file claims to recover their property. Section 25 describes when and how another state may present a claim to recover the property. If the administrator allows the claim, the state claiming the property must agree to indemnify the forum state and its officers and employees against any liability on a claim for the property. If one claiming to be the owner is aggrieved by the administrator’s decision, section 26 permits an appeal of the claim to a court of appropriate jurisdiction.

Section 27 permits the administrator to refuse to receive any property which he considers to have a value less than the expense of giving notice and of conducting the sale. The holder should be aware, however, that it still must report all abandoned property covered by the Act notwithstanding its apparent insignificant value. Subsection (b) is a new provision permitting a holder (including, inter alia, one terminating its business) to report and deliver property before it is presumed abandoned. After delivery, the administrator must hold the property until the dormancy period has expired. Once the dormancy period has expired, the property is subject to the other provisions of the Act. Subsection (b) is certainly warranted, but it does not go far enough. In some limited situations where the holder is going out of business and cannot locate the owner, yet the dormancy period has not expired, the holder should be required to deliver the property to the administrator. Without such a requirement, it seems likely the abandoned property will never be reported or delivered to the state. Section 28 permits the administrator to destroy property which has insubstantial commercial value. This is a novel provision designed to permit the state administrator to dispose of items, such as those in a safety deposit box, which may have some personal significance to the owner, but have no commercial value. Section 29 requires the holder to comply with the Act despite any statutes of limitation that might otherwise apply. Subsection

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a claim to the state administrator received their full claim, pursuant to section 24, it is easy to imagine many claims being completely wiped out by the deduction of such charges. Id. at 360.

This involves the situation discussed in section 3, supra notes 81-83, where the state of the holder’s domicile, as the second priority claimant, or the state in which the transaction out of which the property arose, as the third priority claimant, escheats and it is later determined the state with a higher priority is entitled to escheat. Section 25 discusses the various situations in which a state becomes a superior claimant to the escheating state. Id. § 25.

State administrators have a very difficult time detecting noncompliance. A provision requiring a holder to report and deliver property to the state when that holder goes out of business would make collection of such property much easier. In the event the owner appears, the state is a much more reliable custodian than the holder. It should be noted the dormancy period for dissolute corporations is one year. See supra note 98.

If the state administrator destroys or otherwise disposes of property pursuant to section 28, no action may be maintained against such administrator. Id. § 28 at 364.

Of particular significance is the situation when a state adopts the Uniform Act, but the statute of limitations has run before the effective date of the Act. Without section 29(a), the holder might successfully refuse to report or deliver property which would otherwise be subject to aban-
(b), however, is the Act’s own statute of limitation which prevents the administrator from bringing an action against the holder more than ten years after the time the holder first had a duty to report the property.\textsuperscript{124}

Sections 30 through 32 are designed to facilitate compliance with the Act. Of considerable importance is section 30, which permits the administrator to examine the holder’s records regardless of whether it is believed the holder is not complying, to determine whether the holder has, in fact, complied with the provisions of the Act.\textsuperscript{125} The administrator may require a holder who has not filed a report to verify that it has or has not any unclaimed and reportable property. If the administrator determines that a holder has failed to comply with the Act, it may be assessed costs of examination, not to exceed the value of the property reportable and deliverable, plus penalties discussed in section 34, infra. Section 30 is critical to the effectiveness of the Uniform Act. Without vigorous enforcement through random auditing of holder’s records, the state administrator can never be certain whether holders are complying. Presumably, with the strong economic incentive of noncompliance, many holders will refuse to comply with the Uniform Act unless the possibility of detection is likely. Increased auditing, coupled with strict enforcement of penalties, should increase compliance. Section 31 requires the holder to retain certain records for at least ten years following the date the property was reportable as abandoned property.\textsuperscript{126} Again, section 31, like section 30, is very important in increasing compliance. If the holder’s records show the existence of abandoned property subject to the Act, once those records are destroyed, detection of noncompliance is practically impossible. No comparable provision appeared in the earlier Uniform Act. Section 32 permits the state administrator to bring an action in a court of competent jurisdiction to enforce the Act.\textsuperscript{127}

Section 33 is another extremely important novel provision which encourages joint agreements and cooperation among the states. The administrator is empowered to enter into agreements with other states to exchange information which enables each state to audit records or otherwise determine whether it is

\begin{footnotes}
\item This potentially has both positive and negative consequences. It encourages states to investigate holder’s records to determine whether they have abandoned property subject to the Act; if the state waits more than ten years after the holder had a duty to report, the claim is barred. It also relieves holder’s from the burden of maintaining their records for more than ten years after they first had a duty to report the property. See infra note 126 and accompanying text. However, it is possible that subsection (b) could encourage holders to conceal property with the hope that ten years pass before any detection is made. If this occurs, subsection (b) may provide undesirable results.


\item This should be read in conjunction with section 29(b). See supra note 124 and accompanying text. Section 31 does, however, permit the state administrator to shorten the retention period upon consideration of the burden imposed on the holder in maintaining such records, the opportunity of returning the property, and the holder’s type of business. Id. § 31 at 366-67.

\item The state will normally sue in its own courts, but in those situations where personal jurisdiction cannot be easily obtained over the holder in that state, the action may be brought in a court of competent jurisdiction in another state. Id. § 32 at 367. See supra note 82.
\end{footnotes}
entitled to claim property held in another state.\textsuperscript{128} This is especially important when the state of the last known address of the owner has difficulty asserting jurisdiction over the holder to compel it to file reports.\textsuperscript{129} More importantly, section 33 permits the attorney general of a state to bring an action in the name of the administrator of another state to compel the holder to deliver abandoned property to the state.\textsuperscript{130} In essence, the participating states become collection agents for each other. Through these reciprocal agreements, the state of the last known address of the owner can recover property it is legally entitled to, but which it might not validly assert personal jurisdiction over in its own courts. This prevents the state from having to bear the increased expense of bringing suit in the foreign state. If every state would enact such a provision and enter into such agreements, the jurisdictional problems would no longer exist. Unfortunately, states like Delaware, who have very liberal corporation laws, would probably frown on such a provision because they receive unclaimed property as the second priority claimant under \textit{Texas v. New Jersey}, whenever the state of the last known address of the shareholder cannot claim the property.\textsuperscript{131}

Section 34, like section 25 of the earlier Uniform Act, imposes civil and criminal penalties for noncompliance.\textsuperscript{132} The Commissioners' Comment indicates that a major weakness of the 1966 Act was its ineffective penalty provision which placed too much reliance on the criminal law as a compliance mechanism. The experience of Uniform Act states is that many holders find the economic incentive for noncompliance so great, violations are frequent and extensive.\textsuperscript{133} Only through the strict imposition of penalties will holders be deterred from refusing to comply with the Act.

Section 35 is a new provision designed to limit the activities of "heir finders."\textsuperscript{134} It prohibits heir finder activity for a two-year period following payment or delivery of abandoned property to the state.\textsuperscript{135} The remaining provisions, sections 36 through 43, provide general rules of construction.\textsuperscript{136}

\begin{itemize}
\item \textsuperscript{128} Id. § 33, at 367-68.
\item \textsuperscript{129} See supra notes 44-66 and accompanying text.
\item \textsuperscript{131} Anytime a corporation domiciled in Delaware holds abandoned property for an owner whose last known address is in another state, but that state cannot assert jurisdiction over the property, Delaware is entitled to collect the property as the second priority claimant. Therefore, Delaware realizes a substantial benefit when the state of the last known address of the owner does not have an escheat statute, or if that state cannot assert personal jurisdiction over the holder, or if the owner is in a foreign country, or if the owner is unknown, or if for any other reason the state of the last known address of the owner cannot assert jurisdiction over the property.
\item \textsuperscript{133} Id.
\item \textsuperscript{134} "Heir finders" is a term which describes the small, but active businesses which, pursuant to contract and usually for a percentage of the amount recovered, attempt to locate owners of abandoned property. Id. § 35 at 336. They are also referred to as "head hunters" in the industry.
\item \textsuperscript{135} Id. at 369.
\item \textsuperscript{136} The general rules in sections 36-43 may be summarized as follows: pursuant to section 36, the Uniform Act does not apply to wholly foreign transactions; section 37 requires the holder to comply with the Act as it relates to property held before the effective date of the Act; the state administrator may adopt necessary rules to carry out the provisions of the Act in section 38; sec-
\end{itemize}
VI. PROPOSED CHANGES TO WEST VIRGINIA'S UNCLAIMED PROPERTY ACT

West Virginia adopted the 1954 version of the Uniform Act virtually intact.137 There have been no reported decisions in West Virginia concerning the Act's application. On March 12, 1983, the final day of the session, the West Virginia Legislature adopted a revised version of its Uniform Act.138 Unlike the 1981 Uniform Act's comprehensive revisions, the changes adopted in West Virginia's Uniform Act are not nearly so extensive. House Bill 1454 amends only seven sections of the Act and provides for the addition of two new sections.139

The provision most substantially changed is section 2 which subjects certain property held by banking and financial institutions to the Act.140 The previous fifteen year dormancy period remains intact for any interest bearing demand, savings or matured time deposit141 and for any interest bearing funds paid toward the purchase of shares or other items of a financial organization.142 The dormancy periods for the same noninterest bearing funds are reduced to seven years.143 The dormancy periods for any sum payable on, inter alia, a certificate of deposit and draft144 and personal property in safety deposit boxes145 are reduced from fifteen years to seven years. A fifteen year dormancy period seems inconsistent with the other classes of property in West Virginia's Uniform Act and the 1981 Uniform Act.

Banking and financial organizations are prevented from imposing any service charge due to the dormancy or inactivity of the owner's property unless there is an enforceable written contract between the holder and the owner allowing such charges.146 This is an important provision because it prevents the holder from gradually reducing and potentially eliminating the owner's property with the imposition of service charges unless a contract allows the charges. Apparently some banks are attempting to unilaterally modify these deposit account contracts with their customers by posting notice signs in the bank lobby.147 Whether this notice effectively modifies the existing contract so as to conform with the Act is questionable without express agreement by the customer. However, even if a customer agreed to such a clause there is further danger that the service charges might be excessive and the Act provides no

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137 See supra note 2.
138 H.B. 1454.
139 Id.
140 Id. at 2-6.
141 Id. § 2(b) at 2-3.
142 Id. § 2(d) at 4.
143 Id. § 2(a) and § 2(c) at 2-3.
144 Id. § 2(e) at 4-5.
145 Id. § 2(f) at 5.
146 Id. § 2(g) at 5.
147 Telephone Interview with Mr. Randy Barton, Abandoned Property Division, State Treasurer's Office (March 24, 1983).
protection against this. The owner's property would still be gradually reduced and eliminated, but the bank is arguably protected by a contract enforcing the service charge. Section 5(b) of the 1981 Uniform Act has a different approach. It only permits the holder to deduct charges when the owner fails to present the instrument for payment if a valid contract exists and the holder regularly imposes such charges and does not regularly reverse or otherwise cancel them. This appears to provide more protection for the owner. Although a court would presumably require that any service charges be "reasonable," the word "reasonable" should appear in subsection (e) to avoid any confusion.

The only changes to sections 4 through 8, relating to property held by utilities, business associations, fiduciaries, and courts, public officers and agencies, resulted in increases in the dormancy periods from five to seven years. Both the National Conference of Commissioners and the state treasurer's office favored a five year dormancy period for all classes of property and opposed any such increases. Nevertheless, the legislature failed to adopt their suggestions and selected seven year dormancy periods for those classes of property. The 1981 Act provides for a five year dormancy period for property held by business associations and fiduciaries and only a one year dormancy period for deposits and refunds held by utilities and intangible property held by courts and public agencies.

Section 9, the catch-all provision which previously applied only to intangible personal property, is amended to cover both tangible and intangible personal property. This conforms with Texas v. New Jersey which said that with respect to tangible personal property, only the state in which the property is located may escheat. This is a welcomed addition because it provides an express provision making holders aware that tangible property located in this state is subject to the Act, even if the owner resides out of state. Section 9 also prevents any banking or financial organization from levying any service charges on the owner of any savings account.

Section 11, requiring the holder to file abandoned property reports, is amended to allow the state treasurer to examine the holder's records if there is reason to believe the holder has failed to comply. Previously, the state treasurer was only permitted to examine the holder's records upon issuance of a subpoena duces tecum. If after such examination it is determined there was property which should have been reported, the treasurer may assess the holder costs not to exceed the value of the property reportable. Section 11 was amended to make it easier to examine the holder's records, but the state treasu-

149 H.B. 1454 at 5-7.
150 Telephone Interview with Mr. Randy Barton, Abandoned Property Division, State Treasurer's Office (March 24, 1983).
151 See supra notes 87-89, 96 and accompanying text.
152 H.B. 1454 at 8.
153 379 U.S. at 679.
154 H.B. 1454 at 8.
155 Id. at 8-10.
surer still must have "reason to believe" the holder has failed to comply. Section 30(b) of the 1981 Act permits the state administrator to audit the holder's records even if there is "no reason to believe" the holder has failed to comply. It should be remembered that civil and criminal penalties may also be available in such a situation. The power to examine records is one which should be used frequently, however this power can only be exercised effectively if the state's abandoned property division is adequately staffed and well trained.

Section 17, which required the state treasurer to sell the abandoned property within one year, is amended to permit the treasurer to sell the property "as soon as practical." In most instances, it is not practical for the property to be sold within one year. However, the requirement that the treasurer sell the property "as soon as practical" may provide the treasurer with too much discretion. How long is "as soon as practical"? In contrast, the 1981 Uniform Act provides that all property must be sold within three years following delivery.

Section 12(a) provides that records of abandoned property be kept confidential except with respect to requests for inspection and copying made by certain persons with a claim. The records are also exempt from the Freedom of Information Act in chapter 29B of the Code. These rules are designed to prevent "heir finders" from obtaining this information and locating the owner for a percentage of the recovery. However, section 12(a) merely eliminates the state treasurer's office as a source of information. "Heir finders" can read the state treasurer's published notices and still locate the owner for a percentage of the recovery. The approach is different than section 35 of the 1981 Uniform Act which prohibits heir finder activity for two years after the property is paid or delivered to the state.

Finally, section 23(a) permits interstate agreements and cooperation between states, commonly referred to as "compact agreements", like section 33 of the 1981 Uniform Act. This is an extremely valuable provision which should further compliance. However, unlike section 33 of the 1981 Act, section 23(a) does not include a provision which permits the attorney general to bring an action in a court of competent jurisdiction to enforce another state's abandoned property law, if the other state has a provision providing the same treatment to this state. This essentially enables participating states to serve as collection agents for each other. Such a provision would help this state to avoid a holder's potential lack of jurisdiction argument. The state treasurer's office

107 See supra note 125 and accompanying text.
109 H.B. 1454 at 10-11.
110 See supra note 112 and accompanying text.
111 H.B. 1454 at 10.
112 Id.
114 See supra notes 134-35 and accompanying text.
115 See supra note 112 and accompanying text.
116 H.B. 1454 at 11. See also, supra notes 128-30 and accompanying text.
117 See supra notes 44-66 and accompanying text.
feels that such a provision is not necessary because it can be included in "compact agreements" with other states.\footnote{Telephone interview with Mr. Randy Barton, Abandoned Property Division, State Treasurer's Office (March 24, 1983).}

The recent revisions in West Virginia's Uniform Act incorporate only a few desirable provisions of the 1981 Act. Among these are provisions which permit compact agreements and make it easier for the state treasurer to examine the holder's records. The confidentiality of records should lessen the activities of heir finders, thereby reducing the number of claims brought by owners or their heirs. An express provision making the Act applicable to tangible property should increase compliance and the revenue collected from tangible property. Despite these few improvements, West Virginia's revisions fail to adopt many of the 1981 Act's recommendations.

The National Conference of Commissioners on Uniform State Laws promulgated comprehensive revisions of the 1981 Act primarily to increase compliance by reducing uncertainty. Much of this uncertainty arose as a result of Texas v. New Jersey, however West Virginia's revisions make no mention of Texas v. New Jersey, and therefore do nothing to reduce that uncertainty. The 1981 Act also reduces uncertainty by more clearly defining terms used in the Act and classes of property subject to the Act; however, West Virginia failed to make such improvements. The dormancy periods are increased rather than decreased for most classes of property. The longer this state must wait to collect abandoned property, the less property it will collect. The inescapable conclusion is that many of the provisions adopted by the 1981 Act were not seriously considered by the West Virginia Legislature.

VII. Conclusion

The 1981 Uniform Unclaimed Property Act contains a comprehensive set of provisions which substantially improve existing legislation. Since the Uniform Act was first adopted in 1954, many developments have occurred necessitating changes in abandoned and unclaimed property statutes. The 1981 Uniform Act more clearly defines the rights and duties of the state, the holders and the owners of abandoned property. The Act should result in increased state revenues because its provisions facilitate the ability of states to obtain compliance from holders. In addition to the benefits available to states, the 1981 Act provides greater protection for the owners of abandoned property.

The uncertainties left by the 1954 Uniform Act have resulted in a significant degree of noncompliance by holders. Section 3 of the 1981 Act, which contains the scheme of priority devised by the Supreme Court in Texas v. New Jersey, should substantially reduce that uncertainty. Certain express provisions making, inter alia, underlying stock certificates, wages, credit memos and gift certificates subject to the Act will make it clear holders must report these items. Such express provisions were absent from the earlier Act. The more precise wording of various definitions and classes of property subject to the Act were needed to prevent the holder from arguing that it, or a particular item of
intangible property it holds is not covered by the Act. By reducing the uncertainty of whether a holder or an item of property it holds, is subject to the Act, states should obtain greater compliance with their abandoned property statutes which will increase state revenues.

The 1981 Uniform Act contains many other provisions that should improve compliance. Reduction in dormancy periods for most classes of property will enable enacting states to collect a greater percentage of abandoned property. Section 30 provides the state administrator with more authority to examine holder's records. The ability of the administrator to assess the costs of examination and to impose more effective civil and criminal penalties upon holders is important in obtaining compliance. Section 33, which permits participating states to serve as collection agents for each other, will enable a state to avoid the holder's potential lack of personal jurisdiction argument. These provisions and many others in the 1981 Act were desperately needed to improve compliance.

There are several provisions which more adequately protect the rights of owners of abandoned property. Section 21 permits the owner to recover any interest, dividend or other increment accruing on the property before it is liquidated. Banks and financial organizations are not permitted to impose service charges upon the owner's property unless certain conditions are satisfied. Although section 20 relieves the holder of liability for property delivered to the administrator, the owner can still maintain an action against the holder if the delivery was not made in "good faith."

The West Virginia Legislature enacted only a few of the improved revisions contained in the 1981 Act. Among these are the provision which prevents banking and financial institutions from imposing service charges on the owner's property until satisfying certain conditions, a section which expressly makes the Act applicable to tangible property, one which makes it easier for the state treasurer to audit holder's records, and a section which encourages interstate agreements and cooperation between states. Despite improvements in these areas, the revised Act departs from the 1981 Uniform Act in too many respects. No improvements were made in the definition of terms and classes of property subject to the Act. A glaring omission is the absence of a provision bringing the Act into compliance with Texas v. New Jersey. Unfortunately, the dormancy periods are increased rather than decreased for most classes of property. This more than any other provision could reduce revenue collected under the Act.

It appears that the legislature merely selected a few of the 1981 Uniform Act's provisions without seriously considering the remaining ones; especially since the revisions fail to incorporate the substantial changes brought by Texas v. New Jersey. The recent amendments represent a movement in the right direction for all but the lengthened dormancy periods, but they do not go nearly far enough. Considering that West Virginia collected almost $1,500,000 from abandoned property in the past two years alone, such a substantial nontax
source of revenue should prompt the legislature to take a more serious look at the 1981 Uniform Act and make further revisions.

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