

1999 DRAFTING REQUEST

Bill

Received: 12/23/1998

Received By: **dykmapj**

Wanted: **Soon**

Identical to LRB:

For: **Gary George (608) 266-2500**

By/Representing: **PJD**

This file may be shown to any legislator: **NO**

Drafter: **dykmapj**

May Contact:

Alt. Drafters:

Subject: **Fin. Inst. - banking inst.**
Fin. Inst. - miscellaneous
Fin. Inst. - securities

Extra Copies: **PJD**
Rep. Gundrum

Jacket for Gundrum (Assembly) per PJD + send to Gundrum

Pre Topic:

No specific pre topic given

Topic:

Uniform Unclaimed Property Act (1995)

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Reauired</u>
/P1				_____			S&L
/P2	dykmapj 03/02/1999			_____			S&L
/P3		wjackson 03/11/1999	jfrantze 03/12/1999	_____	lrb-docadmin 03/12/1999		S&L
/1	dykmapj 01/31/2000	wjackson 02/02/2000	hhagen 02/02/2000	_____	lrb-docadmin 02/02/2000	lrb_docadmin 02/08/2000	S&L lrb-docadmin

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Reaired

02/14/2000

FE! Sent For:

<END>

11/11
2/25/00

1999 DRAFTING REQUEST

Bill

Received: **12/23/1998**

Received By: **dykmapj**

Wanted: **Soon**

Identical to LRB:

For: **Gary George (608) 266-2500**

By/Representing: **P JD**

This file may be shown to any legislator: NO

Drafter: **dykmapj**

May Contact:

Alt. Drafters:

Subject: **Fin. Inst. - banking inst.
Fin. Inst. - miscellaneous
Fin. Inst. - securities**

Extra Copies: **PJD
Rep. Gundrum**

Pre Topic:

No specific pre topic given

Topic:

Uniform Unclaimed Property Act (1995)

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Reauired</u>
/P1				_____			S&L
/P2	dykmapj 03/02/1999			_____			S&L
/P3		wjackson 03/11/1999	jfrantze 03/12/1999	_____	lrb-docadmin 03/12/1999		S&L
/1	dykmapj 01/3 1/2000	wjackson 02/02/2000	hhagen 02/02/2000	_____	lrb-docadmin 02/02/2000	lrb_docadmin 02/08/2000	S&L

1999 DRAFTING REQUEST

Bill

Received: **12/23/1998**

Received By: **dykmapj**

Wanted: **Soon**

Identical to LRB:

For: **Gary George (608) 266-2500**

By/Representing: **P JD**

This file may be shown to any legislator: NO

Drafter: **dykmapj**

May Contact:

Alt. Drafters:

Subject: **Fin. Inst. - banking inst.**
Fin. Inst. - miscellaneous
Fin. Inst. - securities

Extra Copies: **PJD**
Rep. Gundrum

Pre Topic:

No specific pre topic given

Topic:

Uniform Unclaimed Property Act (1995)

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1				_____			S&L
/P2	dykmapj 03/02/1999			_____			S&L
/P3	dykmapj	wjackson 03/11/1999	jfrantze 03/12/1999	_____	lrb_docadmin 03/12/1999		S&L

1 Wlj 2/11/2000 nh 026 nh 1/12/2

FE Sent For:

<END>

1999 DRAFTING REQUEST

Bill

Received: **12/23/98**

Received By: **dykmapj**

Wanted: **As time permits**

Identical to LRB:

For: **Gary George (608) 266-2500**

By/Representing: **P JD**

This file may be shown to any legislator: **NO**

Drafter: **dykmapj**

May Contact:

Alt. Drafters:

Subject: **Fin. Inst. - banking inst.**
Fin. Inst. - miscellaneous
Fin. Inst. - securities

Extra Copies: **PJD**

Pre Topic:

No specific pre topic given

Topic:

Uniform Unclaimed Property Act (1995)

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1				_____			S&L
/P2	dykmapj 03/2/99			_____			S&L
/P3		lrb_editor		_____			S&L

p3 3/9 wlj
3/12 *3/12*
<END>

FE Sent For:



PRELIMINARY **DRAFT - NOT** READY **FOR INTRODUCTION**

1 **AN ACT . . . relating to:** the unclaimed property act and granting rule-making
2 authority.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

For further information see the state **and local** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 **SECTION 1.** Chapter 177 of the statutes is repealed and recreated to read:

4 **CHAPTER 177**

5 **UNCLAIMED PROPERTY ACT**

6 **177.01 Definitions.** In this chapter:

7 **(1)** "Administrator" means the state treasurer.

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

1 (3) “Business association” means a corporation, joint stock company,
2 investment company, partnership, unincorporated association, joint venture,
3 limited liability company, business trust, trust company, [land bank], safe deposit
4 company, [safekeeping depository], financial organization, insurance company,
5 mutual fund, utility or other business entity consisting of one or more persons,
6 whether or not for profit.

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

9 (5) “Financial organization” means a savings and loan association, [building
10 and loan association, savings bank, industrial bank,] bank, banking organization or
11 credit union.

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

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

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

1 (9) "Mineral proceeds" means amounts payable for the extraction, production
2 or sale of minerals, or, upon the abandonment of those payments, all payments that
3 become payable thereafter. The term includes amounts payable:

4 (a) For the acquisition and retention of a mineral lease, including bonuses,
5 royalties, compensatory royalties, shut-in royalties, minimum royalties and delay
6 rentals;

7 (b) For the extraction, production or sale of minerals, including net revenue
8 interests, royalties, overriding royalties, extraction payments and production
9 payments; and

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

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

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

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

23 (13) "Property" means tangible property described in s. 177.05 or a fixed and
24 certain interest in intangible property that is held, issued or owed in the course of
25 a holder's business, or by a government, governmental subdivision, agency or

1 instrumentality, and all income or increments therefrom. The term includes
2 property that is referred to as or evidenced by:

3 (a) Money, a check, draft, deposit, interest or dividend;

4 (b) Credit balance, customer's overpayment, gift certificate, security deposit,
5 refund, credit memorandum, unpaid wage, unused ticket, mineral proceeds or
6 unidentified remittance;

7 (c) Stock or other evidence of ownership of an interest in a business association
8 or financial organization;

9 (d) A bond, debenture, note or other evidence of indebtedness;

10 (e) Money deposited to redeem stocks, bonds, coupons or other securities or to
11 make distributions;

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

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

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

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

24 (16) "Utility" means [a person who owns or operates for public use any plant,
25 equipment, real property, franchise or license for the transmission of

1 communications or the production, storage, transmission, sale, delivery or
2 furnishing of electricity, water, steam or gas] [insert cross reference to statute
3 defining public utility].

4 **177.03 Presumption of abandonment. (1)** Property is presumed
5 abandoned if it is unclaimed by the apparent owner during the time set forth below
6 for the particular property:

7 (a) Traveler's check, 15 years after issuance;

8 (b) Money order, 7 years after issuance;

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

12 1. The date of the most recent dividend, stock split or other distribution
13 unclaimed by the apparent owner; or

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

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

20 (e) A demand, savings or time deposit, including a deposit that is automatically
21 renewable, 5 years after the earlier of maturity or the date of the last indication by
22 the owner of interest in the property; but a deposit that is automatically renewable
23 is deemed matured for purposes of this section upon its initial date of maturity,
24 unless the owner has consented to a renewal at or about the time of the renewal and

1 the consent is in writing or is evidenced by a memorandum or other record on file with
2 the holder;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 **177.05 Contents of safe deposit box or other safekeeping depository.**

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

18 **177.07 Rules for taking custody.** Except as otherwise provided in this
19 chapter or by other statute of this state, property that is presumed abandoned,
20 whether located in this or another state, is subject to the custody of this state if:

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 to
24 the property and it is established that the last-known address of the person entitled
25 to the property is in this state;

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

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

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; or

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.

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

18 (2) The report must be verified and must contain:

19 (a) A description of the property;

20 (b) Except with respect to a traveler's check or money order, the name, if known,
21 and last-known address, if any, and the social security number or taxpayer
22 identification number, if readily ascertainable, of the apparent owner of property of
23 the value of \$50 or more;

24 (c) An aggregated amount of items valued under \$50 each;

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

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

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

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

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

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

20 (5) The holder of property presumed abandoned shall send written notice to the
21 apparent owner, not more than 120 days or less than 60 days before filing the report,
22 stating that the holder is in possession of property subject to this chapter, if:

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

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

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

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

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

10 **177.15 Payment or delivery of abandoned property. (1)** Except for
11 property held in a safe deposit box or other safekeeping depository, upon filing the
12 report required by s. 177.13, the holder of property presumed abandoned shall pay,
13 deliver or cause to be paid or delivered to the administrator the property described
14 in the report as unclaimed, but if the property is an automatically renewable deposit,
15 and a penalty or forfeiture in the payment of interest would result, the time for
16 compliance is extended until a penalty or forfeiture would no longer result. Tangible
17 property held in a safe deposit box or other safekeeping depository may not be
18 delivered to the administrator until 120 days after filing the report required by s.
19 177.13.

20 (2) If the property reported to the administrator is a security or security
21 entitlement under ch. 408, the administrator is an appropriate person to make an
22 endorsement, instruction or entitlement order on behalf of the apparent owner to
23 invoke the duty of the issuer or its transfer agent or the securities intermediary to
24 transfer or dispose of the security or the security entitlement in accordance with ch.
25 408.

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

4 (4) An issuer, the holder and any transfer agent or other person acting
5 pursuant to the instructions of and on behalf of the issuer or holder in accordance
6 with this section is not liable to the apparent owner and must be indemnified against
7 claims of any person in accordance with s. 177.19.

8 **177.17 Notice and publication of lists of abandoned property. (1)** The
9 administrator shall publish a notice not later than November 30 of the year next
10 following the year in which abandoned property has been paid or delivered to the
11 administrator. The notice must be published as a class 1 notice under ch. 985 in a
12 newspaper of general circulation in the county of this state in which is located the
13 last-known address of any person named in the notice. If a holder does not report
14 an address for the apparent owner, or the address is outside this state, the notice
15 must be published in the county in which the holder has its principal place of
16 business within this state or another county that the administrator reasonably
17 selects. The advertisement must be in a form that, in the judgment of the
18 administrator, is likely to attract the attention of the apparent owner of the
19 unclaimed property. The form must contain:

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

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

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

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

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

9 **177.19 Custody by state; recovery by holder; defense of holder. (1)** In
10 this section, payment or delivery is made in "good faith" if:

11 (a) Payment or delivery was made in a reasonable attempt to comply with this
12 chapter;

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

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

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

22 (3) A holder who has paid money to the administrator pursuant to this chapter
23 may subsequently make payment to a person reasonably appearing to the holder to
24 be entitled to payment. Upon a filing by the holder of proof of payment and proof that
25 the payee was entitled to the payment, the administrator shall promptly reimburse

1 the holder for the payment without imposing a fee or other charge. If reimbursement
2 is sought for a payment made on a negotiable instrument, including a traveler's
3 check or money order, the holder must be reimbursed upon filing proof that the
4 instrument was duly presented and that payment was made to a person who
5 reasonably appeared to be entitled to payment. The holder must be reimbursed for
6 payment made even if the payment was made to a person whose claim was barred
7 under s. 177.37 (1).

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

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

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

20 (7) Property removed from a safe deposit box or other safekeeping depository
21 is received by the administrator subject to the holder's right to be reimbursed for the
22 cost of the opening and to any valid lien or contract providing for the holder to be
23 reimbursed for unpaid rent or storage charges. The administrator shall reimburse

1 the holder out of the proceeds remaining after deducting the expense incurred by the
2 administrator in selling the property.

3 **177.21 Crediting of dividends, interest and increments to owner's**
4 **account.** If property other than money is delivered to the administrator under this
5 chapter, the owner is entitled to receive from the administrator any income or gain
6 realized or accruing on the property at or before liquidation or conversion of the
7 property into money. If the property was an interest bearing demand, savings or time
8 deposit, including a deposit that is automatically renewable, the administrator shall
9 pay interest at a rate of [insert legal rate] percent a year or any lesser rate the
10 property earned while in the possession of the holder. Interest begins to accrue when
11 the property is delivered to the administrator and ceases on the earlier of the
12 expiration of 10 years after delivery or the date on which payment is made to the
13 owner. Interest on interest bearing property is not payable for any period before the
14 effective date of this chapter [revisor inserts date], unless authorized by law
15 superseded by this chapter.

16 **177.23 Public sale of abandoned property. (1)** Except as otherwise
17 provided in this section, the administrator, within 3 years after the receipt of
18 abandoned property, shall sell it to the highest bidder at public sale at a location in
19 the state which in the judgment of the administrator affords the most favorable
20 market for the property. The administrator may decline the highest bid and reoffer
21 the property for sale if the administrator considers the bid to be insufficient. The
22 administrator need not offer the property for sale if the administrator considers that
23 the probable cost of sale will exceed the proceeds of the sale. A sale held under this
24 section must be preceded by a class 1 notice under ch. 985, at least 3 weeks before

1 sale, in a newspaper of general circulation in the county in which the property is to
2 be sold.

3 (2) Securities listed on an established stock exchange must be sold at prices
4 prevailing on the exchange at the time of sale. Other securities may be sold over the
5 counter at prices prevailing at the time of sale or by any reasonable method selected
6 by the administrator. If securities are sold by the administrator before the expiration
7 of 3 years after their delivery to the administrator, a person making a claim under
8 this chapter before the end of the 3-year period is entitled to the proceeds of the sale
9 of the securities or the market value of the securities at the time the claim is made,
10 whichever is greater, plus dividends, interest and other increments thereon up to the
11 time the claim is made, less any deduction for expenses of sale. A person making a
12 claim under this chapter after the expiration of the S-year period is entitled to
13 receive the securities delivered to the administrator by the holder, if they still remain
14 in the custody of the administrator, or the net proceeds received from sale, and is not
15 entitled to receive any appreciation in the value of the property occurring after
16 delivery to the administrator, except in a case of intentional misconduct or
17 malfeasance by the administrator.

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

22 **177.25 Deposit of funds.** [(1) Except as otherwise provided by this section,
23 the] [The] administrator shall promptly deposit in the [general fund] of this state all
24 funds received under this chapter, including the proceeds from the sale of abandoned
25 property under s. 177.45. [The administrator shall retain in a separate trust fund

1 at least [\$100,000] from which the administrator shall pay claims duly allowed.] The
2 administrator shall record the name and last-known address of each person
3 appearing from the holders' reports to be entitled to the property and the name and
4 last-known address of each insured person or annuitant and beneficiary and with
5 respect to each policy or annuity listed in the report of an insurance company, its
6 number, the name of the company and the amount due.

7 [(2) Before making a deposit to the credit of the [general fund], the
8 administrator may deduct:

9 (a) Expenses of sale of abandoned property;

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

11 (c) Reasonable service charges; and

12 (d) Expenses incurred in examining records of holders of property and in
13 collecting the property from those holders.]

14 **177.27 Claim of another state to recover property. (1)** After property has
15 been paid or delivered to the administrator under this chapter, another state may
16 recover the property if:

17 (a) The property was paid or delivered to the custody of this state because the
18 records of the holder did not reflect a last-known location of the apparent owner
19 within the borders of the other state and the other state establishes that the apparent
20 owner or other person entitled to the property was last known to be located within
21 the borders of that state and under the laws of that state the property has escheated
22 or become subject to a claim of abandonment by that state;

23 (b) The property was paid or delivered to the custody of this state because the
24 laws of the other state did not provide for the escheat or custodial taking of the

1 property, and under the laws of that state subsequently enacted the property has
2 escheated or become subject to a claim of abandonment by that state;

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

7 (d) The property was subjected to custody by this state under s. 177.07 (6) and
8 under the laws of the state of domicile of the holder the property has escheated or
9 become subject to a claim of abandonment by that state; or

10 (e) The property is a sum payable on a traveler's check, money order or similar
11 instrument that was purchased in the other state and delivered into the custody of
12 this state under s. 177.07 (7), and under the laws of the other state the property has
13 escheated or become subject to a claim of abandonment by that state.

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

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

21 **177.29 Filing claim with administrator; handling of claims by**
22 **administrator. (1)** A person, excluding another state, claiming property paid or
23 delivered to the administrator may file a claim on a form prescribed by the
24 administrator and verified by the claimant.

1 (2) Within 90 days after a claim is filed, the administrator shall allow or deny
2 the claim and give written notice of the decision to the claimant. If the claim is
3 denied, the administrator shall inform the claimant of the reasons for the denial and
4 specify what additional evidence is required before the claim will be allowed. The
5 claimant may then file a new claim with the administrator or maintain an action
6 under s. 177.31.

7 (3) Within 30 days after a claim is allowed, the property or the net proceeds of
8 a sale of the property must be delivered or paid by the administrator to the claimant,
9 together with any dividend, interest or other increment to which the claimant is
10 entitled under ss. 177.21 and 177.23.

11 (4) A holder who pays the owner for property that has been delivered to this
12 state and which, if claimed from the administrator by the owner would be subject to
13 an increment under ss. 177.21 and 177.23, may recover from the administrator the
14 amount of the increment.

15 **177.31 Action to establish claim.** A person aggrieved by a decision of the
16 administrator or whose claim has not been acted upon within 90 days after its filing
17 may maintain an original action to establish the claim in the [appropriate] court,
18 naming the administrator as a defendant. [If the aggrieved person establishes the
19 claim in an action against the administrator, the court may award the claimant
20 reasonable attorney's fees.]

21 **177.33 Election to take payment or delivery. (1)** The administrator may
22 decline to receive property reported under this chapter which the administrator
23 considers to have a value less than the expenses of notice and sale.

24 (2) A holder, with the written consent of the administrator and upon conditions
25 and terms prescribed by the administrator, may report and deliver property before

1 the property is presumed abandoned. Property so delivered must be held by the
2 administrator and is not presumed abandoned until it otherwise would be presumed
3 abandoned under this chapter.

4 **177.35 Destruction or disposition of property having no substantial**
5 **commercial value; immunity from liability.** If the administrator determines
6 after investigation that property delivered under this chapter has no substantial
7 commercial value, the administrator may destroy or otherwise dispose of the
8 property at any time. An action or proceeding may not be maintained against this
9 state or any officer or against the holder for or on account of an act of the
10 administrator under this section, except for intentional misconduct or malfeasance.

11 **177.37 Periods of limitation. (1)** The expiration, before, on or after the
12 effective date of this chapter [revisor inserts date], of a period of limitation on the
13 owner's right to receive or recover property, whether specified by contract, statute or
14 court order, does not preclude the property from being presumed abandoned or affect
15 a duty to file a report or to pay or deliver or transfer property to the administrator
16 as required by this chapter.

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

1 **177.39 Requests for reports and examination of records. (1)** The
2 administrator may require a person who has not filed a report, or a person who the
3 administrator believes has filed an inaccurate, incomplete or false report, to file a
4 verified report in a form specified by the administrator. The report must state
5 whether the person is holding property reportable under this chapter, describe
6 property not previously reported or as to which the administrator has made inquiry,
7 and specifically identify and state the amounts of property that may be in issue.

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

14 (3) The administrator at reasonable times may examine the records of an
15 agent, including a dividend disbursing agent or transfer agent, of a business
16 association or financial association that is the holder of property presumed
17 abandoned if the administrator has given the notice required by sub. (2) to both the
18 association or organization and the agent at least 90 days before the examination.

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

23 (a) Used by the administrator in the course of an action to collect unclaimed
24 property or otherwise enforce this chapter;

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

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

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

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

15 (6) If, after the effective date of this chapter . . . [revisor inserts date], a holder
16 does not maintain the records required by s. 177.41 and the records of the holder
17 available for the periods subject to this chapter are insufficient to permit the
18 preparation of a report, the administrator may require the holder to report and pay
19 to the administrator the amount the administrator reasonably estimates, on the
20 basis of any available records of the holder or by any other reasonable method of
21 estimation, should have been but was not reported.

22 **177.41 Retention of records. (1)** Except as otherwise provided in sub. (2), a
23 holder required to file a report under s. 177.13 shall maintain the records containing
24 the information required to be included in the report for 10 years after the holder files
25 the report, unless a shorter period is provided by rule of the administrator.

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

7 **177.43 Enforcement.** The administrator may maintain an action in this or
8 another state to enforce this chapter. The court may award reasonable attorney's
9 fees to the prevailing party.

10 **177.45 Interstate agreements and cooperation; joint and reciprocal**
11 **actions with other states. (1)** The administrator may enter into an agreement
12 with another state to exchange information relating to abandoned property or its
13 possible existence. The agreement may permit the other state, or another person
14 acting on behalf of a state, to examine records as authorized in s. 177.39. The
15 administrator by rule may require the reporting of information needed to enable
16 compliance with an agreement made under this section and prescribe the form.

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

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

1 (4) The administrator may request that the attorney general of another state
2 or another attorney commence an action in the other state on behalf of the
3 administrator. With the approval of the attorney general of this state, the
4 administrator may retain any other attorney to commence an action in this state on
5 behalf of the administrator. This state shall pay all expenses, including attorney's
6 fees, in maintaining an action under this subsection. **With the**
7 **administrator's approval, the expenses and attorney's fees may**
8 **be paid from money received under this chapter.** [The administrator
9 may agree to pay expenses and attorney's fees based in whole or in part on a
10 percentage of the value of any property recovered in the action.] Any expenses or
11 attorney's fees paid under this subsection may not be deducted from the amount that
12 is subject to the claim by the owner under this chapter.

13 **177.47 Interest and taxes. (1)** A holder who fails to report, pay or deliver
14 property within the time prescribed by this chapter shall pay to the administrator
15 interest at the annual rate of [12%] [two percentage points above the annual rate of
16 discount in effect on the date the property should have been paid or delivered for the
17 most recent issue of 52-week United States Treasury bills] on the property or value
18 thereof from the date the property should have been reported, paid or delivered.

19 (2) Except as otherwise provided in sub. (3), a holder who fails to report, pay
20 or deliver property within the time prescribed by this chapter, or fails to perform
21 other duties imposed by this chapter, shall pay to the administrator, in addition to
22 interest as provided in sub. (1), a civil penalty of \$200 for each day the report,
23 payment or delivery is withheld, or the duty is not performed, up to a maximum of
24 \$5,000.

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

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

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

14 **177.49 Agreement to locate property. (1)** An agreement by an owner, the
15 primary purpose of which is to locate, deliver, recover or assist in the recovery of
16 property that is presumed abandoned is void and unenforceable if it was entered into
17 during the period commencing on the date the property was presumed abandoned
18 and extending to a time that is 24 months after the date the property is paid or
19 delivered to the administrator. This subsection does not apply to an owner's
20 agreement with an attorney to file a claim as to identified property or contest the
21 administrator's denial of a claim.

22 (2) An agreement by an owner, the primary purpose of which is to locate,
23 deliver, recover or assist in the recovery of property is enforceable only if the
24 agreement is in writing, clearly sets forth the nature of the property and the services

1 to be rendered, is signed by the apparent owner and states the value of the property
2 before and after the fee or other compensation has been deducted.

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

7 (4) An agreement covered by this section which provides for compensation that
8 is unconscionable is unenforceable except by the owner. An owner who has agreed
9 to pay compensation that is unconscionable, or the administrator on behalf of the
10 owner, may maintain an action to reduce the compensation to a conscionable
11 amount. The court may award reasonable attorney's fees to an owner who prevails
12 in the action.

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

16 **177.51 Foreign transactions.** This chapter does not apply to property held,
17 due and owing in a foreign country and arising out of a foreign transaction.

18 **177.53 Transitional provisions. (1)** An initial report filed under this chapter
19 for property that was not required to be reported before the effective date of this
20 chapter . . . [revisor inserts date] but which is subject to this chapter must include all
21 items of property that would have been presumed abandoned during the lo-year
22 period next preceding the effective date of this chapter . . . [revisor inserts date] as
23 if this chapter had been in effect during that period.



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

This is the

uniform

1 **AN ACT . . . relating to:** the unclaimed property act and granting rule-making
2 authority.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

For further information see the state **and local** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 **SECTION 1.** Chapter 177 of the statutes is repealed and recreated to read:

4 **CHAPTER 177**

5 **UNIFORM UNCLAIMED PROPERTY ACT**

6 **177.01 Definitions.** In this chapter:

7 (1) "Administrator" means the state treasurer.

8 (2) "Apparent owner" means a person whose name appears on the records of

9 a holder as the person entitled to property held, issued or owing by the holder.

177.01

1 (3) "Business association" means a corporation, joint stock company,
2 investment company, partnership, unincorporated association, joint venture,
3 limited liability company, business trust, trust company, ~~land bank~~, safe deposit
4 company, ~~safekeeping depository~~, financial organization, insurance company,
5 mutual fund, utility or other business entity consisting of one or more persons,
6 whether or not for profit.

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

9 (5) "Financial organization" means a savings and loan association, ~~building~~
10 and loan association, savings bank, industrial bank, ~~bank~~, banking organization or
11 credit union.

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

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

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

1 (9) "Mineral proceeds" means amounts payable for the extraction, production
2 or sale of minerals, or, upon the abandonment of those payments, all payments that
3 become payable thereafter. The term includes amounts payable:

4 (a) For the acquisition and retention of a mineral lease, including bonuses,
5 royalties, compensatory royalties, shut-in royalties, minimum royalties and delay
6 rentals;

7 (b) For the extraction, production or sale of minerals, including net revenue
8 interests, royalties, overriding royalties, extraction payments and production
9 payments; and

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

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

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

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

23 (13) "Property" means tangible property described in s. ~~177.05~~ ^{177.025} or a fixed and
24 certain interest in intangible property that is held, issued or owed in the course of
25 a holder's business, or by a government, governmental subdivision, agency or

1 instrumentality, and all income or increments therefrom. The term includes
2 property that is referred to as or evidenced by:

3 (a) Money, a check, draft, deposit, interest or dividend;

4 (b) Credit balance, customer's overpayment, gift certificate, security deposit,
5 refund, credit memorandum, unpaid wage, unused ticket, mineral proceeds or
6 unidentified remittance;

7 (c) Stock or other evidence of ownership of an interest in a business association
8 or financial organization;

9 (d) A bond, debenture, note or other evidence of indebtedness;

10 (e) Money deposited to redeem stocks, bonds, coupons or other securities or to
11 make distributions;

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

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

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

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

24 (16) "Utility" means ~~a~~ a person who owns or operates for public use any plant,
25 equipment, real property, franchise or license for the transmission of

1 communications or the production, storage, transmission, sale, delivery or
2 furnishing of electricity, water, steam or gas, ~~insert cross reference to statute~~
3 ~~defining public utility.~~

177.015

177.015 Exemption. Notwithstanding this chapter, a cooperative organized
4 under ch. 185 may effect the forfeiture to the cooperative of unclaimed funds as
5 provided in ss. 185.03 (10) and 185.75 (1).
6

177.165

177.165 Proceeds from sale of property in self-service storage facility.

Notwithstanding s. 177.02 (1), the proceeds of a sale under s. 704.90 (6) of personal
7 property stored in a leased facility located within a self-service storage facility after
8
9 satisfaction of the operator's lien under s. 704.90 (3) (a) is presumed abandoned.
10

177.02
177.03

177.03 Presumption of abandonment. (1) Property is presumed
11

12 abandoned if it is unclaimed by the apparent owner during the time set forth below
13 for the particular property:

177.014

(a) Traveler's check, 15 years after issuance~~x~~ ,

177.015

(b) Money order, 7 years after issuance~~x~~ ,

177.10

(c) Stock or other equity interest in a business association or financial
16 organization, including a security entitlement under ch. 408, 5 years after the earlier
17

18 of:

19 1. The date of the most recent dividend, stock split or other distribution
20 unclaimed by the apparent owner; or

21 2. The date of the second mailing of a statement of account or other notification
22 or communication that was returned as undeliverable or after the holder
23 discontinued mailings, notifications or communications to the apparent owner~~x~~ .

177.13

1

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

177.153

4

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

177.08

6

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

177.127
12
18

9

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

177.02
177.05
177.04
177.127

14

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

15

16

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

18

19

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

20

21

22

23

24

25

177.04

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

177.06

4 (e) A demand, savings or time deposit, including a deposit that is automatically
5 renewable, 5 years after the earlier of maturity or the date of the last indication by
6 the owner of interest in the property; but a deposit that is automatically renewable
7 is deemed matured for purposes of this section upon its initial date of maturity,
8 unless the owner has consented to a renewal at or about the time of the renewal and
9 the consent is in writing or is evidenced by a memorandum or other record on file with
10 the holder~~x~~ ,

177.07

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

177.14

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

177.07

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

177.11

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

177.13

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

SECTION 1

the following

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

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

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

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

11 (d) The payment of a premium with respect to a property interest in an
12 insurance policy; but the application of an automatic premium loan provision or
13 other nonforfeiture provision contained in an insurance policy does not prevent a
14 policy from maturing or terminating if the insured has died or the insured or the
15 beneficiary of the policy has otherwise become entitled to the proceeds before the
16 depletion of the cash surrender value of a policy by the application of those
17 provisions.

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

21 ^{177.16} ~~177.05~~ **Contents of safe deposit box or other safekeeping depository.**

22 Tangible property held in a safe deposit box or other safekeeping depository in this
23 state in the ordinary course of the holder's business and proceeds resulting from the
24 sale of the property permitted by other law, are presumed abandoned if the property

177.03

1 remains unclaimed by the owner for more than 5 years after expiration of the lease
2 or rental period on the box or other depository.

any of the following conditions is present

3 ~~177.07~~ **Rules for taking custody.** Except as otherwise provided in this
4 chapter or by other statute of this state, property that is presumed abandoned,
5 whether located in this or another state, is subject to the custody of this state if:

6 (1) The last-known address of the apparent owner, as shown on the records of
7 the holder, is in this state~~x~~ ,

8 (2) The records of the holder do not reflect the identity of the person entitled to
9 the property and it is established that the last-known address of the person entitled
10 to the property is in this state~~x~~ ,

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

13 (a) The last-known address of the person entitled to the property is in this state;
14 or

15 (b) The holder is domiciled in this state or is a government or governmental
16 subdivision, agency or instrumentality of this state and has not previously paid or
17 delivered the property to the state of the last-known address of the apparent owner
18 or other person entitled to the property~~x~~ ,

19 (4) The last-known address of the apparent owner, as shown on the records of
20 the holder, is in a state that does not provide for the escheat or custodial taking of
21 the property and the holder is domiciled in this state or is a government or
22 governmental subdivision, agency or instrumentality of this state~~x~~ .

23 (5) The last-known address of the apparent owner, as shown on the records of
24 the holder, is in a foreign country and the holder is domiciled in this state or is a
25 government or governmental subdivision, agency or instrumentality of this state~~x~~ .

177.03

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

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

177.04(3)
177.11
177.05(2)
177.12
177.04(3)

177.09 Dormancy charge. A holder may deduct from property presumed

11 abandoned a charge imposed by reason of the owner's failure to claim the property
12 within a specified time only if there is a valid and enforceable written contract
13 between the holder and the owner under which the holder may impose the charge
14 and the holder regularly imposes the charge, which is not regularly reversed or
15 otherwise canceled. The amount of the deduction is limited to an amount that is not
16 unconscionable.
17

new?

177.11 Burden of proof as to property evidenced by record of check or

18 **draft.** A record of the issuance of a check, draft or similar instrument is prima facie
19 evidence of an obligation. In claiming property from a holder who is also the issuer,
20 the administrator's burden of proof as to the existence and amount of the property
21 and its abandonment is satisfied by showing issuance of the instrument and passage
22 of the requisite period of abandonment. Defenses of payment, satisfaction, discharge
23 and want of consideration are affirmative defenses that must be established by the
24 holder.
25

177.17

177.17

1 **177.13 Report of abandoned property.** (1) A holder of property presumed
2 abandoned shall make a report to the administrator concerning the property.

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

4 (a) A description of the property~~x~~,

5 (b) Except with respect to a traveler's check or money order, the name, if known,
6 and last-known address, if any, and the social security number or taxpayer
7 identification number, if readily ascertainable, of the apparent owner of property of
8 the value of \$50 or more~~x~~ .

9 (c) An aggregated amount of items valued under \$50 each~~x~~ ,

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

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

16 (f) The date, if any, on which the property became payable, demandable or
17 returnable, and the date of the last transaction with the apparent owner with respect
18 to the property~~and~~ .

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

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

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

4 (5) The holder of property presumed abandoned shall send written notice to the
5 apparent owner, not more than 120 days or less than 60 days before filing the report,
6 stating that the holder is in possession of property subject to this chapter, if *all of the following exist*

7 (a) The holder has in its records an address for the apparent owner which the
8 holder's records do not disclose to be inaccurate. *X*

9 (b) The claim of the apparent owner is not barred by a statute of limitations@ *u*

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

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

177.19

177.17

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

move

177.14

19 ~~177.15~~ **Payment or delivery of abandoned property. (1)** Except for
20 property held in a safe deposit box or other safekeeping depository, upon filing the
21 report required by s. ~~177.13~~, the holder of property presumed abandoned shall pay,
22 deliver or cause to be paid or delivered to the administrator the property described
23 in the report as unclaimed, but if the property is an automatically renewable deposit,
24 **and a penalty or forfeiture in the payment of interest would result, the time for**
25 compliance is extended until a penalty or forfeiture would no longer result. Tangible

177.17

1 property held in a safe deposit box or other safekeeping depository may not be
2 delivered to the administrator until 120 days after filing the report required by s.
3 ~~177.13.~~

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

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

13 (4) An issuer, the holder and any transfer agent or other person acting
14 pursuant to the instructions of and on behalf of the issuer or holder in accordance
15 with this section is not liable to the apparent owner and must be indemnified against
16 claims of any person in accordance with s. ~~177.19.~~ 177.18

177.18

~~177.17~~ **Notice and publication of lists of abandoned property.** (1) The
18 administrator shall publish a notice not later than November 30 of the year next
19 following the year in which abandoned property has been paid or delivered to the
20 administrator. The notice must be published as a class 1 notice under ch. 985 in a
21 newspaper of general circulation in the county of this state in which is located the
22 last-known address of any person named in the notice. If a holder does not report
23 an address for the apparent owner, or the address is outside this state, the notice
24 must be published in the county in which the holder has its principal place of
25 business within this state or another county that the administrator reasonably

177-20

1 selects. The advertisement must be in a form that, in the judgment of the
2 administrator, is likely to attract the attention of the apparent owner of the
3 unclaimed property. The form must contain: *all of the following*

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

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

177.20

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

177.20

~~177.19~~ Custody by state; recovery by holder; defense of holder. (1) In

17 this section, payment or delivery is made in "good faith" if *all of the following exist*

18 (a) Payment or delivery was made in a reasonable attempt to comply with this
19 chapter ✓

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

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

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

5 (3) A holder who has paid money to the administrator pursuant to this chapter
6 may subsequently make payment to a person reasonably appearing to the holder to
7 be entitled to payment. Upon a filing by the holder of proof of payment and proof that
8 the payee was entitled to the payment, the administrator shall promptly reimburse
9 the holder for the payment without imposing a fee or other charge. If reimbursement
10 is sought for a payment made on a negotiable instrument, including a traveler's
11 check or money order, the holder must be reimbursed upon filing proof that the
12 instrument was duly presented and that payment was made to a person who
13 reasonably appeared to be entitled to payment. The holder must be reimbursed for
14 payment made even if the payment was made to a person whose claim was barred
15 under s. ~~177.37(1)~~. 177.29

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

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

22 (6) If a holder pays or delivers property to the administrator in good faith and
23 thereafter another person claims the property from the holder or another state
24 claims the money or property under its laws relating to escheat or abandoned or
25 unclaimed property, the administrator, upon written notice of the claim, shall defend

1 the holder against the claim and indemnify the holder against any liability on the
2 claim resulting from payment or delivery of the property to the administrator.

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

177.21 **Crediting of dividends, interest and increments to owner's**
9 **account.** If property other than money is delivered to the administrator under this
10 chapter, the owner is entitled to receive from the administrator any income or gain
11 realized or accruing on the property at or before liquidation or conversion of the
12 property into money. If the property was an interest bearing demand, savings or time
13 deposit, including a deposit that is automatically renewable, the administrator shall
14 pay interest at a rate of ~~insert legal rate~~ percent a year or any lesser rate the
15 property earned while in the possession of the holder. Interest begins to accrue when
16 the property is delivered to the administrator and ceases on the earlier of the
17 expiration of 10 years after delivery or the date on which payment is made to the
18 owner. Interest on interest bearing property is not payable for any period before the
19 effective date of this chapter [revisor inserts date], unless authorized by law
20 ~~superseded by this chapter.~~ 177.22

177.22 **Public sale of abandoned property.** (1) Except as otherwise
21 provided in this section, the administrator, within 3 years after the receipt of
22 abandoned property, shall sell it to the highest bidder at public sale at a location in
23 the state which in the judgment of the administrator affords the most favorable
24
25

ch. 177, 1997 stats

1 market for the property. The administrator may decline the highest bid and reoffer
2 the property for sale if the administrator considers the bid to be insufficient. The
3 administrator need not offer the property for sale if the administrator considers that
4 the probable cost of sale will exceed the proceeds of the sale. A sale held under this
5 section must be preceded by a class 1 notice under ch. 985, at least 3 weeks before
6 sale, in a newspaper of general circulation in the county in which the property is to
7 be sold.

8 (2) Securities listed on an established stock exchange must be sold at prices
9 prevailing on the exchange at the time of sale. Other securities may be sold over the
10 counter at prices prevailing at the time of sale or by any reasonable method selected
11 by the administrator. If securities are sold by the administrator before the expiration
12 of 3 years after their delivery to the administrator, a person making a claim under
13 this chapter before the end of the 3-year period is entitled to the proceeds of the sale
14 of the securities or the market value of the securities at the time the claim is made,
15 whichever is greater, plus dividends, interest and other increments thereon up to the
16 time the claim is made, less any deduction for expenses of sale. A person making a
17 claim under this chapter after the expiration of the S-year period is entitled to
18 receive the securities delivered to the administrator by the holder, if they still remain
19 in the custody of the administrator, or the net proceeds received from sale, and is not
20 entitled to receive any appreciation in the value of the property occurring after
21 delivery to the administrator, except in a case of intentional misconduct or
22 malfeasance by the administrator.

23 (3) A purchaser of property at a sale conducted by the administrator pursuant
24 to this chapter takes the property free of all claims of the owner or previous holder

1 and of all persons claiming through or under them. The administrator shall execute
2 all documents necessary to complete the transfer of ownership.

177.23
~~177.25~~ **Deposit of funds.** (1) Except as otherwise provided by this section,

4 the ~~the~~ administrator shall promptly deposit in the ^{School} ~~general~~ fund of this state all
5 funds received under this chapter, including the ^{clear} proceeds from the sale of abandoned
6 property under s. ~~177.45~~. ~~The administrator shall retain in a separate trust fund~~

7 at least ~~[\$100,000] from which the administrator shall be permitted to~~ ~~retain~~ ~~duly~~ ~~allowed~~. The

8 administrator shall record the name and last-known address of each person
9 appearing from the holders' reports to be entitled to the property and the name and
10 last-known address of each insured person or annuitant and beneficiary and with
11 respect to each policy or annuity listed in the report of an insurance company, its
12 number, the name of the company and the amount due.

13 ~~(2) Before making a deposit to the credit of the [general fund], the~~
14 administrator ~~may deduct:~~ *shall deposit in the general fund*

15 (a) Expenses of sale of abandoned property *an amount equal to*

16 (b) Costs of mailing and publication in connection with abandoned property *all of the following*

17 (c) Reasonable service charges *and*

18 (d) Expenses incurred in examining records of holders of property and in
19 collecting the property from those holders *and*

20 ~~177.27~~ **Claim of another state to recover property.** (1) After property has
21 been paid or delivered to the administrator under this chapter, another state may

22 recover the property if: *any of the following circumstances occur*

23 (a) The property was paid or delivered to the custody of this state because the

24 records of the holder did not reflect a last-known location of the apparent owner

25 within the borders of the other state and the other state establishes that the apparent

administration of this chapter.

177.23

177.23

177.33

In sub. (2)

177.25

(e) Salaries of the employees of the administrator that are attributable to the

1 owner or other person entitled to the property was last known to be located within
2 the borders of that state and under the laws of that state the property has escheated
3 or become subject to a claim of abandonment by that state~~x~~ .

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

8 (c) The records of the holder were erroneous in that they did not accurately
9 identify the owner of the property and the last-known location of the owner within
10 the borders of another state and under the laws of that state the property has
11 escheated or become subject to a claim of abandonment by that state~~x~~ . (77.03)

12 (d) The property was subjected to custody by this state under s. ~~177.07~~ (6) and
13 under the laws of the state of domicile of the holder the property has escheated or
14 become subject to a claim of abandonment by that state~~at~~ . (77.03)

15 (e) The property is a sum payable on a traveler's check, money order or similar
16 instrument that was purchased in the other state and delivered into the custody of
17 this state under s. ~~177.07~~ (7), and under the laws of the other state the property has
18 escheated or become subject to a claim of abandonment by that state.

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

177.24

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

177.24

4 ~~177.29~~ **Filing claim with administrator; handling of claims by**
5 **administrator. (1)** A person, excluding another state, claiming property paid or
6 delivered to the administrator may file a claim on a form prescribed by the
7 administrator and verified by the claimant.

8 (2) Within 90 days after a claim is filed, the administrator shall allow or deny
9 the claim and give written notice of the decision to the claimant. If the claim is
10 denied, the administrator shall inform the claimant of the reasons for the denial and
11 specify what additional evidence is required before the claim will be allowed. The
12 claimant may then file a new claim with the administrator or maintain an action
13 under ~~177.31~~ 177.26

14 (3) Within 30 days after a claim is allowed, the property or the net proceeds of
15 a sale of the property must be delivered or paid by the administrator to the claimant,
16 together with any dividend, interest or other increment to which the claimant is
17 entitled under ss. 177.21 and ~~177.28~~.

18 (4) A holder who pays the owner for property that has been delivered to this
19 state and which, if claimed from the administrator by the owner would be subject to
20 an increment under ss. 177.21 and ~~177.28~~, may recover from the administrator the
21 amount of the increment. 177.26

177.26

22 ~~177.31~~ **Action to establish claim.** A person aggrieved by a decision of the
23 administrator or whose claim has not been acted upon within 90 days after its filing
24 may maintain an original action to establish the claim in the [appropriate] court,
25 naming the administrator as a defendant. ~~X~~ If the aggrieved person establishes the

Circuit

177.27

1 claim in an action against the administrator, the court may award the claimant
2 reasonable attorney's fees.] X

177.27B

~~177.33~~ **Election to take payment or delivery. (1)** The administrator may

4 decline to receive property reported under this chapter which the administrator
5 considers to have a value less than the expenses of notice and sale.

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

177.28

~~177.35~~ **Destruction or disposition of property having no substantial**

12 **commercial value; immunity from liability.** If the administrator determines
13 after investigation that property delivered under this chapter has no substantial
14 commercial value, the administrator may destroy or otherwise dispose of the
15 property at any time. An action or proceeding may not be maintained against this
16 state or any officer or against the holder for or on account of an act of the
17 administrator under this section, except for intentional misconduct or malfeasance.

177.28

~~177.37~~ **Periods of limitation. (1)** The expiration, before, on or after the

19 effective date of this chapter . . . [revisor inserts date], of a period of limitation on the
20 owner's right to receive or recover property, whether specified by contract, statute or
21 court order, does not preclude the property from being presumed abandoned or affect
22 a duty to file a report or to pay or deliver or transfer property to the administrator
23 as required by this chapter.

177.29

177.29

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

177.30

177.30

~~177.39~~ **Requests for reports and examination of records. (1)** The

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

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

21 (3) The administrator at reasonable times may examine the records of an
 22 agent, including a dividend disbursing agent or transfer agent, of a business
 23 association or financial association that is the holder of property presumed
 24 abandoned if the administrator has given the notice required by sub. (2) to both the
 25 association or organization and the agent at least 90 days before the examination.

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

5 (a) Used by the administrator in the course of an action to collect unclaimed
 6 property or otherwise enforce this chapter;

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

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

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

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

21 (6) If, after the effective date of this chapter . . . [revisor inserts date], a holder
 22 does not maintain the records required by s. ~~177.41~~ and the records of the holder
 23 available for the periods subject to this chapter are insufficient to permit the
 24 preparation of a report, the administrator may require the holder to report and pay
 25 to the administrator the amount the administrator reasonably estimates, on the

177.31

177.31

1 basis of any available records of the holder or by any other reasonable method of
2 estimation, should have been but was not reported.

177.17

177.3

~~177.41~~ **Retention of records.** (1) Except as otherwise provided in sub. (2), a
4 holder required to file a report under s. ~~177.13~~ shall maintain the records containing
5 the information required to be included in the report for 10 years after the holder files
6 the report, unless a shorter period is provided by rule of the administrator.

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

177.32

~~177.43~~ **Enforcement.** The administrator may maintain an action in this or
13 another state to enforce this chapter. The court may award reasonable attorney's
14 fees to the prevailing party.

177.32

177.33

~~177.45~~ **Interstate agreements and cooperation; joint and reciprocal
16 actions with other states.** (1) The administrator may enter into an agreement
17 with another state to exchange information relating to abandoned property or its
18 possible existence. The agreement may permit the other state, or another person
19 acting on behalf of a state, to examine records as authorized in s. ~~177.99~~. The
20 administrator by rule may require the reporting of information needed to enable
21 compliance with an agreement made under this section and prescribe the form.
22

177.33

177.30

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

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

9 (4) The administrator may request that the attorney general of another state
10 or another attorney commence an action in the other state on behalf of the
11 administrator. With the approval of the attorney general of this state, the
12 administrator may retain any other attorney to commence an action in this state on
13 behalf of the administrator. This state shall pay all expenses, including attorney's
14 fees, in maintaining an action under this subsection.

Handwritten initials

With the administrator's approval, the expenses and attorney's fees may be paid from money received under this chapter.

~~The administrator may agree to pay expenses and attorney's fees based in whole or in part on a percentage of the value of any property recovered in the action. Any expenses or attorney's fees paid under this subsection may not be deducted from the amount that is subject to the claim by the owner under this chapter.~~

177.34

~~**177.47 Interest and taxes.** (1) A holder who fails to report, pay or deliver property within the time prescribed by this chapter shall pay to the administrator interest at the annual rate of ~~[12%]~~ ~~two percentage points above the annual rate of discount in effect on the date the property should have been paid or delivered for the~~~~

177.34

18%

1 ~~most recent issue of 52-week United States Treasury bills~~ on the property or value
2 thereof from the date the 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 willfully fails to report, pay or deliver property within the time
10 prescribed by this chapter, or willfully 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.~~

177.35

177.35

22 ~~177.49~~ **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

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 which 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's fees to an owner who prevails
19 in 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.

177.36
23 ~~177.51~~ **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.

177.37

177.37

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

177.29

(2) This chapter does not relieve a holder of a duty that arose before the effective date of this chapter . . . [revisor inserts date] to report, pay or deliver property. Except as otherwise provided in s. 177.37(2), a holder who did not comply with ~~the law in effect~~ ^{ch. 177, 1997 stats.} before the effective date of this chapter . . . [revisor inserts date] is subject to the applicable provisions for enforcement and penalties which then existed, which are continued in effect for the purpose of this section.

177.38

177.38

177.55 Rules. The administrator may adopt pursuant to ch. 227 rules necessary to carry out this chapter.

177.40

~~**177.57 Uniformity of application and construction.** This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.~~

177.40

~~SECTION 2. 177.41 of the statutes is amended to read:~~

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

177.41

(END)

In applying and construing

Consideration must be given to the need to promote uniformity of



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1

AN ACT ^{Regen} *to repeal and recreate* chapter 177 of the statutes; **relating to:** the

2

uniform unclaimed property act and granting rule-making authority

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

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

For further information see the state **and local** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3

SECTION 1. Chapter 177 of the statutes is repealed and recreated to read:

4

CHAPTER 177

5

UNIFORM UNCLAIMED PROPERTY ACT

6

177.01 [↓] **Definitions.** In this chapter:

7

(1) "Administrator" means the state treasurer.

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

3 (3) "Business association" means a corporation, joint stock company,
4 investment company, partnership, unincorporated association, joint venture,
5 limited liability company, business trust, trust company, land bank, safe deposit
6 company, safekeeping depository, financial organization, insurance company,
7 mutual fund, utility or other business entity consisting of one or more persons,
8 whether or not for profit.

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

11 (5) "Financial organization" means a savings and loan association, building
12 and loan association, savings bank, industrial bank, bank, banking organization or
13 credit union.

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

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

22 (8) "Mineral" means gas; oil; coal; other gaseous, liquid and solid hydrocarbons;
23 oil shale; cement material; sand and gravel; road material; building stone; chemical
24 raw material; gemstone; fissionable and nonfissionable ores; colloidal and other clay;

1 steam and other geothermal resource; or any other substance defined as a mineral
2 by the law of this state.

3 (9) "Mineral proceeds" means amounts payable for the extraction, production
4 or sale of minerals, or, upon the abandonment of those payments, all payments that
5 become payable thereafter. The term includes any of the following amounts payable:

6 (a) For the acquisition and retention of a mineral lease, including bonuses,
7 royalties, compensatory royalties, shut-in royalties, minimum royalties and delay
8 rentals.

9 (b) For the extraction, production or sale of minerals, including net revenue
10 interests, royalties, overriding royalties, extraction payments and production
11 payments.

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

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

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

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

1 (13) "Property" means tangible property described in s. 177.025[✓] or a fixed and
2 certain interest in intangible property that is held, issued or owed in the course of
3 a holder's business, or by a government, governmental subdivision, agency or
4 instrumentality, and all income or increments therefrom. The term includes
5 property that is referred to as or evidenced by any of the following:

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

7 (b) Credit balance, customer's overpayment, gift certificate, security deposit,
8 refund, credit memorandum, unpaid wage, unused ticket, mineral proceeds or
9 unidentified remittance.

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

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

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

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

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

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

1 **(15)** “State” means a state of the United States, the District of Columbia, the
2 Commonwealth of Puerto Rico, or any territory or insular possession subject to the
3 jurisdiction of the United States.

4 **(16)** “Utility” means a person who owns or operates for public use any plant,
5 equipment, real property, franchise or license for the transmission of
6 communications or the production, storage, transmission, sale, delivery or
7 furnishing of electricity, water, steam or gas.

8 **177.015[√] Exemption.** Notwithstanding this chapter, a cooperative organized
9 under ch. 185 may effect the forfeiture to the cooperative of unclaimed funds as
10 provided in ss. 185.03 (10)[√] and 185.75 (1)[√].

11 **177.02 Presumption of abandonment. (1)** Property is presumed
12 abandoned if it is unclaimed by the apparent owner during the time set forth below
13 for the particular property:

- 14 (a) ^ΔTraveler’s check, 15 years after issuance.
- 15 (b) ^ΔMoney order, 7 years after issuance.
- 16 (c) ^ΔStock or other equity interest in a business association or financial
17 organization, including a security entitlement under ch. 408,^J 5 years after the earlier
18 of:
- 19 1. ^ΔThe date of the most recent dividend, stock split or other distribution
20 unclaimed by the apparent owner *on* ~~the~~ *date of* ~~the~~ *issuance*
- 21 2. ^ΔThe date of the second mailing of a statement of account or other notification
22 or communication that was returned as undeliverable or after the holder
23 discontinued mailings, notifications or communications to the apparent owner.

- 1 (1) Debt of a business association or financial organization, other than a bearer
2 bond or an original issue discount bond, 5 years after the date of the most recent
3 interest payment unclaimed by the apparent owner.
- 4 (4) A demand, savings or time deposit, including a deposit that is automatically
5 renewable, 5 years after the earlier of maturity or the date of the last indication by
6 the owner of interest in the property; but a deposit that is automatically renewable
7 is deemed matured for purposes of this section upon its initial date of maturity,
8 unless the owner has consented to a renewal at or about the time of the renewal and
9 the consent is in writing or is evidenced by a memorandum or other record on file with
10 the holder.
- 11 (11) Money or credits owed to a customer as a result of a retail business
12 transaction, 3 years after the obligation accrued.
- 13 (13) Gift certificate, 3 years after December 31 of the year in which the certificate
14 was sold, but if redeemable in merchandise only, the amount abandoned is deemed
15 to be 60% of the certificate's face value.
- 16 (16) Amount owed by an insurer on a life or endowment insurance policy or an
17 annuity that has matured or terminated, 3 years after the obligation to pay arose or,
18 in the case of a policy or annuity payable upon proof of death, 3 years after the insured
19 has attained, or would have attained if living, the limiting age under the mortality
20 table on which the reserve is based.
- 21 (21) Property distributable by a business association or financial organization in
22 a course of dissolution, one year after the property becomes distributable.
- 23 (23) Property received by a court as proceeds of a class action, and not distributed
24 pursuant to the judgment, one year after the distribution date.

1 (k) Property held by a court, government, governmental subdivision, agency or
2 instrumentality, one year after the property becomes distributable.

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

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

7 (n) Property in an individual retirement account, defined benefit plan or other
8 account or plan that is qualified for tax deferral under the income tax laws of the
9 United States, 3 years after the earliest of the date of the distribution or attempted
10 distribution of the property, the date of the required distribution as stated in the plan
11 or trust agreement governing the plan, or the date, if determinable by the holder,
12 specified in the income tax laws of the United States by which distribution of the
13 property must begin in order to avoid a tax penalty.

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

16 (2) At the time that an interest is presumed abandoned under sub. (1),[✓] any
17 other property right accrued or accruing to the owner as a result of the interest, and
18 not previously presumed abandoned, is also presumed abandoned.

19 (3) Property is unclaimed if, for the applicable period set forth in sub. (1),[✓] the
20 apparent owner has not communicated in writing or by other means reflected in a
21 contemporaneous record prepared by or on behalf of the holder, with the holder
22 concerning the property or the account in which the property is held, and has not
23 otherwise indicated an interest in the property. A communication with an owner by
24 a person other than the holder or its representative who has not in writing identified
25 the property to the owner is not an indication of interest in the property by the owner.

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

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

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

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

11 (d) The payment of a premium with respect to a property interest in an
12 insurance policy; but the application of an automatic premium loan provision or
13 other nonforfeiture provision contained in an insurance policy does not prevent a
14 policy from maturing or terminating if the insured has died or the insured or the
15 beneficiary of the policy has otherwise become entitled to the proceeds before the
16 depletion of the cash surrender value of a policy by the application of those
17 provisions.

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

21 **177.025 Contents of safe deposit box or other safekeeping depository.**

22 Tangible property held in a safe deposit box or other safekeeping depository in this
23 state in the ordinary course of the holder's business and proceeds resulting from the
24 sale of the property permitted by other law, are presumed abandoned if the property

1 remains unclaimed by the owner for more than 5 years after expiration of the lease
2 or rental period on the box or other depository.

3 **177.03[✓] Rules for taking custody.** Except as otherwise provided in this
4 chapter or by other statute of this state, property that is presumed abandoned,
5 whether located in this or another state, is subject to the custody of this state if any
6 of the following conditions ^{STET} ~~is~~ present:

7 (1) ^ΔThe last-known address of the apparent owner, as shown on the records of
8 the holder, is in this state.

9 (2) ^ΔThe records of the holder do not reflect the identity of the person entitled to
10 the property and it is established that the last-known address of the person entitled
11 to the property is in this state.

12 (3) ^ΔThe records of the holder do not reflect the last-known address of the
13 apparent owner and ^{neither of the following} it is established that:

14 (a) ^ΔThe last-known address of the person entitled to the property is in this state ~~or~~ (c)

15 ^{or}

16 (b) ^ΔThe holder is domiciled in this state or is a government or governmental
17 subdivision, agency or instrumentality of this state and has not previously paid or
18 delivered the property to the state of the last-known address of the apparent owner
19 or other person entitled to the property.

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

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

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

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

14 **177.09 Dormancy charge.** ~~A~~ holder may deduct from property presumed
15 abandoned a charge imposed by reason of the owner's failure to claim the property
16 within a specified time only if there is a valid and enforceable written contract
17 between the holder and the owner under which the holder may impose the charge
18 and the holder regularly imposes the charge, which is not regularly reversed or
19 otherwise canceled. The amount of the deduction is limited to an amount that is not
20 unconscionable.

21 **177.11 Burden of proof as to property evidenced by record of check or**
22 **draft.** ~~A~~ record of the issuance of a check, draft or similar instrument is prima facie
23 evidence of an obligation. In claiming property from a holder who is also the issuer,
24 the administrator's burden of proof as to the existence and amount of the property
25 and its abandonment is satisfied by showing issuance of the instrument and passage

1 of the requisite period of abandonment. Defenses of payment, satisfaction, discharge
2 and want of consideration are affirmative defenses that must be established by the
3 holder.

4 **177.165 Proceeds from sale of property in self-service storage facility.**

5 Notwithstanding s. 177.02 (1)^J, the proceeds of a sale under s. 704.90 (6)^J of personal
6 property stored in a leased facility located within a self-service storage facility after
7 satisfaction of the operator's lien under s. 704.90 (3) (a)^J is presumed abandoned.

8 **177.17 Report of abandoned property.** (1) A holder of property presumed
9 abandoned shall make a report to the administrator concerning the property.

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

11 (a) A description of the property.

12 (b) Except with respect to a traveler's check or money order, the name, if known,
13 and last-known address, if any, and the social security number or taxpayer
14 identification number, if readily ascertainable, of the apparent owner of property of
15 the value of \$50 or more.

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

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

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

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

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

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

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

11 (5) The holder of property presumed abandoned shall send written notice to the
12 apparent owner, not more than 120 days or less than 60 days before filing the report,
13 stating that the holder is in possession of property subject to this chapter, if all of the
14 following exist:

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

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

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

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

1 (7) The holder of property presumed abandoned shall file with the report an
2 affidavit stating that the holder has complied with sub. (5).[✓]

(3) **177.18 Notice and publication of lists of abandoned property.** (1) The
4 administrator shall publish a notice not later than November 30 of the year next
5 following the year in which abandoned property has been paid or delivered to the
6 administrator. The notice must be published as a class 1[✓] notice under ch. 985[✓] in a
7 newspaper of general circulation in the county of this state in which is located the
8 last-known address of any person named in the notice. If a holder does not report
9 an address for the apparent owner, or the address is outside this state, the notice
10 must be published in the county in which the holder has its principal place of
11 business within this state or another county that the administrator reasonably
12 selects. The advertisement must be in a form that, in the judgment of the
13 administrator, is likely to attract the attention of the apparent owner of the
14 unclaimed property. The form must contain all of the following:

(15) (a) ^ΔThe name of each person appearing to be the owner of the property, as set
16 forth in the report filed by the holder.

(17) (b) ^ΔThe last-known address or location of each person appearing to be the owner
18 of the property, if an address or location is set forth in the report filed by the holder.

(19) (c) ^ΔA statement explaining that property of the owner is presumed to be
20 abandoned and has been taken into the protective custody of the administrator.

(21) (d) ^ΔA statement that information about the property and its return to the owner
22 is available to a person having a legal or beneficial interest in the property, upon
23 request to the administrator.

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

4 **177.19[✓] Payment or delivery of abandoned property.** (1) Except for
5 property held in a safe deposit box or other safekeeping depository, upon filing the
6 report required by s. 177.17[✓], the holder of property presumed abandoned shall pay,
7 deliver or cause to be paid or delivered to the administrator the property described
8 in the report as unclaimed, but if the property is an automatically renewable deposit,
9 and a penalty or forfeiture in the payment of interest would result, the time for
10 compliance is extended until a penalty or forfeiture would no longer result. Tangible
11 property held in a safe deposit box or other safekeeping depository may not be
12 delivered to the administrator until 120 days after filing the report required by s.
13 177.171

14 (2) If the property reported to the administrator is a security or security
15 entitlement under ch. 408[✓], the administrator is an appropriate person to make an
16 endorsement, instruction or entitlement order on behalf of the apparent owner to
17 invoke the duty of the issuer or its transfer agent or the securities intermediary to
18 transfer or dispose of the security or the security entitlement in accordance with ch.
19 408[✓].

20 (3) If the holder of property reported to the administrator is the issuer of a
21 certificated[✓] security, the administrator has the right to obtain a replacement
22 certificate pursuant to s. 408.405[✓], but an indemnity bond is not required.

23 (4) An issuer, the holder and any transfer agent or other person acting
24 pursuant to the instructions of and on behalf of the issuer or holder in accordance

1 with this section is not liable to the apparent owner and must be indemnified against
2 claims of any person in accordance with s. 177.20.'

3 **177.20 Custody by state; recovery by holder; defense of holder.** (1) In
4 this section, payment or delivery is made in "good faith" if all of the following exist:

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

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

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

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

16 (3) A holder who has paid money to the administrator pursuant to this chapter
17 may subsequently make payment to a person reasonably appearing to the holder to
18 be entitled to payment. Upon a filing by the holder of proof of payment and proof that
19 the payee was entitled to the payment, the administrator shall promptly reimburse
20 the holder for the payment without imposing a fee or other charge. If reimbursement
21 is sought for a payment made on a negotiable instrument, including a traveler's
22 check or money order, the holder must be reimbursed upon filing proof that the
23 instrument was duly presented and that payment was made to a person who
24 reasonably appeared to be entitled to payment. The holder must be reimbursed for

1 payment made even if the payment was made to a person whose claim was barred
2 under s. 177.29 (1).[↓]

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

7 (5) The administrator may accept a holder's affidavit as sufficient proof of the
8 holder's right to recover money and property under this section.[↓]

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

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

21 **177.21 Crediting of dividends, interest and increments to owner's**

22 **account.** If property other than money is delivered to the administrator under this
23 chapter, the owner is entitled to receive from the administrator any income or gain
24 realized or accruing on the property at or before liquidation or conversion of the
25 property into money. If the property was an interest-bearing demand, savings or time

1 deposit, including a deposit that is automatically renewable, the administrator shall
 2 pay interest at a rate of 18% a year or any lesser rate the property earned while in
 3 the possession of the holder. Interest begins to accrue when the property is delivered
 4 to the administrator and ceases on the earlier of the expiration of 10 years after
 5 delivery or the date on which payment is made to the owner. Interest on interest
 6 bearing property is not payable for any period before the effective date of this ^{section}~~chapter~~
 7 [revisor inserts date], unless authorized by ch. 177, 1997 stats.

8 **177.22[✓] Public sale of abandoned property.** ^Δ(1) Except as otherwise

9 provided in this section, the administrator, within 3 years after the receipt of
 10 abandoned property, shall sell it to the highest bidder at public sale at a location in
 11 the state which in the judgment of the administrator affords the most favorable
 12 market for the property. The administrator may decline the highest bid and reoffer
 13 the property for sale if the administrator considers the bid to be insufficient. The
 14 administrator need not offer the property for sale if the administrator considers that
 15 the probable cost of sale will exceed the proceeds of the sale. A sale held under this
 16 section must be preceded by a class 1 notice under ch. 985[✓], at least 3 weeks before
 17 sale, in a newspaper of general circulation in the county in which the property is to
 18 be sold.

19 (2) Securities listed on an established stock exchange must be sold at prices
 20 prevailing on the exchange at the time of sale. Other securities may be sold over the
 21 counter at prices prevailing at the time of sale or by any reasonable method selected
 22 by the administrator. If securities are sold by the administrator before the expiration
 23 of 3 years after their delivery to the administrator, a person making a claim under
 24 this chapter before the end of the 3-year period is entitled to the proceeds of the sale

1 of the securities or the market value of the securities at the time the claim is made,
2 whichever is greater, plus dividends, interest and other increments thereon up to the
3 time the claim is made, less any deduction for expenses of sale. A person making a
4 claim under this chapter after the expiration of the 3-year period is entitled to
5 receive the securities delivered to the administrator by the holder, if they still remain
6 in the custody of the administrator, or the net proceeds received from sale, and is not
7 entitled to receive any appreciation in the value of the property occurring after
8 delivery to the administrator, except in a case of intentional misconduct or
9 malfeasance by the administrator.

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

14 **177.23 Deposit of funds.** (1) Except as otherwise provided by sub. (2), the
15 administrator shall promptly deposit in the school fund all funds received under this
16 chapter, including the clear proceeds from the sale of abandoned property under s.
17 177.33. The administrator shall record the name and last-known address of each
18 person appearing from the holders' reports to be entitled to the property and the
19 name and last-known address of each insured person or annuitant and beneficiary
20 and with respect to each policy or annuity listed in the report of an insurance
21 company, its number, the name of the company and the amount due.

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

24 (a) Expenses of sale of abandoned property.

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

1 (c) Reasonable service charges.

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

4 (e) Salaries of the employes of the administrator which are attributable to the
5 administration of this chapter.

6 **177.25 Claim of another state to recover property.** (1) After property has
7 been paid or delivered to the administrator under this chapter, another state may
8 recover the property if any of the following circumstances occur:

9 (a) The property was paid or delivered to the custody of this state because the
10 records of the holder did not reflect a last-known location of the apparent owner
11 within the borders of the other state and the other state establishes that the apparent
12 owner or other person entitled to the property was last known to be located within
13 the borders of that state and under the laws of that state the property has escheated
14 or become subject to a claim of abandonment by that state.

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

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

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

*move
after
177.24*

move after next section

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

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

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

12) **177.24 Filing of claim with administrator; handling of claims by**

administrator. (1) A person, excluding another state, claiming property paid or delivered to the administrator may file a claim on a form prescribed by the administrator and verified by the claimant.

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

(3) Within 30 days after a claim is allowed, the property or the net proceeds of a sale of the property must be delivered or paid by the administrator to the claimant,

Insert see 177.25

together with any dividend, interest or other increment to which the claimant is entitled under ss. 177.21 and 177.22.

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

7

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

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

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

22

177.28 Destruction or disposition of property having no substantial commercial value; immunity from liability. If the administrator determines after investigation that property delivered under this chapter has no substantial commercial value, the administrator may destroy or otherwise dispose of the property at any time. An action or proceeding may not be maintained against this

1 state or any officer or against the holder for or on account of an act of the
2 administrator under this section, except for intentional misconduct or malfeasance.

③ **177.29' Periods of limitation.** ^{sub-section} (1) The expiration, before, on or after the
4 effective date of this ~~chapter~~ ^{sub-section}.... [revisor inserts date], of a period of limitation on the
5 owner's right to receive or recover property, whether specified by contract, statute or
6 court order, does not preclude the property from being presumed abandoned or affect
7 a duty to file a report or to pay or deliver or transfer property to the administrator
8 as required by this chapter.

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

①⑥ **177.30' Requests for reports and examination of records.** (1) The
①⑦ administrator may require a person ^{that} ~~who~~ has not filed a report, or a person ^{that} ~~who~~ the
18 administrator believes has filed an inaccurate, incomplete or false report, to file a
19 verified report in a form specified by the administrator. The report must state
20 whether the person is holding property reportable under this chapter, describe
21 property not previously reported or as to which the administrator has made inquiry,
22 and specifically identify and state the amounts of property that may be in issue.

23 (2) The administrator, at reasonable times and upon reasonable notice, may
24 examine the records of any person to determine whether the person has complied
25 with this chapter. The administrator may conduct the examination even if the

1 person believes it is not in possession of any property that must be reported, paid or
2 delivered under this chapter. The administrator may contract with any other person
3 to conduct the examination on behalf of the administrator.

4 (3) The administrator at reasonable times may examine the records of an
5 agent, including a dividend disbursing agent or transfer agent, of a business
6 association or financial association that is the holder of property presumed
7 abandoned if the administrator has given the notice required by sub. (2)¹ to both the
8 association or organization and the agent at least 90 days before the examination.

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

13 (a) Used by the administrator in the course of an action to collect unclaimed
14 property or otherwise enforce this chapter *Ⓢ*

15 (b) Used in joint examinations conducted with or pursuant to an agreement
16 with another state, the federal government, or any other governmental subdivision,
17 agency or instrumentality *Ⓢ*

18 (c) Produced pursuant to subpoena or court order *Ⓢ*

19 (d) Disclosed to the abandoned property office of another state for that state's
20 use in circumstances equivalent to those described in this subsection¹, if the other
21 state is bound to keep the documents and papers confidential.

22 (5) If an examination of the records of a person results in the disclosure of
23 property reportable under this chapter, the administrator may assess the cost of the
24 examination against the holder at the rate of \$200 a day for each examiner, or a
25 greater amount that is reasonable and was incurred, but the assessment may not

1 exceed the value of the property found to be reportable. The cost of an examination
2 made pursuant to sub. (3) may be assessed only against the business association or
3 financial organization.

4 (6) If, after the effective date of this ^{Subsection}~~chapter~~ [revisor inserts date], a holder
5 does not maintain the records required by s. 177.31 and the records of the holder
6 available for the periods subject to this chapter are insufficient to permit the
7 preparation of a report, the administrator may require the holder to report and pay
8 to the administrator the amount the administrator reasonably estimates, on the
9 basis of any available records of the holder or by any other reasonable method of
10 estimation, should have been but was not reported.

11 **177.31 Retention of records.** (1) Except as otherwise provided in sub. (2), a
12 holder required to file a report under s. 177.17 shall maintain the records containing
13 the information required to be included in the report for 10 years after the holder files
14 the report, unless a shorter period is provided by rule of the administrator.

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

21 **177.32 Enforcement.** The administrator may maintain an action in this or
22 another state to enforce this chapter. The court may award reasonable attorney's
23 fees to the prevailing party.

24 **177.33 Interstate agreements and cooperation; joint and reciprocal**
25 **actions with other states.** (1) The administrator may enter into an agreement

1 with another state to exchange information relating to abandoned property or its
2 possible existence. The agreement may permit the other state, or another person
3 acting on behalf of a state, to examine records as authorized in s. 177.30[✓]. The
4 administrator by rule may require the reporting of information needed to enable
5 compliance with an agreement made under this section and prescribe the form.

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

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

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

1 deducted from the amount that is subject to the claim by the owner under this
2 chapter.

3 **177.34[✓] Interest and taxes.** (1) A holder who fails to report, pay or deliver
4 property within the time prescribed by this chapter shall pay to the administrator
5 interest at the annual rate of 18% on the property or value thereof from the date the
6 property should have been reported, paid or delivered.

7 (2) Except as otherwise provided in sub. (3),[✓] a holder who fails to report, pay
8 or deliver property within the time prescribed by this chapter, or fails to perform
9 other duties imposed by this chapter, shall pay to the administrator, in addition to
10 interest as provided in sub. (1),[✓] a civil penalty of \$200 for each day the report,
11 payment or delivery is withheld, or the duty is not performed, up to a maximum of
12 \$5,000.

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

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

23 (5) The administrator for good cause may waive, in whole or in part, interest
24 under sub. (1)[✓] and penalties under subs. (2)[✓] and (3)[✓], and shall waive penalties if the
25 holder acted in good faith and without negligence.

①

177.35 Agreement to locate property. (1) An agreement by an owner, the

2

primary purpose of which is to locate, deliver, recover or assist in the recovery of

③

property that is presumed abandoned is void and unenforceable if it was entered into

4

during the period commencing on the date the property was presumed abandoned

5

and extending to a time that is 24 months after the date the property is paid or

6

delivered to the administrator. This subsection does not apply to an owner's

7

agreement with an attorney to file a claim as to identified property or contest the

8

administrator's denial of a claim.

9

(2) An agreement by an owner, the primary purpose of which is to locate,

⑩

deliver, recover or assist in the recovery of property is enforceable only if the

11

agreement is in writing, clearly sets forth the nature of the property and the services

12

to be rendered, is signed by the apparent owner and states the value of the property

13

before and after the fee or other compensation has been deducted.

14

(3) If an agreement covered by this section applies to mineral proceeds and the

15

agreement contains a provision to pay compensation that includes a portion of the

16

underlying minerals or any mineral proceeds not then presumed abandoned, the

17

provision is void and unenforceable.

18

(4) An agreement covered by this section which provides for compensation that

19

is unconscionable is unenforceable except by the owner. An owner who has agreed

20

to pay compensation that is unconscionable, or the administrator on behalf of the

21

owner, may maintain an action to reduce the compensation to a conscionable

22

amount. The court may award reasonable attorney's fees to an owner who prevails

23

in the action.

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

4 **177.36 Foreign transactions.** This chapter does not apply to property held,
5 due and owing in a foreign country and arising out of a foreign transaction.

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

12 (2) This chapter does not relieve a holder of a duty that arose before the
13 effective date of this ^{Subsection}~~Chapter~~ [revisor inserts date] to report, pay or deliver
14 property. Except as otherwise provided in s. 177.29 (2), a holder who did not comply
15 with ch. 177, 1997 ^{Subsection}~~stats.~~, before the effective date of this ^{Subsection}~~Chapter~~ [revisor inserts
16 date], is subject to the applicable provisions for enforcement and penalties which then
17 existed, which are continued in effect for the purpose of this section.

18 **177.38 Rules.** The administrator may adopt pursuant to ch. 227 rules
19 necessary to carry out this chapter.

20 **177.40' Uniformity of application and construction.** This chapter shall
21 be applied and construed to effectuate its general purpose to make uniform the law
22 with respect to the subject of this chapter among states enacting it.

①

✓
177.41 Escheat of property to municipalities. If a statute provides for the

2 escheat of abandoned or unclaimed property to a county, city, village or town, this
3 chapter does not apply.

4

(END)



D, II insert

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB
.....
insert
ok end

1 SECTION 1. 610.61[√] of the statutes is amended to read:

2 **610.61 Duty of life insurers to report abandoned property.** An insurer

3 doing a life insurance business shall report under s. 177.17 any property presumed

4 abandoned under s. ~~177.07~~ 177.02 ¹~~(2)~~ (h).

History: 1979 c. 102; 1983 a. 408 s. 16.