
SENATE BILL No. 322

DIGEST OF INTRODUCED BILL

Citations Affected: IC 32-9-1.5.

Synopsis: Uniform unclaimed property act. Includes evidence of receipt of a distribution of a dividend check or other instrument of payment as an indication of interest in the property if the distribution was made by electronic means. Changes the time periods for presumption of abandonment for unclaimed property to conform to those in the uniform unclaimed property act. Requires the holder of property presumed abandoned to send written notice to the apparent owner not less than 60 days before reporting the property to the attorney general (current law requires that it be not less than 30 days), but does not require the holder to send notice if the value of the property is less than \$50. Requires that tangible property held in a safe
(Continued next page)

Effective: July 1, 1998.

Simpson

January 8, 1998, read first time and referred to Committee on Judiciary.

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Digest Continued

deposit box be held for at least 120 days after the property is reported to the attorney general. Removes the requirement that the attorney general publish a notice relating to a traveler's check, money order, or similar instrument presumed abandoned. Changes the provisions relating to the crediting of dividends, interest, and increments to a presumed owner's account to conform with the uniform unclaimed property act. Requires the attorney general to give notice approving or denying a claim within 90 days after the claim is filed. Allows a person aggrieved by a decision of the attorney general on the person's unclaimed property claim to file an original claim in a court of competent jurisdiction. (Current law requires the aggrieved person to contest the decision in an administrative hearing before allowing the person to appeal the decision in court.) Repeals the provisions relating to the administrative hearing and appeal. Allows a court to award reasonable attorney's fees to the prevailing party in an action brought by the attorney general to enforce the unclaimed property act. Changes the penalty provisions for noncompliance to conform with those in the uniform unclaimed property act. Changes the provisions regarding agreements to locate property presumed abandoned to conform with those in the uniform unclaimed property act. Provides that the unclaimed property act does not apply to property held in a foreign country arising out of a foreign transaction.

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Introduced

Second Regular Session 110th General Assembly (1998)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1997 General Assembly.

SENATE BILL No. 322

A BILL FOR AN ACT to amend the Indiana Code concerning property.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 32-9-1.5-20, AS AMENDED BY P.L.201-1997,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 1998]: Sec. 20. (a) For purposes of this section, an indication
4 of interest in the property by the owner:
5 (1) does not include a communication with an owner by an agent
6 of the holder who has not identified in writing the property to the
7 owner; and
8 (2) includes the following:
9 (A) The cashing of a dividend check or other instrument of
10 payment received **or evidence that the distribution has been**
11 **received if the distribution was made by electronic or**
12 **similar means**, with respect to an account or underlying
13 shares of stock **or other interest in a business association or**
14 **financial organization.**
15 (B) A deposit to or withdrawal from a bank account.



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- 1 (C) The payment of a premium with respect to a property
2 interest in an insurance policy.
- 3 (D) The mailing of any correspondence in writing from a
4 financial institution to the owner, including:
5 (i) a statement;
6 (ii) a report of interest paid or credited; or
7 (iii) any other written advice;
8 relating to a demand, savings, or matured time deposit
9 account, including a deposit account that is automatically
10 renewable, or any other account or other property the owner
11 has with the financial institution if the correspondence is not
12 returned to the financial institution for nondelivery.
- 13 (E) Any activity by the owner that concerns:
14 (i) another demand, savings, or matured time deposit
15 account or other account that the owner has with a financial
16 institution, including any activity by the owner that results
17 in an increase or decrease in the amount of any other
18 account; or
19 (ii) any other relationship with the financial institution,
20 including the payment of any amounts due on a loan;
21 if the mailing address for the owner contained in the financial
22 institution's books and records is the same for both an inactive
23 account and for a related account.
- 24 (b) The application of an automatic premium loan provision or other
25 nonforfeiture provision contained in an insurance policy does not
26 prevent the policy from maturing or terminating if the insured has died
27 or the insured or the beneficiary of the policy otherwise has become
28 entitled to the proceeds before the depletion of the cash surrender value
29 of the policy by the application of those provisions.
- 30 (c) Property that is held, issued, or owed in the ordinary course of
31 a holder's business is presumed abandoned if the owner or apparent
32 owner has not communicated in writing with the holder concerning the
33 property or has not otherwise given an indication of interest in the
34 property during the following times:
35 (1) For traveler's checks, fifteen (15) years after issuance.
36 (2) For money orders, seven (7) years after issuance.
37 (3) For consumer credits, three (3) years after the credit becomes
38 payable.
39 (4) For gift certificates, ~~that are redeemable only in merchandise~~
40 ~~that is valued for purposes of abandonment at sixty percent (60%)~~
41 ~~of face value~~; three (3) years after December 31 of the year in
42 which the gift certificate was sold. **If the gift certificate is**

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1 **redeemable in merchandise only, the amount abandoned is**
 2 **deemed to be sixty percent (60%) of the certificate's face**
 3 **value.**

4 (5) For amounts owed by an insurer on a life or an endowment
 5 insurance policy or an annuity contract:

6 (A) if the policy or contract has matured or terminated, ~~five (5)~~
 7 **three (3)** years after the obligation to pay arose; or

8 (B) if the policy or contract is payable upon proof of death,
 9 ~~five (5)~~ **three (3)** years after the insured has attained, or would
 10 have attained if living, the limiting age under the mortality
 11 table on which the reserve is based.

12 (6) For property distributable by a business association in a course
 13 of dissolution, one (1) year after the property becomes
 14 distributable.

15 (7) For property or proceeds held by a court, ~~ten (10) years~~ **one**
 16 **(1) year** after the property or proceeds become distributable. The
 17 property or proceeds must be treated as unclaimed property under
 18 IC 32-9-8.

19 (8) For property held by a state or other government,
 20 governmental subdivision or agency, or public corporation or
 21 other public authority, one (1) year after the property becomes
 22 distributable.

23 (9) For compensation for personal services, one (1) year after the
 24 compensation becomes payable.

25 (10) For deposits and refunds held for subscribers by utilities, one
 26 (1) year after the deposits or refunds became payable.

27 (11) ~~Except as provided in subdivision (12);~~ For stock or other
 28 interest in a business association, ~~seven (7)~~ **five (5)** years after ~~the~~
 29 **earlier of:**

30 (A) the date of the last dividend, **stock split**, or other
 31 distribution ~~paid with respect to the stock or other interest:~~
 32 **unclaimed by the apparent owner; or**

33 ~~(12) For stock or other interest in a business association~~
 34 ~~for which:~~

35 (A) a dividend has not been paid on the stock or other interest
 36 for seven (7) consecutive years; or

37 (B) the stock or other interest is held under a plan that
 38 provides for the automatic reinvestment of dividends or other
 39 distributions;

40 the earliest of seven (7) years after the date of the second mailing
 41 of official shareholder notifications or communications that were
 42 returned as undeliverable; or the date the holder discontinued the

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1 mailings to the shareholder.

2 ~~(13)~~ **(B) the date of the second mailing of a statement of**
3 **account or other notification or communication that was:**

4 **(i) returned as undeliverable; or**

5 **(ii) made after the holder discontinued mailings to the**
6 **apparent owner.**

7 **(12)** For property in an individual retirement account or another
8 account or plan that is qualified for tax deferral under the Internal
9 Revenue Code, ~~one (1) year~~ **three (3) years** after the earliest of:

10 (A) the actual date of the distribution or attempted
11 distribution;

12 (B) the distribution date as stated in the plan or trust
13 agreement governing the plan; or

14 (C) the date specified in the Internal Revenue Code by which
15 distribution must begin in order to avoid a tax penalty.

16 ~~However, if during the four (4) years before the commencement~~
17 ~~of the one (1) year abandonment period the apparent owner has~~
18 ~~communicated in writing with the holder concerning the property~~
19 ~~or otherwise indicated an interest in the property, then the date of~~
20 ~~the presumed abandonment is one (1) additional year after the~~
21 ~~property would otherwise have been presumed abandoned.~~

22 ~~(14)~~ **(13)** For a demand, savings, or matured time deposit,
23 including a deposit that is automatically renewable, ~~seven (7) five~~
24 **(5) years** after maturity or ~~seven (7) five (5)~~ **(5) years** after the date of
25 the last indication by the owner of interest in the property,
26 whichever is ~~later~~ **earlier**. Property that is automatically
27 renewable is considered matured for purposes of this section upon
28 the expiration of its initial period, unless the owner has consented
29 to a renewal at or about the time of the renewal, and the consent
30 is in writing or is evidenced by a memorandum or other record on
31 file with the holder.

32 ~~(15)~~ **(14)** For all other property, ~~seven (7)~~ **the earlier of five (5)**
33 **years** after:

34 **(A) the owner's right to demand the property; or**

35 **(B) the obligation to pay or distribute the property;**
36 **arose.**

37 (d) Property is payable or distributed for purposes of this chapter
38 notwithstanding the owner's failure to make demand or present an
39 instrument or a document otherwise required to receive payment.

40 SECTION 2. IC 32-9-1.5-24, AS ADDED BY P.L.31-1995,
41 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
42 JULY 1, 1998]: Sec. 24. All tangible and intangible property held in a

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1 safe deposit box or any other safekeeping depository in Indiana in the
 2 ordinary course of the holder's business and the proceeds resulting from
 3 the sale of the property permitted by other law, which remains
 4 unclaimed by the owner for more than ~~seven (7)~~ **five (5)** years after
 5 expiration of the lease or rental period on the box or other depository,
 6 is presumed abandoned.

7 SECTION 3. IC 32-9-1.5-26, AS ADDED BY P.L.31-1995,
 8 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 9 JULY 1, 1998]: Sec. 26. (a) A holder of property presumed abandoned
 10 and subject to custody as unclaimed property under this chapter shall
 11 report in writing to the attorney general concerning the property. Items
 12 of value of less than fifty dollars (\$50) may be reported by the holder
 13 in the aggregate.

14 (b) For each item with a value of fifty dollars (\$50) or more, the
 15 report required under subsection (a) must be verified and include the
 16 following:

17 (1) Except with respect to traveler's checks and money orders, the
 18 apparent owner's:

19 (A) name, if known;

20 (B) last known address, if any; and

21 (C) Social Security number or taxpayer identification number,
 22 if readily ascertainable.

23 (2) In the case of the contents of a safe deposit box or other
 24 safekeeping depository of tangible property:

25 (A) a description of the property;

26 (B) the place where the property is held and may be inspected
 27 by the attorney general; and

28 (C) any amounts owing to the holder.

29 (3) The date:

30 (A) the property became payable, demandable, or returnable;
 31 and

32 (B) of the last transaction with the apparent owner with respect
 33 to the property.

34 (4) Other information that the attorney general requires by rules
 35 adopted under IC 4-22-2 as necessary for the administration of
 36 this chapter.

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



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- 1 (d) The report required by subsection (a) must be filed as follows:
 2 (1) The report of a life insurance company must be filed before
 3 May 1 of each year for the calendar year preceding the year in
 4 which the report is filed.
 5 (2) All other holders must file the report before November 1 of
 6 each year to cover the year preceding July 1 of the year in which
 7 the report is filed.
 8 (e) The holder of property presumed abandoned and subject to
 9 custody as unclaimed property under this chapter shall send written
 10 notice to the apparent owner, not more than one hundred twenty (120)
 11 days or less than ~~thirty (30)~~ **sixty (60)** days before filing the report
 12 required by this section, stating that the holder is in possession of
 13 property subject to this chapter if:
 14 (1) the holder has a record of an address for the apparent owner
 15 that the holder's records do not show as inaccurate; ~~and~~
 16 (2) the claim of the apparent owner is not barred by the statute of
 17 limitations; ~~and~~
 18 **(3) the value of the property is at least fifty dollars (\$50).**
 19 (f) Before the date of filing the report the holder may request the
 20 attorney general to extend the time for filing the report. The attorney
 21 general may grant the extension upon a showing of good cause. The
 22 holder, upon receipt of the extension, may make an interim payment on
 23 the amount the holder estimates will ultimately be due, which will
 24 suspend the accrual of interest on the amount paid.
 25 (g) The holder shall file with the report an affidavit stating that the
 26 holder has complied with this section.
 27 SECTION 4. IC 32-9-1.5-27, AS ADDED BY P.L.31-1995,
 28 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 29 JULY 1, 1998]: Sec. 27. (a) Except as provided in ~~subsection~~
 30 **subsections (b) and (c)**, on the date a report is filed under section 26
 31 of this chapter, the holder shall pay or deliver to the attorney general
 32 the property described in the report as unclaimed.
 33 (b) In the case of an automatically renewable deposit, if at the time
 34 of delivery under subsection (a), a penalty or forfeiture in the payment
 35 of interest would result from the delivery of the property, the time for
 36 delivery is extended until the earliest date upon which a penalty or
 37 forfeiture would not result.
 38 (c) **Tangible property held in a safe deposit box or other**
 39 **safekeeping depository may not be delivered to the attorney**
 40 **general until one hundred and twenty (120) days after the date the**
 41 **report describing the property under section 26 of this chapter is**
 42 **filed.**



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1 (d) If the property reported to the attorney general is a security
2 or security entitlement under IC 26-1-8.1, the attorney general is
3 an appropriate person to make an indorsement, instruction, or
4 entitlement order on behalf of the apparent owner to invoke the
5 duty of the issuer or its transfer agent or the securities
6 intermediary to transfer or dispose of the security or the security
7 entitlement in accordance with IC 26-1-8.1.

8 (e) If the holder of property reported to the attorney general is
9 the issuer of a certificated security, the attorney general has the
10 right to obtain a replacement certificate under IC 26-1-8.1-405, but
11 an indemnity bond is not required.

12 (f) An issuer, the holder, and any transfer agent or other person
13 acting under the instructions of and on behalf of the issuer in
14 accordance with this section is not liable to the apparent owner and
15 must be indemnified against the claims of any person in accordance
16 with section 29 of this chapter.

17 SECTION 5. IC 32-9-1.5-28, AS ADDED BY P.L.31-1995,
18 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
19 JULY 1, 1998]: Sec. 28. (a) Except as provided in subsection (e), the
20 attorney general shall cause a notice to be published not later than
21 November 30 of the year immediately following the year in which
22 unclaimed property has been paid or delivered to the attorney general.

23 (b) Except as provided in subsection (c), the notice required by
24 subsection (a) must be published at least once each week for two (2)
25 successive weeks in a newspaper of general circulation published in the
26 county in Indiana of the last known address of any person named in the
27 notice.

28 (c) If the holder does not report an address for the apparent owner,
29 or reports an address outside Indiana, the notice must be published in
30 the county in which the holder has its principal place of business within
31 Indiana or such other county as the attorney general may reasonably
32 select.

33 (d) The advertised notice required by this section must be in a form
34 that, in the judgment of the attorney general, will attract the attention
35 of the apparent owner of the unclaimed property and must contain the
36 following information:

- 37 (1) The name of each person appearing to be an owner of property
38 presumed abandoned, as set forth in the report filed by the holder.
39 (2) The last known address or location of each person appearing
40 to be an owner of property presumed abandoned, if an address or
41 a location is set forth in the report filed by the holder.
42 (3) A statement explaining that property of the owner is presumed

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1 to be abandoned and has been taken into the protective custody of
2 the attorney general.

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

7 (e) The attorney general is not required to publish **the following** in
8 the notice:

9 (1) Any item of less than fifty dollars (\$50) in value.

10 (2) **Information concerning a traveler's check, money order,
11 or similar instrument.**

12 SECTION 6. IC 32-9-1.5-30, AS ADDED BY P.L.31-1995,
13 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
14 JULY 1, 1998]: Sec. 30. If property other than money is paid or
15 delivered to the attorney general under this chapter, the owner is
16 entitled to receive from the attorney general any dividends, interest, or
17 other increments realized or accruing on the property at or before
18 delivery to the attorney general: ~~The owner is not entitled to receive~~
19 ~~dividends, interest, or other increments accruing after delivery of the~~
20 ~~property to the attorney general unless the property was paid or~~
21 ~~delivered under section 40(b) of this chapter.~~ **liquidation or**
22 **conversion of the property into money. If the property was an**
23 **interest bearing demand, savings, or time deposit, including a**
24 **deposit that is automatically renewable, the attorney general shall**
25 **pay interest at:**

26 (1) **the one year Treasury Bill rate published in the Wall**
27 **Street Journal or its successor on the third Tuesday of:**

28 (A) **the month interest begins to accrue for the first year of**
29 **accrual; and**

30 (B) **the anniversary of the month interest begins to accrue**
31 **for every year of accrual thereafter; or**

32 (2) **any lesser rate the property earned while in the possession**
33 **of the holder;**

34 **for every year of accrual. Interest begins to accrue when the**
35 **property is delivered to the attorney general and ceases on the**
36 **earlier of the expiration of ten (10) years after delivery or the date**
37 **on which payment is made to the owner. Interest on interest**
38 **bearing property is not payable under this section for any period**
39 **before July 1, 1998.**

40 SECTION 7. IC 32-9-1.5-36, AS ADDED BY P.L.31-1995,
41 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
42 JULY 1, 1998]: Sec. 36. (a) A person, not including another state,



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1 claiming an interest in property paid or delivered to the attorney
 2 general may file a claim on a form prescribed by the attorney general
 3 and verified by the claimant.

4 (b) **Within ninety (90) days after a claim is filed** the attorney
 5 general shall:

6 (1) consider the claim; and

7 (2) give written notice to the claimant that the claim is granted or
 8 the claim is denied in whole or in part.

9 (c) Not later than thirty (30) days after a claim is allowed, the
 10 attorney general shall pay over or deliver to the claimant the property
 11 or the net proceeds of the sale of property if the property has been sold
 12 by the attorney general, together with any additional amount to which
 13 the claimant may be entitled under section 30 of this chapter.

14 (d) A holder who pays the owner for property that has been
 15 delivered to the state and that, if claimed from the attorney general by
 16 the owner, would be subject to an increment under section 30 of this
 17 chapter shall recover the amount of such increment from the attorney
 18 general.

19 (e) A person may file a claim under subsection (a) at any time
 20 within twenty-five (25) years after the date on which the property was
 21 first presumed abandoned under this chapter, notwithstanding the
 22 expiration of any other time specified by statute, contract, or court
 23 order during which an action or a proceeding may be commenced or
 24 enforced to obtain payment of a claim for money or recovery of
 25 property.

26 SECTION 8. IC 32-9-1.5-37, AS ADDED BY P.L.31-1995,
 27 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 28 JULY 1, 1998]: Sec. 37. (a) At any time within twenty-five (25) years
 29 after the date on which the property was presumed abandoned under
 30 this chapter, notwithstanding the expiration of any other time specified
 31 by statute, contract, or court order during which an action or
 32 proceeding may be commenced or enforced to obtain payment of a
 33 claim for money or recovery of property, another state may recover the
 34 property if:

35 (1) the property was delivered to the custody of this state because
 36 the records of the holder did not reflect the last known address of
 37 the apparent owner when the property was presumed abandoned
 38 under this chapter, and:

39 (A) the other state establishes that the last known address of
 40 the apparent owner or other person entitled to the property was
 41 in that state; and

42 (B) under the laws of that state the property escheated to or



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1 was subject to a claim of abandonment by that state;

2 (2) ~~the last known address of the apparent owner or other person~~
3 ~~entitled to the property, as reflected by the records of the holder,~~
4 ~~is in the other state the property was paid or delivered to the~~
5 ~~custody of this state because the laws of the other state did not~~
6 ~~provide for the escheat or custodial taking of the property,~~
7 and under the laws of that state **subsequently enacted** the
8 property has escheated to or become subject to a claim of
9 abandonment by that state;

10 (3) the records of the holder did not accurately identify the owner
11 of the property and:

12 (A) the last known address of the owner is in the other state;
13 and

14 (B) under the laws of the other state the property escheated to
15 or was subject to a claim of abandonment by that state;

16 (4) the property was subject to custody by this state under section
17 21(7) of this chapter and under the laws of the state of domicile
18 of the holder the property has escheated to or become subject to
19 a claim of abandonment by that state; or

20 (5) the property is a sum payable on a traveler's check, money
21 order, or similar instrument that was delivered into the custody of
22 this state under section 21(7) of this chapter, and:

23 (A) the instrument was purchased in the other state; and
24 (B) under the laws of the other state the property escheated to
25 or is subject to a claim of abandonment by that state.

26 (b) A claim of another state to recover escheated or abandoned
27 property must be presented in a form prescribed by the attorney
28 general, who shall consider the claim and give written notice **not more**
29 **than ninety (90) days after the presentation of the claim** to the other
30 state that the claim is granted or denied in whole or in part. The
31 attorney general shall allow the claim upon a determination that the
32 other state is entitled to the abandoned property under subsection (a).

33 (c) The attorney general shall require another state, before
34 recovering property under this section, to agree to indemnify this state
35 and its officers and employees against any liability on a claim for the
36 property.

37 SECTION 9. IC 32-9-1.5-38.1 IS ADDED TO THE INDIANA
38 CODE AS A NEW SECTION TO READ AS FOLLOWS
39 [EFFECTIVE JULY 1, 1998]: **Sec. 38.1. A person:**

40 (1) **aggrieved by a decision of the attorney general; or**
41 (2) **whose claim has not been acted upon within ninety (90)**
42 **days after its filing;**

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1 **under this chapter, may maintain an original action to establish the**
 2 **claim in a court of competent jurisdiction, naming the attorney**
 3 **general as a defendant.**

4 SECTION 10. IC 32-9-1.5-43, AS ADDED BY P.L.31-1995,
 5 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 6 JULY 1, 1998]: Sec. 43. (a) The attorney general may require a person
 7 who has not filed a report, or a person who the attorney general
 8 believes has filed an inaccurate, an incomplete, or a false report, to file
 9 a verified report in a form prescribed by the attorney general stating the
 10 following:

11 (1) Whether the person is holding any unclaimed property
 12 reportable or deliverable under this chapter.

13 (2) Describing any property not previously reported or as to which
 14 the attorney general has made inquiry.

15 (3) Specifically identifying and stating the amounts of property
 16 that may be in issue.

17 (b) The attorney general, at reasonable times and upon reasonable
 18 notice, may examine the records of a person to determine whether the
 19 person has complied with this chapter. The attorney general may
 20 conduct the examination even if the person believes the person is not
 21 in possession of any property reportable or deliverable under this
 22 chapter. When making an examination under this chapter the attorney
 23 general may retain attorneys, appraisers, independent actuaries,
 24 independent certified public accountants, or other professionals and
 25 specialists as examiners.

26 (c) The attorney general may examine the records of an agent,
 27 including a dividend disbursing agent or transfer agent, of a business
 28 association that is the holder of property presumed abandoned if the
 29 attorney general has given the notice required by subsection (b) to both
 30 the business association and the agent at least ninety (90) days before
 31 the examination.

32 (d) If an examination of the records of a person results in the
 33 disclosure of property reportable and deliverable under this chapter, the
 34 attorney general may assess the cost of the examination against the
 35 holder at the rate of two hundred dollars (\$200) a day for each
 36 examiner. The cost of the examination made under subsection (c) may
 37 be imposed only against the business association.

38 (e) ~~This section does not limit the attorney general's authority to~~
 39 ~~terminate or suspend an examination in order to pursue other legal or~~
 40 ~~administrative action under this chapter. Findings of fact and~~
 41 ~~conclusions made pursuant to an examination are prima facie evidence~~
 42 ~~in a legal or an administrative action.~~

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1 Ⓢ (e) If a holder fails after July 1, 1996, to maintain the records
 2 required under section 44 of this chapter and the available records of
 3 the holder are insufficient to permit the preparation of a report, the
 4 attorney general may require the holder to report and pay such amounts
 5 as may reasonably be estimated from any available records of the
 6 holder or on the basis of any other reasonable estimating technique that
 7 the attorney general may select.

8 SECTION 11. IC 32-9-1.5-44, AS ADDED BY P.L.31-1995,
 9 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 10 JULY 1, 1998]: Sec. 44. (a) Except as provided in subsection (b) and
 11 subject to rules adopted by the attorney general under IC 4-22-2, a
 12 holder required to file a report under section 26 of this chapter as to any
 13 property for which the holder has the last known address of the owner
 14 shall maintain a record of the ~~name and last known address of the~~
 15 **owner information required to be in the report** for at least ten (10)
 16 years after the property becomes reportable.

17 (b) A business association that sells in Indiana traveler's checks,
 18 money orders, or other similar written instruments, other than
 19 third-party bank checks on which the business association is directly
 20 liable, or that provides those instruments to others for sale in Indiana,
 21 shall maintain a record of outstanding instruments indicating the state
 22 and date of issue for at least three (3) years after the date the property
 23 is reportable.

24 SECTION 12. IC 32-9-1.5-45, AS ADDED BY P.L.31-1995,
 25 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 26 JULY 1, 1998]: Sec. 45. The attorney general may maintain an action
 27 in a court of competent jurisdiction to enforce this chapter. **The court**
 28 **may award reasonable attorney's fees to the prevailing party.**

29 SECTION 13. IC 32-9-1.5-46, AS ADDED BY P.L.31-1995,
 30 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 31 JULY 1, 1998]: Sec. 46. (a) The attorney general may enter into
 32 agreements with other states to exchange information relating to
 33 unclaimed property or the possible existence of unclaimed property.
 34 The agreements may permit other states, or a person acting on behalf
 35 of a state, to examine records as authorized in section 43 of this
 36 chapter. The attorney general may by rule require the reporting of
 37 information needed to enable compliance with agreements made under
 38 this section and prescribe the form.

39 (b) The attorney general may join with other states to seek
 40 enforcement of this chapter against a person who is or may be holding
 41 property reportable under this chapter.

42 (c) At the request of another state, the attorney general may



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1 commence an action on behalf of the administrator of the other state to
 2 enforce in Indiana the unclaimed property laws of the other state
 3 against a holder of property subject to escheat or a claim of
 4 abandonment by the other state, if the other state has agreed to pay
 5 expenses incurred by the attorney general in maintaining the action.

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

19 (e) Documents and working papers obtained or compiled by the
 20 attorney general or the attorney general's agents, employees, or
 21 designated representatives in the course of conducting an audit under
 22 section 43 of this chapter are confidential and are not public records
 23 except:

- 24 (1) when used by the attorney general to maintain an action to
- 25 collect unclaimed property or otherwise enforce this chapter;
- 26 (2) when used in joint audits conducted with or under agreements
- 27 with other states, the federal government, or other governmental
- 28 entities; or
- 29 (3) pursuant to subpoena or court order.

30 **The documents and working papers may be disclosed to the**
 31 **abandoned property office of another state for that state's use in**
 32 **circumstances equivalent to those described in this subsection if the**
 33 **other state is bound to keep the documents and papers confidential.**

34 (f) The attorney general's final completed audit reports are public
 35 records, available for inspection and copying under IC 5-14-3. A final
 36 report may not contain confidential documentation or working papers
 37 unless an exception under subsection (e) applies.

38 SECTION 14. IC 32-9-1.5-47, AS ADDED BY P.L.31-1995,
 39 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 40 JULY 1, 1998]: Sec. 47. (a) A holder that fails to pay or deliver the
 41 property within the time required by this chapter shall pay to the
 42 attorney general interest for the time the holder is delinquent at the



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- 1 following rates:
- 2 (1) The annual interest rate for a period of one (1) year or less
- 3 after the time required by this chapter for payment or delivery of
- 4 the property is:
- 5 (A) the one (1) year Treasury Bill rate published in the Wall
- 6 Street Journal or its successor on the third Tuesday of the
- 7 month the remittance was due; plus
- 8 (B) ~~one (1)~~ **two (2)** percentage ~~point~~ **points**.
- 9 (2) The interest rate for each year after the time set forth in
- 10 subdivision (1) is:
- 11 (A) the one (1) year Treasury Bill rate published in the Wall
- 12 Street Journal or its successor on the third Tuesday of the
- 13 immediately preceding anniversary month and year; plus
- 14 (B) ~~one (1)~~ **two (2)** percentage ~~point~~ **points**.
- 15 For purposes of this subdivision, anniversary month and year
- 16 means the anniversary of the date the property was due to be paid
- 17 or delivered under this chapter.
- 18 (b) **Except as provided in subsection (c)**, a holder who fails to
- 19 render any report or perform other duties required under this chapter
- 20 shall pay, **in addition to the interest required by subsection (a)**, a
- 21 civil penalty of ~~one hundred dollars (\$100)~~ **two hundred dollars**
- 22 **(\$200)** for each day for ~~the first fifteen (15) days~~ that the report is
- 23 withheld or the duty not performed **up to a maximum of five**
- 24 **thousand dollars (\$5,000)**. Thereafter the holder shall pay a civil
- 25 penalty the greater of:
- 26 (1) ~~one hundred dollars (\$100)~~ a day for each additional day, not
- 27 to exceed five thousand dollars (\$5,000); or
- 28 (2) ~~ten percent (10%)~~ of the value of the property at issue not to
- 29 exceed five thousand dollars (\$5,000):
- 30 Upon a showing by the holder of good cause sufficient in the discretion
- 31 of the attorney general to excuse the failure, the attorney general may
- 32 waive the penalty in whole or in part.
- 33 (c) A holder who knowingly or intentionally fails to pay or deliver
- 34 property to the attorney general, **makes a fraudulent report, or fails**
- 35 **to perform other duties** as required under this chapter, shall pay,
- 36 **additionally in addition to the interest required by subsection (a)**, a
- 37 civil penalty equal to ~~ten percent (10%)~~ of ~~one thousand dollars~~
- 38 **(\$1,000)** for each day the report is withheld or the duty not
- 39 **performed up to a maximum of twenty-five thousand dollars**
- 40 **(\$25,000) plus twenty-five percent (25%)** of the value of the property
- 41 that ~~must be~~ **should have been but was not** paid or delivered under
- 42 this chapter.

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(d) If:

(1) the attorney general believes it is in the best interests for the administration of this chapter; or

(2) there is good cause;

the attorney general may waive the penalty **and interest under this section** in whole or in part. **The attorney general shall waive penalties under this section if the holder acted in good faith and without negligence.**

(~~d~~) (e) A holder who willfully refuses after written demand by the attorney general, to pay or deliver property to the attorney general as required under this chapter commits a Class B misdemeanor.

SECTION 15. IC 32-9-1.5-48, AS ADDED BY P.L.31-1995, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 48. (a) An agreement by an owner, **the primary purpose of which is** to pay compensation to locate, deliver, recover, or assist in the recovery of property ~~reported~~ **presumed abandoned** under this chapter that is entered into **not earlier than the date the property was presumed abandoned and** not later than twenty-four (24) months after the date the property is paid or delivered to the attorney general is void and unenforceable. **This subsection does not apply to an owner's agreement with an attorney to file a claim as to identified property or to contest the attorney general's denial of a claim.**

(b) An agreement described in subsection (a) that is entered into more than twenty-four (24) months after the date the property is paid or delivered to the attorney general ~~by an owner,~~ **the primary purpose of which is to locate, deliver, recover, or assist in the recovery of property,** is valid only if:

(~~1~~) the fee or compensation agreed upon is not more than ten percent (~~10%~~) of the amount collected unless the amount collected is fifty dollars (~~\$50~~) or less;

(~~2~~) (1) the agreement is in writing;

(~~3~~) (2) the agreement is signed by the apparent owner;

(~~4~~) (3) the agreement clearly sets forth:

(A) the nature and value of the property; and

(B) the value of the apparent owner's share after the fee or compensation has been deducted; and

(~~5~~) (4) the agreement contains the provision set forth in subsection (d).

(c) This section does not prevent an owner from asserting at any time that an agreement to locate property is otherwise invalid.

(d) This subsection applies to a person who locates, delivers, recovers, or assists in the recovery of property reported under this

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1 chapter for a fee or compensation. An advertisement, a written
 2 communication, or an agreement concerning the location, delivery,
 3 recovery, or assistance in the recovery of property reported under this
 4 chapter shall contain a provision stating that by law any contract
 5 provision requiring the payment of a fee for finding property held by
 6 the attorney general for less than twenty-four (24) months is void. ~~and~~
 7 ~~that fees are limited to not more than ten percent (10%) of the amount~~
 8 ~~collected unless the amount collected is fifty dollars (\$50) or less.~~

9 (e) Subsections ~~(b)(1); (b)(5); (b)(4)~~ and (d) do not apply to
 10 attorney's fees.

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

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

23 SECTION 16. IC 32-9-1.5-53 IS ADDED TO THE INDIANA
 24 CODE AS A NEW SECTION TO READ AS FOLLOWS
 25 [EFFECTIVE JULY 1, 1998]: **Sec. 53. This chapter does not apply**
 26 **to property held, due, and owing in a foreign country and arising**
 27 **out of a foreign transaction.**

28 SECTION 17. IC 32-9-1.5-54 IS ADDED TO THE INDIANA
 29 CODE AS A NEW SECTION TO READ AS FOLLOWS
 30 [EFFECTIVE JULY 1, 1998]: **Sec. 54. This chapter shall be applied**
 31 **and construed to effectuate its general purpose to make uniform**
 32 **the law with respect to the subject of this chapter among states**
 33 **enacting it.**

34 SECTION 18. THE FOLLOWING ARE REPEALED [EFFECTIVE
 35 JULY 1, 1998]: IC 32-9-1.5-38; IC 32-9-1.5-39.

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