



1999 ASSEMBLY BILL 799

February 25, 2000 - Introduced by Representatives GUNDRUM and CULLEN, cosponsored by Senators GEORGE and HUELSMAN. Referred to Committee on Financial Institutions.

1 **AN ACT to amend** 610.61; and **to repeal and recreate** chapter 177 of the
2 **statutes; relating to:** the Uniform Unclaimed Property Act and granting
3 rule-making authority.

Analysis by the Legislative Reference Bureau

This bill is based on the Uniform Unclaimed Property Act (1995), which was approved by the National Conference of Commissioners on Uniform State Laws in 1995.

This bill clarifies the definition of "property", removes ambiguities over the meaning of "last-known address" and adds new definitions of "mineral", "mineral proceeds" and "money order". It also consolidates several sections that deal with various presumptions of abandonment for different classifications of property into one unified treatment of presumptions of abandonment.

This bill adds an express provision to cover proceeds of class actions, and also adds limitations on dormancy charges. It clarifies the limited nature of the states' burden of proof when the unclaimed obligation is evidenced by negotiable instruments. The bill increases penalties for noncompliance and adds a provision for attorney fees in litigated enforcement actions. Rules of confidentiality are added.

The periods of time after which abandonment is presumed have been reduced in some instances: corporate stock, from seven to five years, and gift certificates, from five to three years. Certain life insurance obligations had five-year and two-year periods of abandonment; they have been unified at three years.

The statute of limitations provision has been clarified so that it does not run in favor of a holder who makes no report or whose report is false or fraudulent.

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1 (4) “Domicile” means the state of incorporation of a corporation and the state
2 of the principal place of business of a holder other than a corporation.

3 (5) “Financial organization” means a savings and loan association, building
4 and loan association, savings bank, industrial bank, bank, banking organization or
5 credit union.

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

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

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

19 (9) “Mineral proceeds” means amounts payable for the extraction, production
20 or sale of minerals, or, upon the abandonment of those payments, all payments that
21 become payable thereafter. The term includes any of the following amounts payable:

22 (a) For the acquisition and retention of a mineral lease, including bonuses,
23 royalties, compensatory royalties, shut-in royalties, minimum royalties and delay
24 rentals.

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1 (b) For the extraction, production or sale of minerals, including net revenue
2 interests, royalties, overriding royalties, extraction payments and production
3 payments.

4 (c) Under an agreement or option, including a joint operating agreement, unit
5 agreement, pooling agreement and farm-out agreement.

6 **(10)** “Money order” includes an express money order and a personal money
7 order, on which the remitter is the purchaser. The term does not include a bank
8 money order or any other instrument sold by a financial organization if the seller has
9 obtained the name and address of the payee.

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

14 **(12)** “Person” means an individual, business association, financial
15 organization, estate, trust, government, governmental subdivision, agency or
16 instrumentality, or any other legal or commercial entity.

17 **(13)** “Property” means tangible property described in s. 177.025 or a fixed and
18 certain interest in intangible property that is held, issued or owed in the course of
19 a holder’s business, or by a government, governmental subdivision, agency or
20 instrumentality, and all income or increments therefrom. The term includes
21 property that is referred to as or evidenced by any of the following:

22 (a) Money, a check, draft, deposit, interest or dividend.

23 (b) Credit balance, customer’s overpayment, gift certificate, security deposit,
24 refund, credit memorandum, unpaid wage, unused ticket, mineral proceeds or
25 unidentified remittance.

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1 (c) Stock or other evidence of ownership of an interest in a business association
2 or financial organization.

3 (d) A bond, debenture, note or other evidence of indebtedness.

4 (e) Money deposited to redeem stocks, bonds, coupons or other securities or to
5 make distributions.

6 (f) An amount due and payable under the terms of an annuity or insurance
7 policy, including policies providing life insurance, property and casualty insurance,
8 workers' compensation insurance or health and disability insurance.

9 (g) An amount distributable from a trust or custodial fund established under
10 a plan to provide health, welfare, pension, vacation, severance, retirement, death,
11 stock purchase, profit sharing, employe savings, supplemental unemployment
12 insurance or similar benefits.

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

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

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

22 **177.015 Exemption.** Notwithstanding this chapter, a cooperative organized
23 under ch. 185 may effect the forfeiture to the cooperative of unclaimed funds as
24 provided in ss. 185.03 (10) and 185.75 (1).

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1 **177.02 Presumption of abandonment.** (1) Property is presumed
2 abandoned if it is unclaimed by the apparent owner during the time set forth below
3 for the particular property:

4 (a) Traveler's check, 15 years after issuance.

5 (b) Money order, 7 years after issuance.

6 (c) Stock or other equity interest in a business association or financial
7 organization, including a security entitlement under ch. 408, 5 years after the earlier
8 of:

9 1. The date of the most recent dividend, stock split or other distribution
10 unclaimed by the apparent owner.

11 2. The date of the second mailing of a statement of account or other notification
12 or communication that was returned as undeliverable or after the holder
13 discontinued mailings, notifications or communications to the apparent owner.

14 (d) Debt of a business association or financial organization, other than a bearer
15 bond or an original issue discount bond, 5 years after the date of the most recent
16 interest payment unclaimed by the apparent owner.

17 (e) A demand, savings or time deposit, including a deposit that is automatically
18 renewable, 5 years after the earlier of maturity or the date of the last indication by
19 the owner of interest in the property; but a deposit that is automatically renewable
20 is deemed matured for purposes of this section upon its initial date of maturity,
21 unless the owner has consented to a renewal at or about the time of the renewal and
22 the consent is in writing or is evidenced by a memorandum or other record on file with
23 the holder.

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1 (f) Money or credits owed to a customer as a result of a retail business
2 transaction, 3 years after the obligation accrued.

3 (g) Gift certificate, 3 years after December 31 of the year in which the certificate
4 was sold, but if redeemable in merchandise only, the amount abandoned is deemed
5 to be 60% of the certificate's face value.

6 (h) Amount owed by an insurer on a life or endowment insurance policy or an
7 annuity that has matured or terminated, 3 years after the obligation to pay arose or,
8 in the case of a policy or annuity payable upon proof of death, 3 years after the insured
9 has attained, or would have attained if living, the limiting age under the mortality
10 table on which the reserve is based.

11 (i) Property distributable by a business association or financial organization
12 in a course of dissolution, one year after the property becomes distributable.

13 (j) Property received by a court as proceeds of a class action, and not distributed
14 pursuant to the judgment, one year after the distribution date.

15 (k) Except as provided in ss. 40.08 (8), 800.095 (7m), 852.01 (3), 863.27 (2) and
16 863.39, property held by a court, government, governmental subdivision, agency or
17 instrumentality, one year after the property becomes distributable.

18 (L) Wages or other compensation for personal services, one year after the
19 compensation becomes payable.

20 (m) Deposit or refund owed to a subscriber by a utility, one year after the deposit
21 or refund becomes payable.

22 (n) Property in an individual retirement account, defined benefit plan or other
23 account or plan that is qualified for tax deferral under the income tax laws of the
24 United States, 3 years after the earliest of the date of the distribution or attempted
25 distribution of the property, the date of the required distribution as stated in the plan

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1 or trust agreement governing the plan, or the date, if determinable by the holder,
2 specified in the income tax laws of the United States by which distribution of the
3 property must begin in order to avoid a tax penalty.

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

6 (2) At the time that an interest is presumed abandoned under sub. (1), any
7 other property right accrued or accruing to the owner as a result of the interest, and
8 not previously presumed abandoned, is also presumed abandoned.

9 (3) Property is unclaimed if, for the applicable period set forth in sub. (1), the
10 apparent owner has not communicated in writing, or by other means reflected in a
11 contemporaneous record prepared by or on behalf of the holder, with the holder
12 concerning the property or the account in which the property is held, and has not
13 otherwise indicated an interest in the property. A communication with an owner by
14 a person other than the holder or its representative who has not in writing identified
15 the property to the owner is not an indication of interest in the property by the owner.

16 (4) An indication of an owner's interest in property includes the following:

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

22 (b) Owner-directed activity in the account in which the property is held,
23 including a direction by the owner to increase, decrease or change the amount or type
24 of property held in the account.

25 (c) The making of a deposit to or withdrawal from a bank account.

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

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

11 177.025 Contents of safe deposit box or other safekeeping depository.

12 Tangible property held in a safe deposit box or other safekeeping depository in this
13 state in the ordinary course of the holder's business and proceeds resulting from the
14 sale of the property permitted by other law are presumed abandoned if the property
15 remains unclaimed by the owner for more than 5 years after expiration of the lease
16 or rental period on the box or other depository.

17 **177.03 Rules for taking custody.** Except as otherwise provided in this
18 chapter or by other statute of this state, property that is presumed abandoned,
19 whether located in this or another state, is subject to the custody of this state if any
20 of the following conditions is present:

21 (1) The last-known address of the apparent owner, as shown on the records of
22 the holder, is in this state.

23 (2) The records of the holder do not reflect the identity of the person entitled
24 to the property and it is established that the last-known address of the person
25 entitled to the property is in this state.

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1 **(3)** The records of the holder do not reflect the last-known address of the
2 apparent owner and either of the following is established:

3 (a) The last-known address of the person entitled to the property is in this
4 state.

5 (b) The holder is domiciled in this state or is a government or governmental
6 subdivision, agency or instrumentality of this state and has not previously paid or
7 delivered the property to the state of the last-known address of the apparent owner
8 or other person entitled to the property.

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

13 **(5)** The last-known address of the apparent owner, as shown on the records of
14 the holder, is in a foreign country and the holder is domiciled in this state or is a
15 government or governmental subdivision, agency or instrumentality of this state.

16 **(6)** The transaction out of which the property arose occurred in this state, the
17 holder is domiciled in a state that does not provide for the escheat or custodial taking
18 of the property, and the last-known address of the apparent owner or other person
19 entitled to the property is unknown or is in a state that does not provide for the
20 escheat or custodial taking of the property.

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

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1 **177.09 Dormancy charge.** A holder may deduct from property presumed
2 abandoned a charge imposed by reason of the owner's failure to claim the property
3 within a specified time only if there is a valid and enforceable written contract
4 between the holder and the owner under which the holder may impose the charge
5 and the holder regularly imposes the charge, which is not regularly reversed or
6 otherwise canceled. The amount of the deduction is limited to an amount that is not
7 unconscionable.

8 **177.11 Burden of proof as to property evidenced by record of check or**
9 **draft.** A record of the issuance of a check, draft or similar instrument is prima facie
10 evidence of an obligation. In claiming property from a holder who is also the issuer,
11 the administrator's burden of proof as to the existence and amount of the property
12 and its abandonment is satisfied by showing issuance of the instrument and passage
13 of the requisite period of abandonment. Defenses of payment, satisfaction, discharge
14 and want of consideration are affirmative defenses that must be established by the
15 holder.

16 **177.165 Proceeds from sale of property in self-service storage facility.**
17 Notwithstanding s. 177.02 (1), the proceeds of a sale under s. 704.90 (6) of personal
18 property stored in a leased facility located within a self-service storage facility after
19 satisfaction of the operator's lien under s. 704.90 (3) (a) is presumed abandoned.

20 **177.17 Report of abandoned property. (1)** A holder of property presumed
21 abandoned shall make a report to the administrator concerning the property.

22 **(2)** The report must be verified and must contain all of the following:

23 (a) A description of the property.

24 (b) Except with respect to a traveler's check or money order, the name, if known,
25 and last-known address, if any, and the social security number or taxpayer

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1 identification number, if readily ascertainable, of the apparent owner of property of
2 the value of \$50 or more.

3 (c) An aggregated amount of items valued under \$50 each.

4 (d) In the case of an amount of \$50 or more held or owing under an annuity or
5 a life or endowment insurance policy, the full name and last-known address of the
6 annuitant or insured and of the beneficiary.

7 (e) In the case of property held in a safe deposit box or other safekeeping
8 depository, an indication of the place where it is held and where it may be inspected
9 by the administrator, and any amounts owing to the holder.

10 (f) The date, if any, on which the property became payable, demandable or
11 returnable, and the date of the last transaction with the apparent owner with respect
12 to the property.

13 (g) Other information that the administrator by rule prescribes as necessary
14 for the administration of this chapter.

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

20 **(4)** The report must be filed before November 1 of each year and cover the 12
21 months next preceding July 1 of that year, but a report with respect to a life insurance
22 company must be filed before May 1 of each year for the calendar year next preceding.

23 **(5)** The holder of property presumed abandoned shall send written notice to the
24 apparent owner, not more than 120 days or less than 60 days before filing the report,

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1 stating that the holder is in possession of property subject to this chapter, if all of the
2 following exist:

3 (a) The holder has in its records an address for the apparent owner that the
4 holder's records do not disclose to be inaccurate.

5 (b) The claim of the apparent owner is not barred by a statute of limitations.

6 (c) The value of the property is \$50 or more.

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

13 **(7)** The holder of property presumed abandoned shall file with the report an
14 affidavit stating that the holder has complied with sub. (5).

15 **177.18 Notice and publication of lists of abandoned property.** **(1)** The
16 administrator shall publish a notice not later than November 30 of the year next
17 following the year in which abandoned property has been paid or delivered to the
18 administrator.

19 **(1d)** Except as provided in sub. (1m), the notice must be published as a class
20 1 notice under ch. 985 in a newspaper of general circulation in the county of this state
21 in which is located the last-known address of any person named in the notice. If a
22 holder does not report an address for the apparent owner, or the address is outside
23 this state, the notice must be published in the county in which the holder has its
24 principal place of business within this state or another county that the administrator
25 reasonably selects. The advertisement must be in a form that, in the judgment of the

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1 administrator, is likely to attract the attention of the apparent owner of the
2 unclaimed property. The form must contain all of the following:

3 (a) The name of each person appearing to be the owner of the property, as set
4 forth in the report filed by the holder.

5 (b) The last-known address or location of each person appearing to be the
6 owner of the property, if an address or location is set forth in the report filed by the
7 holder.

8 (c) A statement explaining that property of the owner is presumed to be
9 abandoned and has been taken into the protective custody of the administrator.

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

13 **(1m)** For money or other property received under s. 852.01 (3), 863.37 (2) or
14 863.39 (1), the notice shall be published in the official state newspaper and shall
15 include the name of the decedent, the time and place of the decedent's death, the
16 amount paid to the administrator, the name of the decedent's personal
17 representative, the county in which the estate is probated and a statement that the
18 money will be paid to the heirs or legatees without interest, on proof of ownership,
19 if claimed within 10 years from the date of publication as provided in s. 863.39 (3).

20 **(2)** The administrator is not required to advertise the name and address or
21 location of an owner of property having a total value less than \$50, or information
22 concerning a traveler's check, money order or similar instrument.

23 **177.19 Payment or delivery of abandoned property.** (1) Except for
24 property held in a safe deposit box or other safekeeping depository, upon filing the
25 report required by s. 177.17, the holder of property presumed abandoned shall pay,

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1 deliver or cause to be paid or delivered to the administrator the property described
2 in the report as unclaimed, but if the property is an automatically renewable deposit,
3 and a penalty or forfeiture in the payment of interest would result, the time for
4 compliance is extended until a penalty or forfeiture would no longer result. Tangible
5 property held in a safe deposit box or other safekeeping depository may not be
6 delivered to the administrator until 120 days after filing the report required by s.
7 177.17.

8 (2) If the property reported to the administrator is a security or security
9 entitlement under ch. 408, the administrator is an appropriate person to make an
10 endorsement, instruction or entitlement order on behalf of the apparent owner to
11 invoke the duty of the issuer or its transfer agent or the securities intermediary to
12 transfer or dispose of the security or the security entitlement in accordance with ch.
13 408.

14 (3) If the holder of property reported to the administrator is the issuer of a
15 certificated security, the administrator has the right to obtain a replacement
16 certificate pursuant to s. 408.405, but an indemnity bond is not required.

17 (4) An issuer, the holder and any transfer agent or other person acting
18 pursuant to the instructions of and on behalf of the issuer or holder in accordance
19 with this section is not liable to the apparent owner and must be indemnified against
20 claims of any person in accordance with s. 177.20.

21 **177.20 Custody by state; recovery by holder; defense of holder.** (1) In
22 this section, payment or delivery is made in “good faith” if all of the following exist:

23 (a) Payment or delivery was made in a reasonable attempt to comply with this
24 chapter.

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

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

6 **(2)** Upon payment or delivery of property to the administrator, the state
7 assumes custody and responsibility for the safekeeping of the property. A holder who
8 pays or delivers property to the administrator in good faith is relieved of all liability
9 arising thereafter with respect to the property.

10 **(3)** A holder who has paid money to the administrator pursuant to this chapter
11 may subsequently make payment to a person reasonably appearing to the holder to
12 be entitled to payment. Upon a filing by the holder of proof of payment and proof that
13 the payee was entitled to the payment, the administrator shall promptly reimburse
14 the holder for the payment without imposing a fee or other charge. If reimbursement
15 is sought for a payment made on a negotiable instrument, including a traveler's
16 check or money order, the holder must be reimbursed upon filing proof that the
17 instrument was duly presented and that payment was made to a person who
18 reasonably appeared to be entitled to payment. The holder must be reimbursed for
19 payment made even if the payment was made to a person whose claim was barred
20 under s. 177.29 (1).

21 **(4)** A holder who has delivered property other than money to the administrator
22 pursuant to this chapter may reclaim the property if it is still in the possession of the
23 administrator, without paying any fee or other charge, upon filing proof that the
24 apparent owner has claimed the property from the holder.

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

3 (6) If a holder pays or delivers property to the administrator in good faith and
4 thereafter another person claims the property from the holder or another state
5 claims the money or property under its laws relating to escheat or abandoned or
6 unclaimed property, the administrator, upon written notice of the claim, shall defend
7 the holder against the claim and indemnify the holder against any liability on the
8 claim resulting from payment or delivery of the property to the administrator.

9 (7) Property removed from a safe deposit box or other safekeeping depository
10 is received by the administrator subject to the holder's right to be reimbursed for the
11 cost of the opening and to any valid lien or contract providing for the holder to be
12 reimbursed for unpaid rent or storage charges. The administrator shall reimburse
13 the holder out of the proceeds remaining after deducting the expense incurred by the
14 administrator in selling the property.

15 **177.21 Crediting of dividends, interest and increments to owner's**
16 **account.** If property other than money is delivered to the administrator under this
17 chapter, the owner is entitled to receive from the administrator any income or gain
18 realized or accruing on the property at or before liquidation or conversion of the
19 property into money. If the property was an interest-bearing demand, savings or
20 time deposit, including a deposit that is automatically renewable, the administrator
21 shall pay interest at a rate of 18% a year or any lesser rate the property earned while
22 in the possession of the holder. Interest begins to accrue when the property is
23 delivered to the administrator and ceases on the earlier of the expiration of 10 years
24 after delivery or the date on which payment is made to the owner. Interest on

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1 interest-bearing property is not payable for any period before the effective date of
2 this section [revisor inserts date], unless authorized by ch. 177, 1997 stats.

3 **177.22 Public sale of abandoned property.** (1) Except as otherwise
4 provided in this section, the administrator, within 3 years after the receipt of
5 abandoned property, shall sell it to the highest bidder at public sale at a location in
6 the state that in the judgment of the administrator affords the most favorable market
7 for the property. The administrator may decline the highest bid and reoffer the
8 property for sale if the administrator considers the bid to be insufficient. The
9 administrator need not offer the property for sale if the administrator considers that
10 the probable cost of sale will exceed the proceeds of the sale. A sale held under this
11 section must be preceded by a class 1 notice under ch. 985, at least 3 weeks before
12 sale, in a newspaper of general circulation in the county in which the property is to
13 be sold.

14 (2) Securities listed on an established stock exchange must be sold at prices
15 prevailing on the exchange at the time of sale. Other securities may be sold over the
16 counter at prices prevailing at the time of sale or by any reasonable method selected
17 by the administrator. If securities are sold by the administrator before the expiration
18 of 3 years after their delivery to the administrator, a person making a claim under
19 this chapter before the end of the 3-year period is entitled to the proceeds of the sale
20 of the securities or the market value of the securities at the time the claim is made,
21 whichever is greater, plus dividends, interest and other increments thereon up to the
22 time the claim is made, less any deduction for expenses of sale. A person making a
23 claim under this chapter after the expiration of the 3-year period is entitled to
24 receive the securities delivered to the administrator by the holder, if they still remain

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1 in the custody of the administrator, or the net proceeds received from sale, and is not
2 entitled to receive any appreciation in the value of the property occurring after
3 delivery to the administrator, except in a case of intentional misconduct or
4 malfeasance by the administrator.

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

9 **177.23 Deposit of funds.** (1) Except as otherwise provided by sub. (2), the
10 administrator shall promptly deposit in the school fund all funds received under this
11 chapter, including the clear proceeds from the sale of abandoned property under s.
12 177.33. The administrator shall record the name and last-known address of each
13 person appearing from the holders' reports to be entitled to the property and the
14 name and last-known address of each insured person or annuitant and beneficiary
15 and with respect to each policy or annuity listed in the report of an insurance
16 company, its number, the name of the company and the amount due.

17 (2) The administrator shall deposit in the general fund an amount equal to all
18 of the following:

19 (a) Expenses of sale of abandoned property.

20 (b) Costs of mailing and publication in connection with abandoned property.

21 (c) Reasonable service charges.

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

24 (e) Salaries of the employes of the administrator that are attributable to the
25 administration of this chapter.

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1 **177.24 Filing of claim with administrator; handling of claims by**
2 **administrator.** (1) A person, excluding another state, claiming property paid or
3 delivered to the administrator may file a claim on a form prescribed by the
4 administrator and verified by the claimant.

5 (2) Within 90 days after a claim is filed, the administrator shall allow or deny
6 the claim and give written notice of the decision to the claimant. If the claim is
7 denied, the administrator shall inform the claimant of the reasons for the denial and
8 specify what additional evidence is required before the claim will be allowed. The
9 claimant may then file a new claim with the administrator or maintain an action
10 under s. 177.26.

11 (3) Within 30 days after a claim is allowed, the property or the net proceeds of
12 a sale of the property must be delivered or paid by the administrator to the claimant,
13 together with any dividend, interest or other increment to which the claimant is
14 entitled under ss. 177.21 and 177.22.

15 (4) A holder who pays the owner for property that has been delivered to this
16 state and that, if claimed from the administrator by the owner, would be subject to
17 an increment under ss. 177.21 and 177.22 may recover from the administrator the
18 amount of the increment.

19 **177.25 Claim of another state to recover property.** (1) After property has
20 been paid or delivered to the administrator under this chapter, another state may
21 recover the property if any of the following circumstances occur:

22 (a) The property was paid or delivered to the custody of this state because the
23 records of the holder did not reflect a last-known location of the apparent owner
24 within the borders of the other state and the other state establishes that the apparent
25 owner or other person entitled to the property was last known to be located within

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1 the borders of that state and under the laws of that state the property has escheated
2 or become subject to a claim of abandonment by that state.

3 (b) The property was paid or delivered to the custody of this state because the
4 laws of the other state did not provide for the escheat or custodial taking of the
5 property and, under the laws of that state subsequently enacted, the property has
6 escheated or become subject to a claim of abandonment by that state.

7 (c) The records of the holder were erroneous in that they did not accurately
8 identify the owner of the property and the last-known location of the owner within
9 the borders of another state and under the laws of that state the property has
10 escheated or become subject to a claim of abandonment by that state.

11 (d) The property was subjected to custody by this state under s. 177.03 (6) and
12 under the laws of the state of domicile of the holder the property has escheated or
13 become subject to a claim of abandonment by that state.

14 (e) The property is a sum payable on a traveler's check, money order or similar
15 instrument that was purchased in the other state and delivered into the custody of
16 this state under s. 177.03 (7), and under the laws of the other state the property has
17 escheated or become subject to a claim of abandonment by that state.

18 **(2)** A claim of another state to recover escheated or abandoned property must
19 be presented in a form prescribed by the administrator, who shall decide the claim
20 within 90 days after it is presented. The administrator shall allow the claim upon
21 determining that the other state is entitled to the abandoned property under sub. (1).

22 **(3)** The administrator shall require another state, before recovering property
23 under this section, to agree to indemnify this state and its officers and employes
24 against any liability on a claim to the property.

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1 **177.26 Action to establish claim.** A person aggrieved by a decision of the
2 administrator or whose claim has not been acted upon within 90 days after its filing
3 may maintain an original action to establish the claim in the circuit court, naming
4 the administrator as a defendant. If the aggrieved person establishes the claim in
5 an action against the administrator, the court may award the claimant reasonable
6 attorney fees.

7 **177.27 Election to take payment or delivery. (1)** The administrator may
8 decline to receive property reported under this chapter that the administrator
9 considers to have a value less than the expenses of notice and sale.

10 **(2)** A holder, with the written consent of the administrator and upon conditions
11 and terms prescribed by the administrator, may report and deliver property before
12 the property is presumed abandoned. Property so delivered must be held by the
13 administrator and is not presumed abandoned until it otherwise would be presumed
14 abandoned under this chapter.

15 **177.28 Destruction or disposition of property having no substantial**
16 **commercial value; immunity from liability.** If the administrator determines
17 after investigation that property delivered under this chapter has no substantial
18 commercial value, the administrator may destroy or otherwise dispose of the
19 property at any time. An action or proceeding may not be maintained against this
20 state or any of its officers or against the holder for or on account of an act of the
21 administrator under this section, except for intentional misconduct or malfeasance.

22 **177.29 Periods of limitation. (1)** The expiration, before, on or after the
23 effective date of this subsection [revisor inserts date], of a period of limitation on
24 the owner's right to receive or recover property, whether specified by contract,
25 statute or court order, does not preclude the property from being presumed

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1 abandoned or affect a duty to file a report or to pay, deliver or transfer property to
2 the administrator as required by this chapter.

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

10 **177.30 Requests for reports and examination of records.** (1) The
11 administrator may require a person that has not filed a report, or a person that the
12 administrator believes has filed an inaccurate, incomplete or false report, to file a
13 verified report in a form specified by the administrator. The report must state
14 whether the person is holding property reportable under this chapter, describe
15 property not previously reported or as to which the administrator has made inquiry,
16 and specifically identify and state the amounts of property that may be in issue.

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

23 (3) The administrator, at reasonable times, may examine the records of an
24 agent, including a dividend disbursing agent or transfer agent, of a business
25 association or financial association that is the holder of property presumed

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1 abandoned if the administrator has given the notice required by sub. (2) to both the
2 association or organization and the agent at least 90 days before the examination.

3 (4) Documents and working papers obtained or compiled by the administrator,
4 or the administrator's agents, employes or designated representatives, in the course
5 of conducting an examination are confidential and are not public records, but the
6 documents and papers may be used, produced and disclosed as follows:

7 (a) Used by the administrator in the course of an action to collect unclaimed
8 property or to otherwise enforce this chapter.

9 (b) Used in joint examinations conducted with or pursuant to an agreement
10 with another state, the federal government, or any other governmental subdivision,
11 agency or instrumentality.

12 (c) Produced pursuant to subpoena or court order.

13 (d) Disclosed to the abandoned property office of another state for that state's
14 use in circumstances equivalent to those described in this subsection, if the other
15 state is bound to keep the documents and papers confidential.

16 (5) If an examination of the records of a person results in the disclosure of
17 property reportable under this chapter, the administrator may assess the cost of the
18 examination against the holder at the rate of \$200 a day for each examiner, or a
19 greater amount that is reasonable and was incurred, but the assessment may not
20 exceed the value of the property found to be reportable. The cost of an examination
21 made pursuant to sub. (3) may be assessed only against the business association or
22 financial organization.

23 (6) If, after the effective date of this subsection [revisor inserts date], a
24 holder does not maintain the records required by s. 177.31 and the records of the
25 holder available for the periods subject to this chapter are insufficient to permit the

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1 preparation of a report, the administrator may require the holder to report and pay
2 to the administrator the amount the administrator reasonably estimates, on the
3 basis of any available records of the holder or by any other reasonable method of
4 estimation, should have been but was not reported.

5 **177.31 Retention of records.** (1) Except as otherwise provided in sub. (2),
6 a holder required to file a report under s. 177.17 shall maintain the records
7 containing the information required to be included in the report for 10 years after the
8 holder files the report, unless a shorter period is provided by rule of the
9 administrator.

10 (2) A business association or financial organization that sells, issues or
11 provides to others for sale or issue in this state, traveler's checks, money orders or
12 similar instruments other than third-party bank checks, on which the business
13 association or financial organization is directly liable, shall maintain a record of the
14 instruments while they remain outstanding, indicating the state and date of issue,
15 for 3 years.

16 **177.32 Enforcement.** The administrator may maintain an action in this or
17 another state to enforce this chapter. The court may award reasonable attorney fees
18 to the prevailing party.

19 **177.33 Interstate agreements and cooperation; joint and reciprocal**
20 **actions with other states.** (1) The administrator may enter into an agreement
21 with another state to exchange information relating to abandoned property or its
22 possible existence. The agreement may permit the other state, or another person
23 acting on behalf of a state, to examine records as authorized in s. 177.30. The

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1 administrator by rule may require the reporting of information needed to enable
2 compliance with an agreement made under this section and prescribe the form.

3 (2) The administrator may join with another state to seek enforcement of this
4 chapter against any person who is or may be holding property reportable under this
5 chapter.

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

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

23 **177.34 Interest and penalties.** (1) A holder who fails to report, pay or deliver
24 property within the time prescribed by this chapter shall pay to the administrator

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1 interest at the annual rate of 18% on the property or value thereof from the date the
2 property should have been reported, paid or delivered.

3 (2) Except as otherwise provided in sub. (3), a holder who fails to report, pay
4 or deliver property within the time prescribed by this chapter, or fails to perform
5 other duties imposed by this chapter, shall pay to the administrator, in addition to
6 interest as provided in sub. (1), a civil penalty of \$200 for each day the report,
7 payment or delivery is withheld, or the duty is not performed, up to a maximum of
8 \$5,000.

9 (3) A holder who wilfully fails to report, pay or deliver property within the time
10 prescribed by this chapter, or wilfully fails to perform other duties imposed by this
11 chapter, shall pay to the administrator, in addition to interest as provided in sub. (1),
12 a civil penalty of \$1,000 for each day the report, payment or delivery is withheld, or
13 the duty is not performed, up to a maximum of \$25,000, plus 25% of the value of any
14 property that should have been but was not reported.

15 (4) A holder who makes a fraudulent report shall pay to the administrator, in
16 addition to interest as provided in sub. (1), a civil penalty of \$1,000 for each day from
17 the date a report under this chapter was due, up to a maximum of \$25,000, plus 25%
18 of the value of any property that should have been but was not reported.

19 (5) The administrator for good cause may waive, in whole or in part, interest
20 under sub. (1) and penalties under subs. (2) and (3), and shall waive penalties if the
21 holder acted in good faith and without negligence.

22 **177.35 Agreement to locate property.** (1) An agreement by an owner, the
23 primary purpose of which is to locate, deliver, recover or assist in the recovery of
24 property that is presumed abandoned, is void and unenforceable if it was entered into
25 during the period commencing on the date the property was presumed abandoned

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1 and extending to a time that is 24 months after the date the property is paid or
2 delivered to the administrator. This subsection does not apply to an owner's
3 agreement with an attorney to file a claim as to identified property or contest the
4 administrator's denial of a claim.

5 (2) An agreement by an owner, the primary purpose of which is to locate,
6 deliver, recover or assist in the recovery of property, is enforceable only if the
7 agreement is in writing, clearly sets forth the nature of the property and the services
8 to be rendered, is signed by the apparent owner and states the value of the property
9 before and after the fee or other compensation has been deducted.

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

14 (4) An agreement covered by this section that provides for compensation that
15 is unconscionable is unenforceable except by the owner. An owner who has agreed
16 to pay compensation that is unconscionable, or the administrator on behalf of the
17 owner, may maintain an action to reduce the compensation to a conscionable
18 amount. The court may award reasonable attorney fees to an owner who prevails in
19 the action.

20 (5) This section does not preclude an owner from asserting that an agreement
21 covered by this section is invalid on grounds other than unconscionable
22 compensation.

23 **177.36 Foreign transactions.** This chapter does not apply to property held,
24 due and owing in a foreign country and arising out of a foreign transaction.

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1 **177.37 Transitional provisions.** (1) An initial report filed under this
2 chapter for property that was not required to be reported before the effective date of
3 this subsection [revisor inserts date], but which is subject to this chapter must
4 include all items of property that would have been presumed abandoned during the
5 10-year period next preceding the effective date of this subsection [revisor inserts
6 date], as if this chapter had been in effect during that period.

7 (2) This chapter does not relieve a holder of a duty that arose before the
8 effective date of this subsection [revisor inserts date], to report, pay or deliver
9 property. Except as otherwise provided in s. 177.29 (2), a holder who did not comply
10 with ch. 177, 1997 stats., before the effective date of this subsection [revisor
11 inserts date], is subject to the applicable provisions for enforcement and penalties
12 that then existed, which are continued in effect for the purpose of this section.

13 **177.38 Rules.** The administrator may adopt rules pursuant to ch. 227
14 necessary to carry out this chapter.

15 **177.40 Uniformity of application and construction.** This chapter shall
16 be applied and construed to effectuate its general purpose to make uniform the law
17 with respect to the subject of this chapter among states enacting it.

18 **177.41 Escheat of property to municipalities.** If a statute of this state
19 provides for the escheat of abandoned or unclaimed property to a county, city, village
20 or town, this chapter does not apply to the property.

21 **SECTION 2.** 610.61 of the statutes is amended to read:

