

UNCLAIMED PROPERTY ACT REVISIONS

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Fred R. Hunsaker

Senate Sponsor: Peter C. Knudson

LONG TITLE

General Description:

This bill modifies provisions of the Unclaimed Property Act.

Highlighted Provisions:

This bill:

- ▶ modifies the definition of intangible property to include electronic cards;
- ▶ reduces the time after which the following unclaimed property is considered to be abandoned from five years to three years:
 - net intangible property;
 - a bank draft;
 - a deposit in a financial institution;
 - a stock, shareholding, or other intangible ownership in a business;
 - intangible property or income held in an agent or fiduciary capacity; or
 - mineral proceeds;
- ▶ provides that all unclaimed funds held or owing under a life or endowment insurance policy are considered to be abandoned after three years;
- ▶ requires that any charge deducted by a financial institution from a traveler's check, money order, bank draft, or deposit that has been considered abandoned must be related to the actual cost of maintaining the account;
- ▶ changes the month in which reports of unclaimed property are to be filed from June to November;



- 28 ▶ raises the dollar amount at which unclaimed property must be accompanied by
- 29 specific information and be reported individually from \$25 to \$50;
- 30 ▶ permits an electronic book entry to be used as proof of ownership of stock or other
- 31 intangible interests;
- 32 ▶ requires that the administrator publish notice of unclaimed property within 12
- 33 months of the date the property was received;
- 34 ▶ removes certain content requirements for publication of unclaimed property via
- 35 newspaper;
- 36 ▶ permits sale of abandoned property via the internet;
- 37 ▶ provides procedures for delivery of property and deductions of reasonable fees and
- 38 expenses at the time of sale;
- 39 ▶ modifies procedures and requirements for the sale of securities;
- 40 ▶ permits the administrator to examine records pertaining to abandoned or unclaimed
- 41 property that are in the possession of an agent of a business association or a
- 42 financial association;
- 43 ▶ permits the administrator to require a person to file a verified report stating whether
- 44 or not the person is holding any unclaimed property subject to the act;
- 45 ▶ provides that a person who fails to pay or deliver property when required by the act
- 46 shall pay interest on the value of the property at the rate of 12% per annum; and
- 47 ▶ makes technical changes.

48 **Monies Appropriated in this Bill:**

49 None

50 **Other Special Clauses:**

51 None

52 **Utah Code Sections Affected:**

53 AMENDS:

54 **67-4a-102**, as last amended by Chapter 92, Laws of Utah 2004

55 **67-4a-201**, as enacted by Chapter 198, Laws of Utah 1995

56 **67-4a-202**, as enacted by Chapter 198, Laws of Utah 1995

57 **67-4a-203**, as enacted by Chapter 198, Laws of Utah 1995

58 **67-4a-204**, as enacted by Chapter 198, Laws of Utah 1995

- 59 **67-4a-205**, as enacted by Chapter 198, Laws of Utah 1995
- 60 **67-4a-208**, as enacted by Chapter 198, Laws of Utah 1995
- 61 **67-4a-209**, as enacted by Chapter 198, Laws of Utah 1995
- 62 **67-4a-214**, as enacted by Chapter 198, Laws of Utah 1995
- 63 **67-4a-301**, as enacted by Chapter 198, Laws of Utah 1995
- 64 **67-4a-302**, as enacted by Chapter 198, Laws of Utah 1995
- 65 **67-4a-402**, as enacted by Chapter 198, Laws of Utah 1995
- 66 **67-4a-403**, as enacted by Chapter 198, Laws of Utah 1995
- 67 **67-4a-601**, as enacted by Chapter 198, Laws of Utah 1995
- 68 **67-4a-701**, as enacted by Chapter 198, Laws of Utah 1995
- 69 **67-4a-703**, as enacted by Chapter 198, Laws of Utah 1995

71 *Be it enacted by the Legislature of the state of Utah:*

72 Section 1. Section **67-4a-102** is amended to read:

73 **67-4a-102. Definitions.**

74 As used in this chapter:

75 (1) "Administrator" means the deputy state treasurer assigned by the state treasurer to
 76 administer the law governing unclaimed property in Utah.

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

79 (3) (a) "Bank draft" means a check, draft, or similar instrument on which a banking or
 80 financial organization is directly liable.

81 (b) "Bank draft" includes:

82 (i) cashier's checks; and

83 (ii) certified checks.

84 (c) "Bank draft" does not include:

85 (i) traveler's checks; or

86 (ii) money orders.

87 (4) "Banking organization" means:

88 (a) a bank;

89 (b) an industrial bank;

- 90 (c) a trust company;
- 91 (d) a savings bank; or
- 92 (e) any organization defined by other law as a bank or banking organization.

93 (5) "Business association" means a nonpublic corporation, joint stock company,
94 investment company, business trust, partnership, or association for business purposes of two or
95 more individuals, whether or not for profit, including:

- 96 (a) a banking organization;
- 97 (b) a financial organization;
- 98 (c) an insurance company; or
- 99 (d) a utility.

100 (6) "Cashier's check" means a check drawn by a banking organization on itself, signed
101 by an officer of the banking organization, authorizing payment of the amount shown on its face
102 to the payee.

103 (7) "Class action" means a legal action:

- 104 (a) certified by the court as a class action; or
- 105 (b) treated by the court as a class action without being formally certified as a class
106 action.

107 (8) (a) "Deposit in a financial institution" means a demand, savings, or matured time
108 deposit with a banking or financial organization.

109 (b) "Deposit in a financial institution" includes:

- 110 (i) any interest or dividends on a deposit; and
- 111 (ii) a deposit that is automatically renewable.

112 (9) "Domicile" means the state of incorporation of a corporation and the state of the
113 principal place of business of an unincorporated person.

114 (10) "Financial organization" means:

- 115 (a) a savings and loan association; or
- 116 (b) a credit union.

117 (11) "Government entity" means:

- 118 (a) the state;
- 119 (b) any administrative unit of the state;
- 120 (c) any political subdivision of the state;

121 (d) any administrative unit of a political subdivision of the state; or
122 (e) any officer or employee of an entity described in Subsections (11)(a) through (d).

123 (12) "Holder" means a person, wherever organized or domiciled, who is:

124 (a) in possession of property belonging to another;

125 (b) a trustee;

126 (c) indebted to another on an obligation; or

127 (d) charged with the duty of paying or delivering intangible property under Section
128 67-4a-302.

129 (13) "Insurance company" means an association, corporation, fraternal or mutual
130 benefit organization, whether or not for profit, that is engaged in providing insurance coverage,
131 including:

132 (a) accident insurance;

133 (b) burial insurance;

134 (c) casualty insurance;

135 (d) credit life insurance;

136 (e) contract performance insurance;

137 (f) dental insurance;

138 (g) fidelity insurance;

139 (h) fire insurance;

140 (i) health insurance;

141 (j) hospitalization insurance;

142 (k) illness insurance;

143 (l) life insurance, including endowments and annuities;

144 (m) malpractice insurance;

145 (n) marine insurance;

146 (o) mortgage insurance;

147 (p) surety insurance; and

148 (q) wage protection insurance.

149 (14) (a) "Intangible property" includes:

150 (i) monies, checks, drafts, deposits in a financial institution, interest, dividends, and
151 income;

152 (ii) credit balances, customer overpayments, gift certificates over \$25, electronic cards,
153 security deposits, refunds, credit memos, unpaid wages, unused airline tickets, and unidentified
154 remittances;

155 (iii) stocks, mutual funds, and other intangible ownership interests in business
156 associations;

157 (iv) monies deposited to redeem stocks, bonds, coupons, and other securities or to
158 make distributions;

159 (v) bonds, notes, and any other debt obligations;

160 (vi) amounts due and payable under the terms of insurance policies;

161 (vii) amounts distributable from a trust or custodial fund established under a plan to
162 provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit
163 sharing, employee savings, supplemental unemployment insurance or similar benefits; and

164 (viii) amounts distributable from a mineral interest in land.

165 (b) "Intangible property" does not include patronage capital of electric, telephone, and
166 agricultural cooperatives.

167 (15) "Last-known address" means a description of the location of the apparent owner
168 sufficient for the purpose of the delivery of mail.

169 (16) "Mineral" means oil, gas, uranium, sulphur, lignite, coal, and any other substance
170 that is ordinarily and naturally considered a mineral, regardless of the depth at which the oil,
171 gas, uranium, sulphur, lignite, coal, or other substance is found.

172 (17) "Mineral proceeds" includes:

173 (a) all obligations to pay resulting from the production and sale of minerals, including:

174 (i) net revenue interest;

175 (ii) royalties;

176 (iii) overriding royalties;

177 (iv) production payments; and

178 (v) joint operating agreements; and

179 (b) all obligations for the acquisition and retention of a mineral lease, including:

180 (i) bonuses;

181 (ii) delay rentals;

182 (iii) shut-in royalties; and

183 (iv) minimum royalties.

184 (18) (a) "Money order" means a negotiable draft issued by a business association for
185 which the business association is not directly liable.

186 (b) "Money order" does not mean a cashier's check.

187 (19) "Net intangible property" means intangible property that is held, issued, or owing
188 in the ordinary course of a holder's business plus any income or increment derived from it and
189 less any lawful charges.

190 (20) "Owner" means:

191 (a) a depositor in the case of a deposit;

192 (b) a beneficiary in the case of a trust other than a deposit in trust;

193 (c) a creditor, claimant, or payee in the case of other intangible property; or

194 (d) a person or that person's legal representative having a legal or equitable interest in
195 property subject to this chapter.

196 (21) (a) "Ownership purchase funds" means any funds paid toward the purchase of a
197 share, a mutual investment certificate, or any other interest in a banking or financial
198 organization.

199 (b) "Ownership purchase funds" includes any interest or dividends paid on those funds.

200 (22) "Person" means:

201 (a) an individual;

202 (b) a business association;

203 (c) a government entity;

204 (d) a public corporation;

205 (e) a public authority;

206 (f) an estate;

207 (g) a trust;

208 (h) two or more persons having a joint or common interest; or

209 (i) any other legal or commercial entity.

210 (23) "State" means any state, district, commonwealth, territory, insular possession, or
211 any other area subject to the legislative authority of the United States.

212 (24) "Utility" means a person who owns or operates for public use any plant,
213 equipment, property, franchise, or license for:

- 214 (a) the transmission of communications, including cable television; or
- 215 (b) the production, storage, transmission, sale, delivery, or furnishing of electricity,
- 216 water, steam, or gas.

217 Section 2. Section **67-4a-201** is amended to read:

218 **67-4a-201. Abandoned and unclaimed property -- General rules.**

219 (1) (a) Property is considered to be "abandoned" or "unclaimed" when:

- 220 (i) the property is held, issued, or owing by a holder;
- 221 (ii) the identity, status, or present location of the apparent owner is unknown; and
- 222 (iii) the property cannot be paid, distributed, or given to the apparent owner after the
- 223 stated dormancy period for that type of unclaimed property established in this chapter.

224 (b) Property may not be considered to be "abandoned" or "unclaimed" when:

- 225 (i) the character or degree of ownership interest of the apparent owner in the property is
- 226 unsettled or in dispute; and
- 227 (ii) the holder is notified of this fact.

228 (2) (a) For purposes of this [~~subsection~~] section, property is payable or distributable

229 even if the owner has failed to demand the property or to present any instrument or document

230 required to receive payment.

231 (b) Except as otherwise provided by this chapter, net intangible property is considered

232 abandoned if it is not claimed by the owner within [~~five~~] three years after it became payable or

233 distributable.

234 Section 3. Section **67-4a-202** is amended to read:

235 **67-4a-202. Traveler's checks and money orders.**

236 (1) Except as provided in Subsection (4), any sum payable on a traveler's check that

237 has been outstanding for more than 15 years after its issuance is considered abandoned unless

238 the owner, within the 15 years, has communicated in writing with the issuer concerning it or

239 otherwise indicated an interest as evidenced by a memorandum or other record on file prepared

240 by an employee of the issuer.

241 (2) Except as provided in Subsection (4), any sum payable on a money order that has

242 been outstanding for more than seven years after its issuance is considered abandoned unless

243 the owner, within the seven years, has communicated in writing with the issuer concerning it or

244 otherwise indicated an interest as evidenced by a memorandum or other record on file prepared

245 by an employee of the issuer.

246 (3) A holder may not deduct from the amount of a traveler's check or money order any
247 charge imposed because of the failure to present the instrument for payment unless:

248 (a) there is a valid and enforceable written contract between the issuer and the owner of
249 the instrument that authorizes the issuer to impose a charge; [~~and~~]

250 (b) the issuer regularly imposes those charges and does not regularly reverse or
251 otherwise cancel them[-]; and

252 (c) the amount of the charge is related to the actual cost of maintaining the account.

253 (4) The state may not claim custody of a sum payable on a traveler's check or money
254 order described in Subsections (1) and (2) as unclaimed property unless:

255 (a) the records of the issuer show that the traveler's check or money order was
256 purchased in Utah;

257 (b) the issuer has its principal place of business in Utah and the records of the issuer do
258 not show the state in which the traveler's check or money order was purchased; or

259 (c) the issuer has its principal place of business in Utah, the records of the issuer show
260 the state in which the traveler's check or money order was purchased, and the laws of the state
261 of purchase do not provide for the escheat or custodial taking of the property or its escheat or
262 unclaimed property law is not applicable to the property.

263 (5) Notwithstanding any other provision of this chapter, Subsection (4) applies to sums
264 payable on traveler's checks or money orders considered abandoned on or after May 2, 1994.

265 Section 4. Section **67-4a-203** is amended to read:

266 **67-4a-203. Checks, drafts, and similar instruments issued or certified by banking
267 and financial organizations.**

268 (1) Any sum payable on a bank draft that has been outstanding for more [~~that five~~] than
269 three years after it was payable or after its issuance, if payable on demand, is considered
270 abandoned unless the owner, within [~~five~~] three years, has communicated in writing with the
271 banking or financial organization concerning it or otherwise indicated an interest as evidenced
272 by a memorandum or other record on file prepared by an employee of the banking or financial
273 organization.

274 (2) A holder may not deduct from the amount of a bank draft any charge imposed
275 because of the failure to present the instrument for payment unless:

276 (a) there is a valid and enforceable written contract between the issuer and the owner of
277 the instrument that authorizes the issuer to impose a charge; [~~and~~]

278 (b) the issuer regularly imposes those charges and does not regularly reverse or
279 otherwise cancel them[-]; and

280 (c) the amount of the charge is related to the actual cost of maintaining the account.

281 Section 5. Section **67-4a-204** is amended to read:

282 **67-4a-204. Deposits in a financial institution and funds in financial organizations.**

283 (1) Each deposit in a financial institution and any ownership purchase funds held by a
284 banking or financial organization are considered abandoned after [~~five~~] three years if the
285 location of the owner is unknown, unless:

286 (a) the owner, within the [~~five~~] three years, has:

287 (i) in the case of a deposit in a financial institution, increased or decreased its amount
288 or presented the passbook or other similar evidence of the deposit for the crediting of interest;

289 (ii) communicated in writing with the banking or financial organization concerning the
290 property; and

291 (iii) otherwise indicated an interest in the property as evidenced by a memorandum or
292 other record on file prepared by an employee of the banking or financial organization;

293 (b) (i) the owner, within [~~five~~] three years, has owned other property to which
294 Subsection (1)(a)(i), (ii), or (iii) apply; and

295 (ii) the banking or financial organization communicates in writing with the owner with
296 regard to the property that would otherwise be considered abandoned at the address to which
297 communications regarding the other property regularly are sent; or

298 (c) (i) the owner, within [~~five~~] three years, has had another relationship with the
299 banking or financial organization concerning which the owner has communicated in writing
300 with the banking or financial organization; and

301 (ii) the banking or financial organization communicates in writing with the owner with
302 regard to the property that would otherwise be considered abandoned at the address to which
303 communications regarding the other relationship regularly are sent.

304 (2) A holder may not impose any charge due to dormancy or inactivity or cease
305 payment of interest on any property described in Subsection (1) unless:

306 (a) the holder is specifically exempted by federal law; or

307 (b) (i) there is a valid and enforceable written contract between the issuer and the
308 owner of the instrument that authorizes the issuer to impose a charge; ~~and]~~

309 (ii) the issuer regularly imposes those charges and does not regularly reverse or
310 otherwise cancel them[-]; and

311 (iii) the amount of the charge is related to the actual cost of maintaining the account.

312 (3) (a) Except as provided in Subsection (3)(b), any property described in Subsection
313 (1) that is automatically renewable is considered matured for purposes of Subsection (1) when
314 its initial time period expires.

315 (b) If the owner consents to any renewal at or about the time of renewal by
316 communicating in writing with the banking or financial organization or otherwise indicating
317 consent as evidenced by a memorandum or other record on file prepared by an employee of the
318 organization, the property is considered matured for purposes of Subsection (1) when the last
319 time period for which consent was given expires.

320 (c) If, at the time provided for delivery in Section 67-4a-302, a penalty or forfeiture in
321 the payment of interest would result from the delivery of the property, the time for delivery is
322 extended until the time when no penalty or forfeiture would result.

323 Section 6. Section **67-4a-205** is amended to read:

324 **67-4a-205. Funds owing under life insurance policies.**

325 (1) [~~(a) Except as provided in Subsection (b), funds~~] Funds held or owing under any
326 life or endowment insurance policy or annuity contract that has terminated or matured as
327 defined in Subsection (3)(a) or (3)(b) are considered [~~abandoned if unclaimed for more than~~
328 ~~five years after the funds became due and payable as established from the records of the~~
329 ~~insurance company holding or owing the funds. (b) Funds held or owing under any life or~~
330 ~~endowment insurance policy or annuity contract that has matured as defined in Subsection~~
331 ~~(3)(b) are considered~~] abandoned if unclaimed for more than [~~two~~] three years.

332 (2) The insurance company shall presume that the last-known address of the person
333 entitled to the funds is the same as the last-known address of the insured or annuitant according
334 to the records of the company if:

335 (a) a person other than the insured or annuitant is entitled to the funds and an address
336 of the person is not known to the company; or

337 (b) it is not definite and certain from the records of the company who is entitled to the

338 funds.

339 (3) For purposes of this section, a life or endowment insurance policy or annuity
340 contract not matured by actual proof of the death of the insured or annuitant according to the
341 records of the company is matured and the proceeds are due and payable if the company:

342 (a) knows that the insured or annuitant has died; or

343 (b) determines that:

344 (i) the insured has attained, or would have attained if living, the limiting age under the
345 mortality table on which the reserve is based;

346 (ii) the policy was in force at the time the insured attained, or would have attained, the
347 limiting age specified ~~in~~ under Subsection (3)(b)(i); and

348 (iii) according to the records of the company, neither the insured nor any other person
349 appearing to have an interest in the policy has, within the last two years:

350 (A) assigned, readjusted, or paid premiums on the policy;

351 (B) subjected the policy to a loan;

352 (C) corresponded in writing with the company concerning the policy; or

353 (D) otherwise indicated an interest in the policy as evidenced by a memorandum or
354 other record on file prepared by an employee of the company.

355 (4) For purposes of this section, the application of an automatic premium loan
356 provision or other nonforfeiture provision contained in an insurance policy does not prevent a
357 policy from being matured or terminated under Subsection (1) if the insured has died or the
358 insured or the beneficiary of the policy otherwise has become entitled to the proceeds of the
359 policy before the depletion of the cash surrender value of the policy by the application of those
360 provisions.

361 Section 7. Section **67-4a-208** is amended to read:

362 **67-4a-208. Stock and other intangible interests in business associations.**

363 (1) Any stock, shareholding, or other intangible ownership interest in a business
364 association that is evidenced by records available to the association is considered abandoned if:

365 (a) the interest in the association is owned by a person who for more than ~~five~~ three
366 years has failed to:

367 (i) claim a dividend, distribution, or other sum payable as a result of the interest; or

368 (ii) communicate with the association regarding the interest or a dividend, distribution,

369 or other sum payable as the result of the interest, as evidenced by a memorandum or other
370 record on file with the association prepared by an employee of the association; and

371 (b) the association does not know the location of the owner at the end of the [~~five-year~~]
372 three-year period.

373 (2) The return of official shareholder notifications or communications by the postal
374 service as undeliverable is evidence that the association does not know the location of the
375 owner.

376 (3) This section applies to:

377 (a) the underlying stock, shareholdings, or other intangible ownership interests of an
378 owner;

379 (b) any stock, shareholdings, or other intangible ownership interest of an owner when
380 the business association is in possession of the certificate or other evidence of ownership; and

381 (c) the stock, shareholdings, or other intangible ownership interests of dividend and
382 nondividend paying business associations whether or not the interest is represented by a
383 certificate.

384 (4) At the time an interest is considered abandoned under this section, any dividend,
385 distribution, or other sum then held for or owing to the owner as a result of the interest, and not
386 previously considered abandoned, is considered abandoned.

387 (5) (a) This section does not apply to any stock or other intangible ownership interest
388 enrolled in a plan that provides for the automatic reinvestment of dividends, distributions, or
389 other sums payable as a result of the interest unless:

390 (i) the records available to the administrator of the plan show, with respect to any
391 intangible ownership interest not enrolled in the reinvestment plan, that the owner has not
392 communicated in any manner described in this section within [~~five~~] three years; or

393 (ii) [~~five~~] three years have elapsed since the location of the owner became unknown to
394 the association, as evidenced by the return of official shareholder notifications or
395 communications by the postal service as undeliverable, and the owner has not within those
396 [~~five~~] three years communicated in any manner described in this section.

397 (b) The [~~five-year~~] three-year period from the return of official shareholder
398 notifications or communications begins at the earlier of the return of the second of those
399 notifications or communications or the time the holder discontinues mailings to the

400 shareholder.

401 Section 8. Section **67-4a-209** is amended to read:

402 **67-4a-209. Property held by agents and fiduciaries.**

403 (1) All intangible property, and any income or increment derived from it, that is held in
404 a fiduciary capacity for the benefit of another person is considered abandoned unless the owner
405 has, within [~~five~~] three years after it has become payable or distributable:

- 406 (a) increased or decreased the principal;
- 407 (b) accepted payment of principal or income;
- 408 (c) communicated concerning the property; or
- 409 (d) otherwise indicated an interest as evidenced by a memorandum or other record on
410 file with the fiduciary.

411 (2) (a) As used in this [~~subsection~~] section, "distribution date" means the earliest of:

- 412 (i) the actual date of distribution or attempted distribution;
- 413 (ii) the date contracted for distribution in the plan or trust agreement governing the
414 account or plan; or

415 (iii) the date specified in the internal revenue law of the United States by which
416 distribution must begin in order to avoid a tax penalty.

417 (b) All intangible property and any income or increment derived from it that is held in
418 an individual retirement account, a retirement plan for self-employed individuals, or similar
419 account or plan established under the internal revenue laws of the United States that has not
420 been paid or distributed for more than 90 days after the distribution date is considered
421 abandoned unless the owner or beneficiary has, within [~~five~~] three preceding years:

- 422 (i) made additional payments or transfers of property to the account or plan;
- 423 (ii) been paid or received a distribution;
- 424 (iii) communicated concerning the property; or
- 425 (iv) otherwise indicated an interest as evidenced by a memorandum or
426 other record on file with the account or plan fiduciary.

427 (3) For the purpose of this section, a person who holds property as an agent for a
428 business association is considered to hold the property in a fiduciary capacity for that business
429 association alone, unless the agreement between him and the business association provides
430 otherwise.

431 (4) For the purposes of this section, a person who is considered to hold property in a
432 fiduciary capacity for a business association alone is the holder of the property only for the
433 interest of the business association in the property, and the business association is the holder of
434 the property for the interest of any other person in the property.

435 Section 9. Section **67-4a-214** is amended to read:

436 **67-4a-214. Mineral proceeds.**

437 (1) (a) Any sum payable as mineral proceeds that has remained unclaimed by the
438 owner for more than [~~five~~] three years after it became payable or distributable is considered
439 abandoned.

440 (b) The owner's underlying right to receive those mineral proceeds is considered
441 abandoned when any sum payable as mineral proceeds has remained unclaimed by the owner
442 for more than [~~five~~] three years.

443 (2) At the time an owner's underlying right to receive mineral proceeds is considered
444 abandoned, any mineral proceeds then owing to the owner and any proceeds accruing after that
445 time are considered abandoned.

446 (3) The sum considered abandoned is subject to the custody of this state as unclaimed
447 property if:

448 (a) the last-known address of the apparent owner, as shown on the records of the
449 holder, is in Utah;

450 (b) the records of the holder do not identify the last-known address and it is established
451 that the last-known address of the apparent owner is in Utah;

452 (c) the records of the holder do not reflect the last-known address, and the holder is
453 domiciled in or is a government or governmental subdivision or agency of Utah; or

454 (d) the mineral interest is located in Utah and:

455 (i) the last-known address of the apparent owner, as shown on the records of the
456 holder, is in a state that does not provide by law for the escheat or custodial taking of the
457 property or is in a state in which the state's escheat or unclaimed property law is not applicable
458 to the property; or

459 (ii) the last-known address of the apparent owner is unknown and the holder is
460 domiciled in a state that does not provide by law for the escheat or custodial taking of the
461 property or a state in which the state escheat or unclaimed property law is not applicable to the

462 property.

463 (4) A holder may not deduct from mineral proceeds any charge due to dormancy unless
464 there is an enforceable written contract between the holder and the owner of the mineral
465 proceeds under which the holder may impose a charge.

466 Section 10. Section **67-4a-301** is amended to read:

467 **67-4a-301. Report of abandoned property -- Notice.**

468 (1) (a) A person holding tangible or intangible property that is considered abandoned
469 and subject to the state's custody as abandoned or unclaimed property under this chapter shall:

470 (i) file a report concerning the property with the administrator before [~~May~~] November
471 1 of each year as of the preceding [~~December 31~~] June 30 containing the information required
472 by this section; and

473 (ii) transfer the property identified in the report, including all interest, dividends,
474 increments, and accretions due, payable, or distributable on the property as of [~~May~~] November
475 1 of the year in which the report is required to the administrator as required by Section
476 67-4a-302.

477 (b) The administrator may postpone the reporting date if he receives a written request
478 to extend the time of the report from any person required to file a report.

479 (2) (a) The report shall include:

480 (i) except with respect to traveler's checks and money orders, the name, if known, and
481 last-known address, if any, of each person appearing from the records of the holder to be the
482 owner of property with a value of [~~\$25~~] \$50 or more that is considered abandoned under
483 requirements of this chapter;

484 (ii) for unclaimed funds of [~~\$25~~] \$50 or more held or owing under any insurance policy
485 or annuity contract, the full name and last-known address of the insured policy owner or
486 annuitant and of the beneficiary according to the records of the insurance company holding or
487 owing the funds;

488 (iii) for the contents of a safe deposit box or other safekeeping repository or of other
489 tangible property, a description of the property and any amounts owing to the holder;

490 (iv) the nature and identifying number, if any, or description of the property and the
491 amount appearing from the records to be due;

492 (v) the date the property became payable, demandable, or returnable and the date of the

493 last transaction with the apparent owner with respect to the property;

494 (vi) a verification by the person completing the report that the information contained in
495 it is true and accurate; [~~and~~]

496 (vii) all known names and addresses of each previous holder of the property if:

497 (A) the person holding property considered abandoned and subject to custody as
498 unclaimed property is a successor to other persons who previously held the property for the
499 apparent owner; or

500 (B) the holder has changed a name while holding the property; and

501 (viii) other information required by the administrator.

502 (b) When reporting the nature and identifying number, if any, or description of the
503 property and the amount appearing from the records to be due, items of value under [~~\$25~~] \$50
504 each may be reported in the aggregate.

505 (3) Not more than 120 days before filing the report required by this section, the holder
506 in possession of property considered abandoned and subject to the state's custody as unclaimed
507 property under this chapter shall send written notice to the apparent owner at that owner's
508 last-known address informing the owner that the holder is in possession of property subject to
509 this chapter if:

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

512 (b) the property has a value of \$50 or more.

513 Section 11. Section **67-4a-302** is amended to read:

514 **67-4a-302. Payment or delivery of abandoned property.**

515 (1) (a) Each person holding property considered abandoned and subject to the state's
516 custody as unclaimed property shall pay or deliver to the administrator all of the property
517 shown on the report required by this part.

518 (b) The administrator may:

519 (i) postpone the payment or delivery of the property if requested by the person holding
520 the property; and

521 (ii) impose terms and for payment and delivery upon the person holding the property.

522 (c) If the administrator authorizes postponement of payment or delivery of the property,
523 the property paid or delivered to the administrator shall include all interest, dividends,

524 increments and accretions due, payable, or distributable on the day that the property is paid or
525 delivered to the administrator.

526 (2) (a) The holder of stocks and other intangible interests under Section 67-4a-208
527 shall issue and deliver or transmit to the administrator a duplicate certificate, or other evidence
528 of ownership if the holder does not issue certificates of ownership, [~~that is~~] including an
529 electronic book entry registered in the name prescribed by the state treasurer.

530 (b) Upon delivery of a duplicate certificate or transmittance of a book entry to the
531 administrator, the holder and any transfer agent, registrar, or other person acting for or on
532 behalf of a holder in executing or delivering the duplicate certificate or other evidence of
533 ownership is relieved of all liability in accordance with Section 67-4a-303 to every person,
534 including any person acquiring the original certificate or the duplicate certificate issued to the
535 administrator, for any losses or damages resulting to any person by the issuance and delivery of
536 the duplicate certificate or other evidence of ownership to the administrator.

537 (3) (a) When a certificate or other evidence of ownership, or a bond or other debt
538 security, registered in the name of a person is delivered to the administrator according to the
539 procedures and requirements of this chapter and is presented by the administrator to the issuer
540 or the issuer's agent, the issuer shall:

541 (i) transfer and register it in the name as prescribed by the state treasurer; and
542 (ii) deliver a new certificate or security registered in that name to the administrator.

543 (b) The issuer and its transfer agent, registrar, or other person acting on behalf of the
544 issuer in executing and delivering the certificate or security is relieved from any liability to any
545 person in accordance with Section 67-4a-303 for any loss or damage caused by the transfer,
546 issuance, and delivery of the certificate or security to the administrator.

547 (4) (a) A holder, with the written consent of the administrator and upon conditions and
548 terms prescribed by the administrator, may report and deliver property before the property is
549 considered abandoned under this chapter.

550 (b) Property delivered under this Subsection (4) is presumed abandoned.

551 (c) The administrator shall advertise and dispose of the property according to the
552 requirements of this chapter.

553 Section 12. Section **67-4a-402** is amended to read:

554 **67-4a-402. Publication of notice.**

555 ~~[(1) In the calendar year in which]~~ Within 12 months of the date the unclaimed
 556 property was paid or delivered to the administrator, the administrator shall:

557 ~~[(a)]~~ (1) cause a notice to be published once in a newspaper having general circulation
 558 in Utah; and

559 ~~[(b)]~~ (2) ensure that the notice is in a form that is likely to attract the attention of the
 560 apparent owner of the unclaimed property[;].

561 ~~[(c) unless exempted by Subsection (2), ensure that the notice contains:]~~

562 ~~[(i) the name of each person appearing to be the owner of property considered~~
 563 ~~abandoned, as set forth in the report filed by the holder;]~~

564 ~~[(ii) the last-known address or location of each person appearing to be the owner of~~
 565 ~~property considered abandoned, if an address or location is set forth in the report filed by the~~
 566 ~~holder;]~~

567 ~~[(iii) a statement explaining that property of the owner is considered to be abandoned~~
 568 ~~and has been taken into the protective custody of the administrator; and]~~

569 ~~[(iv) a statement that information about the abandoned property and its return to the~~
 570 ~~apparent owner can be obtained at any time by a person having a legal interest in that property~~
 571 ~~by making an inquiry to the administrator.]~~

572 ~~[(2) The administrator need not advertise:]~~

573 ~~[(a) the name and address or location of an owner of abandoned property having a total~~
 574 ~~value less than \$50; or]~~

575 ~~[(b) information concerning traveler's checks, money orders, and other similar written~~
 576 ~~instruments considered abandoned under Section 67-4a-202.]~~

577 Section 13. Section **67-4a-403** is amended to read:

578 **67-4a-403. Disposition of abandoned property -- Sale.**

579 (1) (a) Except as provided in Subsections (2)[;] and (3)[, ~~and~~ (4)], the administrator
 580 shall:

581 (i) within three years after the receipt of abandoned property, sell the property to the
 582 highest bidder at a public sale, which may include sale via the internet; and

583 (ii) if the sale is held at a specified physical location, publish notice of the sale in a
 584 newspaper of general circulation in this state at least three weeks before the sale.

585 (b) The administrator may hold the sale in whatever city in Utah he believes will

586 provide the most favorable market for the property.

587 (c) The administrator may decline the highest bid and reoffer the property for sale if the
588 bid is insufficient.

589 (d) If the administrator determines that the probable cost of sale exceeds the value of
590 the property, the administrator need not offer the property for sale.

591 (e) When any person makes a claim, the administrator shall provide the person with:

592 (i) the property delivered by the holder to the administrator; or

593 (ii) the proceeds received from the sale.

594 (f) The administrator may, in the administrator's discretion, deduct reasonable fees and
595 expenses incurred from the sale.

596 (2) (a) The administrator shall sell:

597 ~~[(a)]~~ (i) securities listed on an established stock exchange at prices prevailing at the
598 time of sale on the exchange; and

599 ~~[(b)]~~ (ii) securities not listed on an established stock exchange:

600 ~~[(i)]~~ (A) over-the-counter at prices prevailing at the time of sale; or

601 ~~[(ii)]~~ (B) by any other method the administrator considers to be in the best interest of
602 the state.

603 ~~[(3) Unless the administrator considers it to be in the best interest of the state to do~~
604 ~~otherwise, all securities received by the administrator, other than those considered abandoned~~
605 ~~under Section 67-4a-208, shall be held for at least one year before they may be sold.]~~

606 ~~[(4) (a) Unless the administrator considers it to be in the best interest of the state to do~~
607 ~~otherwise, all securities considered abandoned under Section 67-4a-208 and delivered to the~~
608 ~~administrator shall be held for at least three years before the administrator may sell them.]~~

609 ~~[(b) (i) If the administrator sells any of those securities before the expiration of the~~
610 ~~three years, the administrator shall pay any person claiming the securities before the end of the~~
611 ~~three years either the proceeds of the sale of the securities or the market value of the securities~~
612 ~~at the time the claim is made, whichever is greater.]~~

613 (b) The administrator may sell securities upon receipt.

614 ~~[(ii)]~~ (c) When any person makes a claim ~~[after three years]~~, the administrator shall
615 provide the person with:

616 ~~[(A)]~~ (i) the securities delivered to the administrator by the holder, if they still remain

617 in the hands of the administrator; or

618 ~~[(B)]~~ (ii) the proceeds received from the sale.

619 (d) The administrator may, in the administrator's discretion, deduct reasonable fees and
620 expenses incurred from the sale.

621 ~~[(c)]~~ (e) A person making a claim under this ~~[subsection]~~ section may not make any
622 claim against the state, the holder, any transfer agent, registrar or other person acting for or on
623 behalf of a holder for any appreciation in the value of the property occurring after delivery by
624 the holder to the administrator.

625 ~~[(5)]~~ (3) (a) The purchaser of any property at any sale conducted by the administrator
626 under the authority of this chapter takes the property free of all claims of the owner or previous
627 holder of the property and of all persons claiming through or under them.

628 (b) The administrator shall execute all documents necessary to complete the transfer of
629 ownership.

630 Section 14. Section **67-4a-601** is amended to read:

631 **67-4a-601. Records retention.**

632 (1) Except as provided in Subsection (2), each holder required to file a report under
633 Part 3 shall maintain a record of the name and last-known address of the owner for five years
634 after the ~~[property becomes reportable]~~ date the holder files the report.

635 (2) Any business association that sells in this state its traveler's checks, money orders,
636 or other similar written instruments, other than third-party bank checks on which the business
637 association is directly liable, or that provides such instruments to others for sale in this state,
638 shall maintain a record of those instruments while they remain outstanding, indicating the state
639 and date of issue for three years after the date the property is reportable.

640 Section 15. Section **67-4a-701** is amended to read:

641 **67-4a-701. Examination of records.**

642 (1) (a) The administrator may examine at reasonable times and upon reasonable notice,
643 the records pertaining to abandoned or unclaimed property of any person, including the records
644 of an agent of a business association or financial association, to determine whether the person
645 has complied with the provisions of this chapter.

646 (b) If an examination of the records of a person results in the disclosure of property
647 reportable and deliverable under this chapter, and the unreported amount is more than \$12,500,

648 the administrator:

649 (i) may assess the cost of the examination against the holder at the rate of up to \$200 a
650 day for each examiner; and

651 (ii) may not charge more than \$5,000 or 10% of the value of the property found to be
652 reportable and deliverable.

653 (2) If a holder fails to maintain the records required by Part 6 and the records of the
654 holder available for the periods subject to this act are insufficient to permit the preparation of a
655 report, the administrator may require the holder to report and pay whatever amounts can be
656 reasonably estimated from any available records.

657 (3) The administrator may require any person who has not filed a report to file a
658 verified report stating whether or not the person is holding any unclaimed property reportable
659 or deliverable under this chapter.

660 Section 16. Section **67-4a-703** is amended to read:

661 **67-4a-703. Interest and penalties.**

662 (1) A person who fails to pay or deliver property within the time required by this
663 chapter shall pay interest to the administrator at the [~~annual~~] rate of [~~2% above the local prime~~
664 ~~lending rate~~] 12% per annum on the property or value of the property from the date the
665 property should have been paid or delivered.

666 (2) (a) A person who willfully fails to file any report, or perform a duty required by this
667 chapter, or to pay or deliver property to the administrator as required by this chapter shall pay a
668 civil penalty equal to 20% of the value of the property that should have been paid or delivered.

669 (b) The administrator shall comply with the procedures and requirements of Title 63,
670 Chapter 46b, Administrative Procedures Act, in imposing civil penalties under this section.

671 (3) (a) It is unlawful for any person to willfully refuse to pay or deliver property to the
672 administrator after written demand by the administrator as required by this chapter.

673 (b) Any person who violates this Subsection (3) is guilty of a class B misdemeanor.

674 (4) The administrator may, in appropriate circumstances:

675 (a) waive the payment of civil penalties;

676 (b) waive the payment of interest; or

677 (c) reduce the amount of the interest.

Legislative Review Note
as of 12-9-05 1:34 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0075

Unclaimed Property Act Revisions

19-Jan-06

10:14 AM

State Impact

It is estimated that provisions of this bill can be implemented with existing resources.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst