January 19, 2000

SENATE BILL No. 227

DIGEST OF SB 227 (Updated January 18, 2000 3:06 PM - DI 75)

Citations Affected: IC 32-9.

Synopsis: Uniform unclaimed property act. Makes changes to Indiana's unclaimed property law to conform to the uniform unclaimed property act. Changes the time period requirement for written notice from the holder of property presumed abandoned to the apparent owner and attorney general. Requires that tangible property held in a safe 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. Requires the attorney general to give notice approving or denying a claim within 90 days after the claim is filed. Excludes from the definition of "property" in the unclaimed property law a transaction between business entities and motor carriers. Provides for a judicial appeal of an adverse unclaimed property decision.

Effective: July 1, 2000.

Simpson

January 10, 2000, read first time and referred to Committee on Commerce and Consumer Affairs.
January 18, 2000, amended, reported favorably — Do Pass.

C o p y

January 19, 2000

Second Regular Session 111th General Assembly (2000)

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 1999 General Assembly.

C o p y

SENATE BILL No. 227

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

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

SECTION 1. IC 32-9-1.5-7.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 7.5. **(a)** As used in this chapter, "financial institution" means **a depository financial institution that is organized or reorganized under Indiana law, the law of another state, or United States law. The term includes any of the following:**

(1) A commercial bank.
(2) A trust company.
(3) A savings bank.
(4) A savings association.
(5) A credit union.
(6) An industrial loan and investment company. ~~or~~
(7) Any other entity that has powers similar to the powers of an entity described in subdivisions (1) through (6).

~~organized or reorganized under the laws of the United States or a state.~~

(b) For purposes of section 17 of this chapter, the term includes a bank of discount and deposit.

SECTION 2. IC 32-9-1.5-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 17. (a) The definition in this section does not apply to section 24 of this chapter.

(b) **Except as provided in subsection (c),** as used in this chapter, "property" means an interest in intangible personal property, except an unliquidated claim, and all income or increment derived from the interest, including that which is referred to as or evidenced by:

(1) money, a check, a draft, a deposit, an interest, or a dividend;

(2) a credit balance, a customer overpayment, a gift certificate, a security deposit, a refund, a credit memorandum, an unpaid wage, an unused airline ticket, mineral proceeds, or an unidentified remittance;

(3) stock and other ownership interest in a business association;

(4) a bond, debenture, note, or other evidence of indebtedness;

(5) money deposited to redeem stocks, bonds, coupons, and other securities or to make distributions;

(6) an amount due and payable under the terms of an insurance policy; and

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

(c) As used in this chapter, "property" does not include transactions between business entities and:

(1) a motor carrier (as defined in IC 8-2.1-17-10); or

(2) a carrier (as defined in 49 U.S.C. 13102(3)).

SECTION 3. IC 32-9-1.5-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 20. (a) For purposes of this section, an indication of interest in the property by the owner:

(1) does not include a communication with an owner by an agent of the holder who has not identified in writing the property to the owner; and

(2) includes the following:

(A) The cashing of a dividend check or other instrument of payment received **or evidence that the distribution has been received if the distribution was made by electronic or similar means,** with respect to an account or underlying shares of stock **or other interest in a business association or financial organization.**

(B) A deposit to or withdrawal from a bank account.

(C) The payment of a premium with respect to a property

Copy

interest in an insurance policy.

(D) The mailing of any correspondence in writing from a financial institution to the owner, including:

(i) a statement;

(ii) a report of interest paid or credited; or

(iii) any other written advice;

relating to a demand, savings, or matured time deposit account, including a deposit account that is automatically renewable, or any other account or other property the owner has with the financial institution if the correspondence is not returned to the financial institution for nondelivery.

(E) Any activity by the owner that concerns:

(i) another demand, savings, or matured time deposit account or other account that the owner has with a financial institution, including any activity by the owner that results in an increase or decrease in the amount of any other account; or

(ii) any other relationship with the financial institution, including the payment of any amounts due on a loan;

if the mailing address for the owner contained in the financial institution's books and records is the same for both an inactive account and for a related account.

(b) The application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent the policy from maturing or terminating if the insured has died or the insured or the beneficiary of the policy otherwise has become entitled to the proceeds before the depletion of the cash surrender value of the policy by the application of those provisions.

(c) Property that is held, issued, or owed in the ordinary course of a holder's business is presumed abandoned if the owner or apparent owner has not communicated in writing with the holder concerning the property or has not otherwise given an indication of interest in the property during the following times:

(1) For traveler's checks, fifteen (15) years after issuance.

(2) For money orders, seven (7) years after issuance.

(3) For consumer credits, three (3) years after the credit becomes payable.

(4) For gift certificates, ~~that are redeemable only in merchandise that is valued for purposes of abandonment at sixty percent (60%) of face value,~~ three (3) years after December 31 of the year in which the gift certificate was sold. **If the gift certificate is redeemable in merchandise only, the amount abandoned is**

Copy

considered to be sixty percent (60%) of the certificate's face value.

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

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

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

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

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

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

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

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

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

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

(B) the date of the second mailing of a statement of account or other notification or communication that was:

(i) returned as undeliverable; or

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

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

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

~~(B) the stock or other interest is held under a plan that provides for the automatic reinvestment of dividends or other~~

Copy

~~distributions;~~

~~the earliest of seven (7) years after the date of the second mailing of official shareholder notifications or communications that were returned as undeliverable, or the date the holder discontinued the mailings to the shareholder.~~

~~(13)~~ **(12)** For property in an individual retirement account or another account or plan that is qualified for tax deferral under the Internal Revenue Code, ~~one (1) year~~ **three (3) years** after the earliest of:

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

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

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

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

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

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

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

(B) the obligation to pay or distribute the property;

arose.

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

SECTION 4. IC 32-9-1.5-24 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 24. All tangible and intangible property held in a safe deposit box or any other safekeeping

Copy

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

SECTION 5. IC 32-9-1.5-26 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 26. (a) A holder of property presumed abandoned and subject to custody as unclaimed property under this chapter shall report in writing to the attorney general concerning the property. Items of value of less than fifty dollars ($50) may be reported by the holder in the aggregate.

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

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

(A) name, if known;

(B) last known address, if any; and

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

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

(A) a description of the property;

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

(C) any amounts owing to the holder.

(3) The date:

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

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

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

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

(d) The report required by subsection (a) must be filed as follows:

(1) The report of a life insurance company must be filed before

C o p y

May 1 of each year for the calendar year preceding the year in which the report is filed.

(2) All other holders must file the report before November 1 of each year to cover the year preceding July 1 of the year in which the report is filed.

(e) The holder of property presumed abandoned and subject to custody as unclaimed property under this chapter shall send written notice to the apparent owner, not more than one hundred twenty (120) days or less than ~~thirty (30)~~ **sixty (60)** days before filing the report required by this section, stating that the holder is in possession of property subject to this chapter if:

(1) the holder has a record of an address for the apparent owner that the holder's records do not show as inaccurate; ~~and~~

(2) the claim of the apparent owner is not barred by the statute of limitations; **and**

(3) the value of the property is at least fifty dollars ($50).

(f) Before the date of filing the report the holder may request the attorney general to extend the time for filing the report. The attorney general may grant the extension upon a showing of good cause. The holder, upon receipt of the extension, may make an interim payment on the amount the holder estimates will ultimately be due, which will suspend the accrual of interest on the amount paid.

(g) The holder shall file with the report an affidavit stating that the holder has complied with this section.

SECTION 6. IC 32-9-1.5-27 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 27. (a) Except as provided in ~~subsection~~ **subsections** (b) **and (c),** on the date a report is filed under section 26 of this chapter, the holder shall pay or deliver to the attorney general the property described in the report as unclaimed.

(b) In the case of an automatically renewable deposit, if at the time of delivery under subsection (a), a penalty or forfeiture in the payment of interest would result from the delivery of the property, the time for delivery is extended until the earliest date upon which a penalty or forfeiture would not result.

(c) Tangible property held in a safe deposit box or other safekeeping depository may not be delivered to the attorney general until one hundred twenty (120) days after the date the report describing the property under section 26 of this chapter is filed.

(d) If the property reported to the attorney general is a security or security entitlement under IC 26-1-8.1, the attorney general is an appropriate person to make an endorsement, instruction, or

Copy

entitlement order on behalf of the apparent owner to invoke the duty of the issuer or its transfer agent or the securities intermediary to transfer or dispose of the security or the security entitlement in accordance with IC 26-1-8.1.

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

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

SECTION 7. IC 32-9-1.5-28 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 28. (a) Except as provided in subsection (e), the attorney general shall cause a notice to be published not later than November 30 of the year immediately following the year in which unclaimed property has been paid or delivered to the attorney general.

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

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

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

(1) The name of each person appearing to be an owner of property presumed abandoned, as set forth in the report filed by the holder.

(2) The last known address or location of each person appearing to be an owner of property presumed abandoned, if an address or a location is set forth in the report filed by the holder.

(3) A statement explaining that property of the owner is presumed to be abandoned and has been taken into the protective custody of the attorney general.

(4) A statement that information about the abandoned property

Copy

and its return to the owner is available to a person having a legal or beneficial interest in the property, upon request to the attorney general.

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

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

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

SECTION 8. IC 32-9-1.5-30 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 30. If property other than money is paid or delivered to the attorney general under this chapter, the owner is entitled to receive from the attorney general any dividends, interest, or other increments realized or accruing on the property at or before ~~delivery to the attorney general. The owner is not entitled to receive dividends, interest, or other increments accruing after delivery of the property to the attorney general unless the property was paid or delivered under section 40(b) of this chapter.~~ **liquidation or conversion of the property into money. If the property was an interest bearing demand, savings, or time deposit, including a deposit that is automatically renewable, the attorney general shall pay interest at:**

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

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

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

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

for every year of accrual. Interest begins to accrue when the property is delivered to the attorney general and ceases on the earlier of the expiration of ten (10) years after delivery or the date on which payment is made to the owner. Interest on interest bearing property is not payable under this section for any period before July 1, 2000.

SECTION 9. IC 32-9-1.5-36 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 36. (a) A person, not including another state, claiming an interest in property paid or delivered to the attorney general may file a claim on a form prescribed by the attorney general and verified by the claimant.

(b) **Not later than ninety (90) days after a claim is filed,** the attorney general shall:

C o p y

(1) consider the claim; and

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

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

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

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

SECTION 10. IC 32-9-1.5-37 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 37. (a) At any time within twenty-five (25) years after the date on which the property was presumed abandoned under this chapter, notwithstanding the expiration of any other time specified by statute, contract, or court order during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property, another state may recover the property if:

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

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

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

(2) ~~the last known address of the apparent owner or other person entitled to the property, as reflected by the records of the holder, is in the other state~~ **the property was paid or delivered to the custody of this state because the laws of the other state did not provide for the escheat or custodial taking of the property,**

Copy

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

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

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

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

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

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

(A) the instrument was purchased in the other state; and

(B) under the laws of the other state the property escheated to or is subject to a claim of abandonment by that state.

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

(c) The attorney general 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 for the property.

SECTION 11. IC 32-9-1.5-38.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: **Sec. 38.1. A person:**

(1) aggrieved by a decision of the attorney general; or

(2) whose claim has not been acted upon within ninety (90) days after its filing;

under this chapter, may maintain an original action to establish the claim in a court with jurisdiction, naming the attorney general as a defendant.

SECTION 12. IC 32-9-1.5-43 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 43. (a) The attorney general may require a person who has not filed a report, or a person

C o p y

who the attorney general believes has filed an inaccurate, an incomplete, or a false report, to file a verified report in a form prescribed by the attorney general stating the following:

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

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

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

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

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

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

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

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

C o p y

SECTION 13. IC 32-9-1.5-44 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 44. (a) Except as provided in subsection (b) and subject to rules adopted by the attorney general under IC 4-22-2, a holder required to file a report under section 26 of this chapter as to any property for which the holder has the last known address of the owner shall maintain a record of the ~~name and last known address of the owner~~ **information required to be in the report** for at least ten (10) years after the property becomes reportable.

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

SECTION 14. IC 32-9-1.5-46 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 46. (a) The attorney general may enter into agreements with other states to exchange information relating to unclaimed property or the possible existence of unclaimed property. The agreements may permit other states, or a person acting on behalf of a state, to examine records as authorized in section 43 of this chapter. The attorney general may by rule require the reporting of information needed to enable compliance with agreements made under this section and prescribe the form.

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

(c) At the request of another state, the attorney general may commence an action on behalf of the administrator of the other state to enforce in Indiana the unclaimed property laws of the other state against a holder of property subject to escheat or a claim of abandonment by the other state, if the other state has agreed to pay expenses incurred by the attorney general in maintaining the action.

(d) The attorney general may request that the attorney general of another state or any other attorney commence an action on behalf of the attorney general in another state. The attorney general may retain another attorney to commence an action in Indiana on behalf of the attorney general. This state shall pay all expenses including attorney's fees in maintaining an action under this subsection. With the attorney general's approval, the expenses and attorney's fees may be paid from money received under this chapter. The attorney general may agree to pay the person bringing the action attorney's fees based in whole or in

C o p y

part on a percentage of the value of any property recovered in the action. 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.

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

(1) when used by the attorney general to maintain an action to collect unclaimed property or otherwise enforce this chapter;

(2) when used in joint audits conducted with or under agreements with other states, the federal government, or other governmental entities; or

(3) pursuant to subpoena or court order.

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

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

SECTION 15. IC 32-9-1.5-48 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: 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;

Copy

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

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

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

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

SECTION 16. IC 32-9-1.5-53 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: **Sec. 53. This chapter does not apply to property held, due, and owing in a foreign country and arising out of a foreign transaction.**

SECTION 17. IC 32-9-1.5-54 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: **Sec. 54. This chapter shall be applied**

Copy

and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

SECTION 18. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2000]: IC 32-9-1.5-38; IC 32-9-1.5-39.

C o p y

COMMITTEE REPORT

Mr. President: The Senate Committee on Commerce and Consumer Affairs, to which was referred Senate Bill No. 227, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 32-9-1.5-7.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 7.5. **(a)** As used in this chapter, "financial institution" means **a depository financial institution that is organized or reorganized under Indiana law, the law of another state, or United States law. The term includes any of the following:**

(1) A commercial bank.
(2) A trust company.
(3) A savings bank.
(4) A savings association.
(5) A credit union.
(6) An industrial loan and investment company. ~~or~~
(7) Any other entity that has powers similar to the powers of an entity described in subdivisions (1) through (6).

~~organized or reorganized under the laws of the United States or a state.~~

(b) For purposes of section 17 of this chapter, the term includes a bank of discount and deposit.

SECTION 2. IC 32-9-1.5-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 17. (a) The definition in this section does not apply to section 24 of this chapter.

(b) **Except as provided in subsection (c),** as used in this chapter, "property" means an interest in intangible personal property, except an unliquidated claim, and all income or increment derived from the interest, including that which is referred to as or evidenced by:

(1) money, a check, a draft, a deposit, an interest, or a dividend;
(2) a credit balance, a customer overpayment, a gift certificate, a security deposit, a refund, a credit memorandum, an unpaid wage, an unused airline ticket, mineral proceeds, or an unidentified remittance;
(3) stock and other ownership interest in a business association;
(4) a bond, debenture, note, or other evidence of indebtedness;
(5) money deposited to redeem stocks, bonds, coupons, and other securities or to make distributions;
(6) an amount due and payable under the terms of an insurance

C o p y

policy; and

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

(c) As used in this chapter, "property" does not include transactions between business entities and:

(1) a motor carrier (as defined in IC 8-2.1-17-10); or

(2) a carrier (as defined in 49 U.S.C. 13102(3)).".

Page 13, reset in roman lines 38 through 40.

Page 13, line 41, delete "(2)(1)" and insert "(2)".

Page 13, line 42, delete "(3)(2)" and insert "(3)".

Page 14, line 1, delete "(4)(3)" and insert "(4)".

Page 14, line 5, delete "(5)(4)" and insert "(5)".

Page 14, line 16, delete ".".

Page 14, line 16, reset in roman "and".

Page 14, reset in roman lines 17 through 18.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 227 as introduced.)

MILLS, Chairperson

Committee Vote: Yeas 7, Nays 0.

C o p y