

## **Article 2A Uniform Disposition of Unclaimed Property Act of 2004.**

- Section 35-12-70 Short title.
- Section 35-12-71 Definitions.
- Section 35-12-72 Presumption of abandonment.
- Section 35-12-73 Exemptions.
- Section 35-12-74 Rules for taking custody.
- Section 35-12-75 Dormancy charges.
- Section 35-12-76 Report of abandoned property.
- Section 35-12-77 Payment or delivery of abandoned property.
- Section 35-12-78 Notification of abandoned property.
- Section 35-12-79 Custody by state; recovery by holder; defense of holder.
- Section 35-12-80 Public sale of abandoned property.
- Section 35-12-81 Deposit of funds.
- Section 35-12-82 Claim of another state to recover property.
- Section 35-12-83 Filing and handling of claims.
- Section 35-12-84 Filing of a claim - intestate and small claims.
- Section 35-12-85 Action to establish a claim.
- Section 35-12-86 Election to take payment or delivery.
- Section 35-12-87 Disposition of property having no substantial commercial value
- Section 35-12-88 Periods of limitation.
- Section 35-12-89 Requests for reports and examination of records.
- Section 35-12-90 Retention of records.
- Section 35-12-91 Interstate agreements.
- Section 35-12-92 Penalties and enforcement.
- Section 35-12-93 Agreement to locate property.
- Section 35-12-94 Confidentiality; staff.
- Section 35-12-95 Transitional provisions.
- Section 35-12-96 Uniformity of application and construction.

## **Section 35-12-70**

### **Short title.**

This article may be cited as the Uniform Disposition of Unclaimed Property Act of 2004.

**(Act 2004-440, p. 755, §1.)**

## **Section 35-12-71**

### **Definitions.**

As used in this article, unless the context otherwise requires, the following terms shall have the meanings respectively ascribed to them by this section:

(1) **APPARENT OWNER.** A person whose name appears on the records of a holder as the person entitled to property held, issued, or owing by the holder.

(2) **BUSINESS ASSOCIATION.** A corporation, joint stock company, investment company, partnership, unincorporated association, joint venture, limited liability company, business trust, trust company, safe deposit company, financial organization, insurance company, mutual fund, utility, or other business entity consisting of one or more persons, whether or not for profit.

(3) **DOMICILE.** The state of incorporation of a corporation and the state of the principal place of business of a holder other than a corporation.

(4) **FINANCIAL ORGANIZATION.** A savings and loan association, building and loan association, industrial loan organization, credit union, cooperative bank, bank, or banking organization.

(5) **HOLDER.** A person in possession of property belonging to another, or who is a trustee in case of a trust, obligated to hold for the account of, or deliver to, or pay to, the owner or apparent owner as applicable, property that is subject to this article.

(6) **INSURANCE COMPANY.** An association, corporation, or fraternal or mutual benefit organization, whether or not for profit, engaged in the business of providing life endowments, annuities, or insurance, including, but not limited to, accidental, burial, casualty, credit life, contract performance, dental, disability, fidelity, fire, health, hospitalization, illness, life, malpractice, marine, mortgage, surety, wage protection, and workers' compensation insurance.

(7) **MINERAL.** Gas; oil; coal; other gaseous, liquid, and solid hydrocarbons; oil shale; cement material; sand and gravel; road material; building stone; chemical raw material; gemstone; fissionable and nonfissionable ores; colloidal and other clay; steam and other geothermal resource; or any other substance defined as a mineral by the law of this state.

(8) **MINERAL PROCEEDS.** Amounts payable for the extraction, production, or sale of minerals, or, upon the abandonment of those payments, all payments that become payable thereafter. The term includes amounts payable:

- a. For the acquisition and retention of a mineral lease, including bonuses, royalties, compensatory royalties, shut-in royalties, minimum royalties, and delay rentals.
- b. For the extraction, production, or sale of minerals, including net revenue interests, royalties, overriding royalties, extraction payments, and production payments.
- c. Under an agreement or option, including a joint operating agreement, unit agreement, pooling agreement, and farm-out agreement.

(9) OWNER. A person who has a legal or equitable interest in property subject to this article or the person's legal representative. The term includes a depositor in the case of a deposit, a beneficiary in the case of a trust other than a deposit in trust, and a creditor, claimant, or payee in the case of other property.

(10) PERSON. An individual, business association, financial organization, estate, trust, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(11) PROPERTY. Tangible property held in a safe deposit box or other safekeeping depository in this state, and fixed and certain interest in intangible property that is held, issued, or owed in the course of a holder's business, or by a government, governmental subdivision, agency, or instrumentality, and all income or increments therefrom. The term includes, but is not limited to, property that is referred to as or evidenced by any of the following:

- a. Money, a check, draft, deposit, interest, or dividend.
- b. Credit balance, customer's overpayment, gift certificate, security deposit, refund, credit memorandum, unpaid wage, unused ticket, mineral proceeds, or unidentified remittance.
- c. Stock or other evidence of ownership of an interest in a business association or financial organization.
- d. A bond, debenture, note, or other evidence of indebtedness.
- e. Money deposited to redeem stocks, bonds, coupons, or other securities or to make distributions.
- f. An amount due and payable under the terms of an annuity or insurance policy, including, but not limited to, policies providing life insurance, property and casualty insurance, workers' compensation insurance, or health and disability insurance.
- g. 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.

(12) RECORD. Information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(13) RULES. Rules necessary to carry out this article adopted pursuant to the Administrative Procedure Act.

(14) STATE. A state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(15) TREASURER. The Treasurer of the State of Alabama, or the designee of the Treasurer.

(16) UTILITY. Any person who owns or operates, for public use, any plant, equipment, real property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

***(Act 2004-440, p. 755, §1.)***

### **Section 35-12-72**

#### **Presumption of abandonment.**

(a) Property is presumed abandoned if it is unclaimed by the apparent owner during the time set forth below for the particular property:

(1) Traveler's checks, 15 years after issuance.

(2) Money order, five years after issuance.

(3) A demand, savings, or time deposit including a deposit that is automatically renewable, three years after the earlier of maturity, as extended from time to time, or the date of the last indication by the apparent owner of interest in the property.

(4) Tangible and intangible property held in a safe deposit box or other safekeeping depository in this state in the ordinary course of the holder's business and proceeds resulting from the sale of the property permitted by other law, three years after expiration of the lease or rental period on the box or other depository.

(5) Money or credits owed to a customer as a result of a retail business transaction, one year after the obligation accrued.

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

(7) Stock or other equity interest in a business association or financial organization, including a security entitlement under Article 8 of Title 7, the Uniform Commercial Code, three years after the earlier of a. the date of the most recent dividend, stock split, or other distribution 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 returned as undeliverable or after the holder discontinued mailings, notifications, or communications to the apparent owner.

(8) Debt of a business association or financial organization, other than a bearer bond or an original issue discount bond covered under subdivision (18), three years after the date of the most recent interest payment unclaimed by the apparent owner.

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

(10) Amount owed by an insurer on a life or endowment insurance policy or an annuity that has matured or terminated, three years after the obligation to pay arose or, in the case of a policy or annuity payable upon proof of death, three 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.

(11) Property distributable in the course of a demutualization or related reorganization of an insurance company shall be deemed abandoned as follows:

a. Any funds, two years after the date of the demutualization or reorganization, if the funds remain unclaimed, and the owner has not otherwise communicated with the holder or its agent regarding the property as evidenced by a memorandum or other record on file with the holder or its agent.

b. Any stock or other equity interest, two years after the date of the demutualization or reorganization if instruments or statements reflecting the distribution are either mailed to the owner and returned by the post office as undeliverable, or not mailed to the owner because of an address on the books and records of the holder that is known to be incorrect and the owner has not otherwise communicated with the holder or its agent regarding the property as evidenced by a memorandum or other record on file with the holder or its agent.

c. Property not subject to paragraphs a. or b. within two years of the distribution shall remain reportable under other sections of this article.

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

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

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

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

(16) Any check, warrant, debit card, or other payment instrument drawn on or issued by the State of Alabama, outstanding and unpaid within the time frame allowed under Section 41-4-60.

(17) Gift certificate, other than those exempt under Section 35-12-73, three years after June 30 of the year in which the certificate was sold, but if redeemable in merchandise only, the amount abandoned is deemed to be 60 percent of the certificate's face value.

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

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

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

(d) An indication of an owner's or apparent owner's interest in property includes any of the following:

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

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

(3) The making of a deposit to or withdrawal from a bank account. Any correspondence in writing from the holder to the apparent owner, such as the mailing of a statement, report of interest paid or credited, renewal of a deposit or other written information relating to the deposit shall be construed to mean that the apparent owner has indicated an interest in the deposit if the correspondence in writing is not returned to the holder for nondelivery thereof. Any activity or indication of interest by an apparent owner in the deposit or in any other deposits in a holder shall be construed to be activity and indication of interest in all other deposits of the apparent owner in the holder.

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

(e) Property is payable or distributable for purposes of this article notwithstanding the failure of the owner or apparent owner to make demand or present an instrument or document otherwise required to obtain payment.

*(Act 2004-440, p. 755, §1; Act 2013-91, §1.)*

### **Section 35-12-73**

#### **Exemptions.**

(a) The following entities are exempt from reporting property under this article:

- (1) Electric cooperatives organized under Chapters 6 and 7 of Title 37.
- (2) Incorporated municipalities and incorporated municipal boards and county and county boards of this state.

(b) The following property is exempt from reporting under this article:

- (1) A gift certificate, gift card, or in-store merchandise credit issued or maintained by any person engaged primarily in the business of selling tangible personal property at retail.
- (2) Property held, due, and owing in a foreign country and arising out of a foreign transaction.

*(Act 2004-440, p. 755, §1.)*

### **Section 35-12-74**

#### **Rules for taking custody.**

Except as otherwise provided in this article, or by other statute of this state, property that is presumed abandoned, whether located in this or another state, is subject to the custody of this state if any of the following occur:

- (1) The last known address of the apparent owner, as shown on the records of the holder, is in this state.
- (2) The records of the holder do not reflect the identity of the person entitled to the property and it is established that the last known address of the person entitled to the property is in this state.
- (3) The records of the holder do not reflect the last known address of the apparent owner and it is established that:
  - a. The last known address of the person entitled to the property is in this state; or
  - b. The holder is domiciled in this state or is a government or governmental subdivision, agency, or instrumentality of this state and has not previously paid or delivered the property to the state of the last known address of the apparent owner or other person entitled to the property.
- (4) The last known address of the apparent owner, as shown on the records of the holder, is in a state that does not provide for the escheat or custodial taking of the property and the holder is

domiciled in this state or is a government or governmental subdivision, agency, or instrumentality of this state.

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

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

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

***(Act 2004-440, p. 755, §1.)***

### **Section 35-12-75**

#### **Dormancy charges.**

(a) Any person engaged primarily in the business of selling tangible personal property at retail, by contract with the customer may, charge, and deduct from the property otherwise subject to this article, a reasonable administrative and restocking fee of not more than twenty-five dollars (\$25) with respect to items purchased under a layaway or similar agreement the terms of which are not fulfilled by the customer and the items are returned to inventory.

(b) A holder may deduct from property presumed abandoned a charge imposed by reason of the apparent owner's failure to claim the property within a specified time only if there is a valid and enforceable written contract between the holder and the apparent owner under which the holder may impose the charge and the holder regularly imposes the charge. The amount of the deduction is limited to an amount that is not unconscionable.

***(Act 2004-440, p. 755, §1.)***

### **Section 35-12-76**

#### **Report of abandoned property.**

(a) A holder of property presumed abandoned shall make a report to the Treasurer concerning the property. The report shall be filed electronically and the monies remitted electronically. The Treasurer may grant an exception upon written request as established by rule. A report should contain only tangible property or intangible property. If a holder possesses both property types, two reports shall be filed.



(b) The report must be verified, balanced, and must contain, at a minimum, all of the following:

(1) A description of the property.

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

(3) Other information that the Treasurer by rule prescribes as necessary for the administration of this article.

(4) Except with respect to a traveler's check, money order, or State of Alabama issued payment instruments, the name, if known, the last known address, if any, and the Social Security number or taxpayer identification number, if readily ascertainable, of the apparent owner of property in an amount greater than the aggregate amount established by rule.

(5) In the case of property held or owing under an annuity or a life or endowment insurance policy, the policy number, the full name, Social Security number, if known, date of birth, if known, and last known address, of the annuitant or insured and of the beneficiary.

(6) In the case of expired State of Alabama issued warrants or other payment instruments, the full name of the owner/payee, warrant or account number, date of issuance, owner address, and Social Security number, if known.

(7) In the case of property held in a safe deposit box or other safekeeping depository, an indication of the place where it was held, the full name and last known address of the apparent owner, and any amounts owing to the holder.

(8) In the case of individual items valued under fifty dollars (\$50), or a greater amount if established by rule, an aggregated amount.

(c) The report shall be filed before November 1 of each year and cover the 12 months next preceding July 1 of that year.

(d) The holder shall send written notice to the apparent owner, not less than 60 days before filing the report, stating that the holder is in possession of property subject to this article, if all of the following requirements are met:

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

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

(3) The value of the property is fifty dollars (\$50) or a greater amount as established by rule.

(e) State of Alabama issued warrants or other payment instruments outstanding and unpaid are void and transferred to the Unclaimed Property Reserve Fund pursuant to Section 41-4-60. Therefore, subsection (d) does not apply.

(f) Before the date for filing the report, the holder may request the Treasurer to extend the time for filing the report. The Treasurer may grant the extension for 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 terminates the accrual of penalties, if any, on the amount paid.

***(Act 2004-440, p. 755, §1; Act 2013-91, §1.)***

### **Section 35-12-77**

#### **Payment or delivery of abandoned property.**

(a) Except for property held in a safe deposit box or other safekeeping depository, upon filing the report required in Section 35-12-76, the holder of property presumed abandoned shall pay, deliver, or cause to be paid or delivered to the Treasurer the property described in the report as unclaimed, but if the property is an automatically renewable deposit, and a penalty or forfeiture in the payment of interest would result, the time for compliance is extended until a penalty or forfeiture would no longer result.

(b) Tangible property held in a safe deposit box or other safekeeping depository shall be delivered to the Treasurer within 120 days after filing the report required in Section 35-12-76.

(c) If the property reported to the Treasurer is a security or security entitlement under Article 8 of Title 7, the Uniform Commercial Code, the Treasurer is an appropriate person to make an indorsement, instruction, or 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 Article 8 of Title 7, the Uniform Commercial Code.

(d) If the holder of property reported to the Treasurer is the issuer of a certificated security, the Treasurer has the right to obtain a replacement certificate pursuant to Section 7-8-405 of the Uniform Commercial Code, but an indemnity bond is not required.

(e) Remittance to the state shall occur annually on or before November 1 of each year and shall accompany the report provided for in subsection (c) of Section 35-12-76 and shall cover the same time period as the report.

***(Act 2004-440, p. 755, §1; Act 2013-91, §1.)***

### **Section 35-12-78**

#### **Notification of abandoned property.**

(a) It is specifically recognized that the state has an obligation to make an effort to notify apparent owners of abandoned property in a cost-effective manner.

(b) The Treasurer shall make at least one active attempt to notify apparent owners of the existence of abandoned property held by the office of the Treasurer. Within 12 months of the

receipt of the property, the Treasurer shall mail a postcard notification to the apparent owner containing all of the following information set forth in the report filed by the holder:

- (1) The name of each person appearing to be the owner of the property.
  - (2) The last known address or location of each person appearing to be the owner of the property.
  - (3) A statement explaining that the property of the apparent owner is presumed to be abandoned and has been delivered into the protective custody of the Treasurer.
  - (4) A statement that information about the property and its return to the owner is available to a person having a legal or beneficial interest in the property, upon written request to the Treasurer.
- (c) The Treasurer is not required to attempt to notify apparent owners of property having a total value less than fifty dollars (\$50), or concerning a traveler's check, money order, or similar instrument that has no reported name or address.

***(Act 2004-440, p. 755, §1.)***

### **Section 35-12-79**

#### **Custody by state; recovery by holder; defense of holder.**

- (a) In this article, good faith means honesty in fact in the conduct or transaction concerned.
- (b) Upon payment or delivery of property to the Treasurer, the state assumes custody and responsibility for the safekeeping of the property. A holder who pays or delivers property to the Treasurer in good faith is relieved of all liability arising thereafter with respect to the property. The payment or delivery of property to the Treasurer shall operate as a full, absolute and unconditional release and discharge of the holder from any and all claims or demands of or liability to any person entitled thereto, or to any other claimant or state, and the payment or delivery may be pleaded as an absolute bar to any action brought against the holder by any other person entitled thereto, or by any other claimant or state. Once properly pleaded, the holder shall immediately and thereafter be relieved of and held harmless from any and all liabilities for any claim or claims which exist at the time with reference to the property or which may thereafter be made or may come into existence on account of or in respect to any such property. This section does not relieve the holder from any fine or civil penalty imposed pursuant to Section 35-12-92.
- (c) A holder who has paid money to the Treasurer pursuant to this article may subsequently reestablish an account or make payment to a person reasonably appearing to the holder to be entitled to payment. Upon a filing by the holder that the property was remitted in error or upon proof of payment and proof that the payee was entitled to the payment, the Treasurer shall promptly reimburse the holder, unless the Treasurer already has paid a claim for the property, for the payment without imposing a fee or other charge. If reimbursement is sought for a payment made on a negotiable instrument, including a traveler's check or money order, the holder shall be reimbursed upon filing proof that the instrument was duly presented and that

payment was made to a person who reasonably appeared to be entitled to payment. The holder must be reimbursed for payment made even if the payment was made to a person whose claim was barred under Section 35-12-88.

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

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

(f) If a holder pays or delivers property to the Treasurer in good faith and thereafter another person claims the property from the holder or another state claims the property under its laws relating to escheat or abandoned or unclaimed property, the payment or delivery may be pleaded as an absolute bar to any action brought against the holder by any other person entitled thereto or by any other claimant or state. Once properly pleaded, the holder is relieved of and held harmless against any and all liabilities on the claim resulting from payment or delivery of the property to the Treasurer.

(g) Property removed from a safe deposit box or other safekeeping depository is received by the Treasurer subject to the holder's right to be reimbursed for the cost of the opening if the holder includes the amount in its report of abandoned property. The Treasurer shall reimburse the holder out of the proceeds remaining after deducting the expense incurred by the Treasurer in selling the property.

(h) A record of the issuance of a check, draft, or similar negotiable instrument is prima facie evidence of an obligation. In claiming property from a holder who is also the issuer, the Treasurer's burden of proof as to the existence and amount of the property and its abandonment is satisfied by showing issuance of the instrument and passage of the requisite period of abandonment. Defenses of payment, satisfaction, discharge, want of consideration, statute of limitations, and other similar defenses are affirmative defenses that must be established by the holder.

(i) When property or funds are delivered to the Treasurer pursuant to this article, the Treasurer shall not be civilly or criminally liable for the receiving, holding, or returning of the property.

***(Act 2004-440, p. 755, §1; Act 2013-91, §1.)***

### **Section 35-12-80**

#### **Public sale of abandoned property.**

(a) Except as otherwise provided in this section, the Treasurer, within three years after the receipt of abandoned property, shall sell it to the highest bidder at public sale. The Treasurer may decline the highest bid and reoffer the property for sale if the Treasurer considers the bid to be insufficient. The Treasurer need not offer the property for sale, if the Treasurer considers that the probable cost of sale will exceed the proceeds of the sale. A sale held under this section

shall be preceded by a single publication of notice, at least three weeks before sale, in a newspaper of general circulation in the county in which the property is to be sold.

(b) Securities listed on an established stock exchange must be sold at prices prevailing on the exchange at the time of sale. Other securities may be sold over the counter at prices prevailing at the time of sale or by any reasonable method selected by the Treasurer. All securities delivered to the Treasurer may be sold upon receipt.

(c) Any person making a claim pursuant to this section is entitled to receive either the property delivered by the holder, if it still remains in custody of the Treasurer, or the proceeds received from sale, less any fees and expenses incurred from the sale if deducted. No person has any claim under this article against the state, the Treasurer, the holder, any transfer agent, any auctioneer, or any person acting for or on behalf of the holder or Treasurer for any appreciation or depreciation in the value of property occurring after delivery by the holder to the Treasurer.

(d) A purchaser of property at a sale conducted by the Treasurer pursuant to this article takes the property free of all claims of the owner or previous holder and of all persons claiming through or under them. The Treasurer shall execute all documents necessary to complete the transfer of ownership.

***(Act 2004-440, p. 755, §1.)***

### **Section 35-12-81**

#### **Deposit of funds.**

(a) The Treasurer shall promptly deposit in the Unclaimed Property Reserve Fund, created within the Treasury, all funds received under this article, including but not limited to, the proceeds from the sale of abandoned property under Section 35-12-80, from which the Treasurer shall pay claims duly allowed and shall transfer funds to the State Treasury Operations Fund. The Treasurer shall record the name and last known address of each person appearing from the holder's reports to be entitled to the property, and the name and last known address of each insured person or annuitant and beneficiary and with respect to each policy or annuity listed in the report of an insurance company, its number, the name of the company, and the amount due.

(b) All costs and expenses of administering the program under this article and all costs and expenses of administering the Office of State Treasurer shall be paid from the State Treasury Operations Fund.

(c) On a quarterly basis, the Treasurer shall deposit in the State General Fund any surplus monies remaining in the Unclaimed Property Reserve Fund, after the requirements of this section have been met.

(d) Any unobligated amounts remaining in the Unclaimed Property Administrative Fund after September 30, 2013, shall be transferred to the State Treasury Operations Fund.

***(Act 2004-440, p. 755, §1; Act 2013-92, §2.)***

## **Section 35-12-82**

### **Claim of another state to recover property.**

(a) After property has been paid or delivered to the Treasurer under this article, another state may recover the property if any of the following apply:

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

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

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

(4) The property was subjected to custody by this state under subdivision (6) of Section 35-12-74, and under the laws of the state of domicile of the holder the property has escheated or become subject to a claim of abandonment by that state.

(5) The property is a sum payable on a traveler's check, money order, or similar instrument that was purchased in the other state and delivered into the custody of this state under subdivision (7) of Section 35-12-74, and under the laws of the other state the property has escheated or become 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 Treasurer, who shall decide the claim within 120 days after it is presented. The Treasurer shall allow the claim upon determining that the other state is entitled to the abandoned property under subsection (a).

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

*(Act 2004-440, p. 755, §1.)*

## **Section 35-12-83**

### **Filing and handling of claims.**

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

(b) Within 120 days after a claim is filed, the Treasurer shall allow or deny the claim and give written notice of the decision to the claimant. If the claim is denied, the Treasurer shall inform the claimant of the reasons for the denial and specify what additional evidence is required before the claim will be allowed. The claimant may then file a new claim with the Treasurer or maintain an action under Section 35-12-85.

(c) Within 30 days after a claim is allowed, the property or the net proceeds of a sale of the property must be delivered or paid by the Treasurer to the claimant. When property is paid or delivered to the Treasurer under this article, the owner is not entitled to receive interest, thereafter; however, the owner is entitled to receive dividends and other increments accruing thereafter.

(d) The Treasurer is not civilly or criminally liable for any property or funds distributed pursuant to this article, provided such distribution is made in good faith.

***(Act 2004-440, p. 755, §1.)***

#### **Section 35-12-84**

##### **Filing of a claim - intestate and small claims.**

(a) The surviving spouse or, if none, the surviving child or children or, if none, the surviving parent or parents of an abandoned property owner who has died intestate may claim the abandoned property under this section, and will have a defeasible right to the property, if all of the following conditions exist:

(1) The aggregate value of the abandoned property held on behalf of the owner, as established by rule, must not exceed the amount allowed in Section 43-2-692.

(2) The claim need not be accompanied by an order of a probate court if the claimant files documentation established in the rules, including, but not limited to, a. a written confirmation by the probate court that no estate has been opened or filed; b. an affidavit, signed by all beneficiaries, as applicable, stating that all beneficiaries have amicably agreed among themselves upon a division of the property; c. supporting documentation showing heir rights; and d. authorization to release the name and address of the claimant to subsequent claimants.

(b) Nothing in this section shall be construed to remove the jurisdiction of the probate court in matters of estates.

(c) A person may claim abandoned property in his or her name under this section and will have a defeasible right to the property, if all of the following conditions exist:

(1) The aggregate amount value of the abandoned property held on behalf of the owner is equal to or less than two hundred dollars (\$200), or a greater amount if established by rule.

(2) The claim is accompanied by an affidavit swearing to the authenticity of a claim and lack of matching documentation, an authorization to release the name and address of the claimant to subsequent claimants, and any other required documentation if established by rule.

(d) Any person to whom payment, delivery, transfer, or issuance is made under this section shall be answerable and accountable therefor to any heir of the decedent, to any person having a superior right to the decedent's property, or to the surviving spouse, children, or parents of the decedent who shall proceed against such person. This liability shall only be to the extent of the value of the property received by each person under this section.

(e) Any person who was lawfully entitled to share in the property but did not receive his or her share of the property may enforce his or her rights in appropriate legal proceedings against those who received the property.

***(Act 2004-440, p. 755, §1; Act 2013-91, §1.)***

### **Section 35-12-85**

#### **Action to establish a claim.**

A person aggrieved by a decision of the Treasurer or whose claim has not been acted upon within 120 days after its filing may maintain an original action to establish the claim in the Circuit Court of Montgomery County, Alabama, naming the Treasurer as a defendant. In any proceeding for determination of a claim to property under this article, the burden shall be upon the claimant to establish entitlement to the property by a preponderance of evidence. The proceeding shall be brought by the claimant within 90 days after the decision of the Treasurer.

***(Act 2004-440, p. 755, §1.)***

### **Section 35-12-86**

#### **Election to take payment or delivery.**

(a) The Treasurer may decline to receive property reported under this article which the Treasurer considers to have a value less than the expenses of notice and sale.

(b) A holder, with the written consent of the Treasurer and upon conditions and terms prescribed by the Treasurer, may report and deliver property before the property is presumed abandoned. A holder exempt from reporting, upon conditions and terms prescribed by the Treasurer, may voluntarily report. Property delivered under this section is deemed abandoned upon receipt by the Treasurer and shall be handled in the same manner as other abandoned property under this article.

***(Act 2004-440, p. 755, §1; Act 2013-91, §1.)***

### **Section 35-12-87**



### **Disposition of property having no substantial commercial value.**

If the Treasurer determines after investigation that property delivered under this article has no substantial commercial value, the Treasurer may destroy or otherwise dispose of the property at any time. An action or proceeding may not be maintained against the state, the Treasurer, or the holder for or on account of an act of the Treasurer under this section, except for intentional misconduct of malfeasance.

*(Act 2004-440, p. 755, §1.)*

### **Section 35-12-88**

#### **Periods of limitation.**

(a) The expiration, before or after May 12, 2004, of a period of limitation on the owner's right to receive or recover property, whether specified by contract, statute, or court order, does not preclude the property from being presumed abandoned or affect a duty to file a report or to pay or deliver or transfer property to the Treasurer as required by this article.

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

*(Act 2004-440, p. 755, §1.)*

### **Section 35-12-89**

#### **Requests for reports and examination of records.**

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

(b) The Treasurer, at reasonable times and upon reasonable notice, may examine the records of any person to determine whether the person has complied with this article. The Treasurer may conduct the examination even if the person believes it is not in possession of any property that shall be reported, paid, or delivered under this article. The Treasurer may contract with any other person to conduct the examination on behalf of the Treasurer.

(c) The Treasurer, at reasonable times, may examine the records of an agent, including a dividend disbursing agent or transfer agent, of a business association or financial association that is the holder of property presumed abandoned if the Treasurer has given the notice

required by subsection (b) to both the association or organization and the agent at least 90 days before the examination.

(d) Documents and working papers obtained or compiled by the Treasurer, or the agents, employees, or designated representatives of the Treasurer, in the course of conducting an examination are confidential and are not public records, but the documents and papers may be:

(1) Used by the Treasurer in the course of an action to collect unclaimed property or otherwise enforce this article.

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

(3) Produced pursuant to subpoena or court order.

(4) 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.

(e) If an examination of the records of a person results in the disclosure of property reportable under this article, the Treasurer may assess the cost of the examination against the holder in the amount of expenses incurred, but the assessment may not exceed the value of the property found to be reportable. The cost of an examination made pursuant to subsection (c) may be assessed only against the business association or financial organization.

(f) If, after May 12, 2004, a holder does not maintain records required by Section 35-12-90, and the records of the holder available for periods subject to this article are insufficient to permit the preparation of a report, the Treasurer may require the holder to report and pay to the Treasurer the amount the holder and Treasurer reasonably estimates, on the basis of any available records of the holder or by any other reasonable method of estimation, should have been but was not reported.

***(Act 2004-440, p. 755, §1.)***

## **Section 35-12-90**

### **Retention of records.**

(a) Except as otherwise provided in subsection (b), a holder required to file a report under Section 35-12-76 shall maintain the records containing the information required to be included in the report for 10 years after the holder files the report, unless a shorter period is provided by rule of the Treasurer.

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

*(Act 2004-440, p. 755, §1.)*

### **Section 35-12-91**

#### **Interstate agreements.**

(a) The Treasurer may enter into an agreement with another state to exchange information relating to abandoned property or its possible existence. The agreement may permit the other state, or another person acting on behalf of a state, to examine records as authorized in Section 35-12-89. The Treasurer, by rule, may require the reporting of information needed to enable compliance with an agreement made under this section and prescribe the form.

(b) The Treasurer may join with another state to seek enforcement of this article against any person who is or may be holding property reportable under this article.

(c) At the request of another state, the Attorney General of this state may maintain an action on behalf of the other state to enforce, in this state, 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 of this state may request the attorney general of another state or another attorney commence an action in the other state on behalf of the Treasurer. With the approval of the Attorney General of this state, the Treasurer may retain any other attorney to commence an action in this state on behalf of the Treasurer. This state shall pay all expenses, including attorney's fees, in maintaining an action under this subsection. With the Treasurer's approval, the expenses and attorney's fees may be paid from money received under this article. Any expenses or attorney's fees paid under this subsection may not be deducted from the amount that is subject to the claim by the owner under this article.

*(Act 2004-440, p. 755, §1.)*

### **Section 35-12-92**

#### **Penalties and enforcement.**

(a) A holder who fails to report, pay, or deliver property within the time prescribed by this article, or fails to perform other duties imposed by this article, shall pay to the Treasurer for credit to the General Fund a civil penalty of one hundred dollars (\$100) for each business day the report, payment, or delivery is withheld, or the duty is not performed, up to a maximum of five thousand dollars (\$5,000).

(b) A holder who willfully fails to report, pay, or deliver property within the time prescribed by this article, or willfully fails to perform other duties imposed by this article, shall pay to the Treasurer for credit to the General Fund a civil penalty of five hundred dollars (\$500) for each business day the report, payment, or delivery is withheld, or the duty is not performed, up to a maximum of twenty-five thousand dollars (\$25,000).

(c) A holder who makes an intentional fraudulent report shall pay to the Treasurer for credit to the General Fund a civil penalty of one thousand dollars (\$1,000) for each business day from the date a report under this article was due, up to a maximum of twenty-five thousand dollars (\$25,000).

(d) The Treasurer for good cause may waive, in whole or part, penalties under subsections (a) and (b); and shall waive penalties if the holder acted in good faith.

(e) The Attorney General may maintain an action in this or another state to enforce this article.

***(Act 2004-440, p. 755, §1.)***

### **Section 35-12-93**

#### **Agreement to locate property.**

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

(b) An agreement by an owner, the primary purpose of which is to locate, deliver, recover, or assist in the recovery of property, is enforceable only if the agreement is in writing, clearly sets forth the nature of the property and the services to be rendered, states that the property is in custody of the State of Alabama Treasurer's Office, is signed by the apparent owner, states the compensation fee percentage of the value of the amount to be claimed, and states any other compensation to be deducted.

(c) 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.

(d) Total compensation in an agreement covered by this section may not exceed 10 percent of the value of the amount claimed.

(e) This section does not preclude an owner from asserting that an agreement covered by this section is invalid on grounds other than unconscionable compensation. It is the sole responsibility of the owner to enforce this section.

***(Act 2004-440, p. 755, §1; Act 2013-91, §1.)***

### **Section 35-12-94**

#### **Confidentiality; staff.**

(a) Certain information contained in a holder's report to the Treasurer under this article, such as Social Security numbers, policy numbers, tangible property descriptions, and property dollar amounts, is not considered a public writing, but is confidential and exempt from the provisions of Section 36-12-40, and not subject to dissemination to anyone other than the Treasurer and the property owner. Except as expressly authorized by the Treasurer, it shall be unlawful for any person to print, publish, or divulge any information regarding property subject to this article.

(b) The Treasurer, pursuant to the Alabama Administrative Procedure Act, may adopt rules necessary to carry out this article.

(c) The Treasurer may employ the staff necessary to carry out the duties conferred upon the Treasurer pursuant to this article. The salaries for these persons shall be fixed according to the Merit System. The Treasurer may employ one individual outside the classified Merit System service. Salaries shall be paid from the Unclaimed Property Administrative Fund.

***(Act 2004-440, p. 755, §1.)***

### **Section 35-12-95**

#### **Transitional provisions.**

(a) An initial report filed under this article for property that was not required to be reported before May 12, 2004, but which is subject to this article must include all items of property that would have been presumed abandoned during the 10-year period next preceding May 12, 2004, as if this article had been in effect during that period.

(b) This article does not relieve a holder of a duty that arose before May 12, 2004, to report, pay, or deliver property. Except as otherwise provided in subsection (b) of Section 35-12-88, a holder who did not comply with the law in effect before May 12, 2004, is subject to the applicable provisions for enforcement and penalties which then existed, which are continued in effect for the purpose of this section.

***(Act 2004-440, p. 755, §1.)***

### **Section 35-12-96**

#### **Uniformity of application and construction.**

This article shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this article among states enacting it.

***(Act 2004-440, p. 755, §1.)***