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TO: Senator Joseph Baldacci  
Representative Suzanne Salisbury

Joint Standing Committee on State and Local Government

FROM: Joseph C. Perry, State Treasurer

DATE: May 19, 2025

RE: L.D. 1969 "An Act to Amend the Maine Revised Unclaimed Property Act"

Good morning, Senator Baldacci, Representative Salisbury and members of the Joint Standing Committee on State and Local Government. My name is Joe Perry, and I am the State Treasurer. I am here today to testify in favor of L.D. 1969 "An Act to Amend the Revised Unclaimed Property Act". This is a bill requested by my office. Thank you for the opportunity to come before you today to discuss this matter.

The Office of the State Treasurer has primary responsibility for administering Maine's Unclaimed Property Program. When financial properties go dormant after a specified period of time, companies and institutions are to turn the money over to my office, where we work to reunite properties with the rightful owners around the state. We bring this bill before you today to make timely updates to the law and needed adjustments necessitated by changes in the financial industry. I will briefly summarize the various changes proposed. For clarity, holders are the institutions, like banks and insurance companies, who hold property for their customers. Owners are the customers whose property is held, and who have claims to property through the unclaimed property program.

This bill seeks to add "virtual currency" as a property type covered by the Unclaimed Property Act. The act is currently silent on the matter and creates uncertainty for the holders and owners of virtual currency. My office proposes that we include these properties in the act and treat them similarly to other financial assets.

This bill aims to simplify the presumption of abandonment guidelines for tax-advantaged retirement accounts, custodial accounts for minors and security accounts. This would make for simpler administration as well as easier compliance for the holders of these accounts.

This bill removes automatic transactions as an indication of an owner's interest in the presumed abandoned property. This protects the owner's interest in the property, by strengthening the presumption of abandonment that must be adhered to by property holders.

This bill proposes to prohibit the charging of escheat fees on certain accounts; disallowing holders to charge fees for the legally required act of remitting abandoned assets to the Unclaimed Property Administrator. This would protect the full assets of the property holder.

This bill proposes to clarify when an unclaimed property audit of a holder has commenced. And seeks to clarify that property not yet remitted to the administrator be held in trust and not become part of bankruptcy assets.

Finally, this bill proposes to strengthen the confidentiality provisions in the law. It would protect the confidentiality of owner's data connected to their unclaimed property as well as strengthen the confidentiality obligations of 3<sup>rd</sup> party auditors.

Thank you for your opportunity to testify on this important bill. My office looks forward to participating with the committee in the coming work session. I or my staff would be happy to answer any questions you might have.

# Proposed RUUPA changes

The proposed changes to Unclaimed Properties' statute can be accepted as a whole or have select items removed from consideration by the legislative committee. This document serves as a breakdown of those changes presented with reasons for the suggestions.

## Virtual/Crypto Currency

Language regarding virtual currency is a suggested addition to the existing language. When Maine's RUUPA was adopted in 2019, Treasury and Legislature purposely did not include language regarding Virtual Currency which existed in definition only for the Uniform Law Commission (ULC) version. The property type was still early in consideration. Over the last 6 years, Virtual Currency has become an increasingly emergent property type for most states with holder of the property looking for specific language developed for them to report.

ULC draft in Section 102 (Section 2052 for Maine Equivalent)

(32) "Virtual currency" means a digital representation of value used as a medium of exchange, unit of account, or store of value, which does not have legal tender status recognized by the United States. The term does not include:

- (A) the software or protocols governing the transfer of the digital representation of value;
- (B) game-related digital content; or
- (C) a loyalty card[ or gift card].

2016 Notes: "Virtual currency" - The definition in Section 102(32) of virtual currency is adapted from the current draft of the Uniform Regulation of Virtual Currency Act (URVCA). The drafting committee of that Act has not yet settled on a definition of "virtual currency." It is thought that the two definitions should be harmonized. Under this Act, "virtual currency" is property included in the URVCA definition and the definition in this Act specifically excludes game related digital content and loyalty cards because they are excluded from this act, in order that they not be swept back in through an over broad interpretation of "virtual currency." The same will hold true for versions of this Act that are enacted by states that elect to exclude "gift cards". See Section 102(11).

About a dozen states have produced language in their unclaimed property statutes to clarify due diligence and reporting requirements when it comes to dormant accounts with virtual currency. Washington, DC and New York's unclaimed property programs are currently seeking the remittance of property in its native form, i.e., actual coins transferred to a state virtual currency custodian. California is the only other state currently looking to do the same.

To date, only DC has been able to collect the property in its native form and needs to track the property records using external software or spreadsheet. Thus far, DC has received an immaterial amount of virtual currency, and it is unknown whether that program will be able to continue to handle reports manually when reporting volumes significantly increase. The process of holding a wallet with a 3<sup>rd</sup> party can be costly (DC negotiated the contract down to \$20,000 without the ability to liquidate, which is where most of the cost occurs for the custodian and from the currency's market) and found difficult to maintain and ensure payment in these currencies are not susceptible

to fraud or human error. New York's law covering virtual currency does not take effect until 2027 and it remains to be seen whether that state can establish a viable custody arrangement within the next 24 months.

All other states have developed language regarding virtual currency for unclaimed property and used language like what Treasury is presenting at this time. These states include Connecticut, Delaware, Florida, Idaho, Illinois, Indiana, Kentucky, Montana, Vermont, Wisconsin, and West Virginia. Similar language is pending in Colorado, Maryland, North and South Dakota. The language serves to protect the State and holders as they use the process to convert the virtual currency to US dollars prior to remitting funds to the State of Maine.

This process will greatly reduce costs for the state to hold a virtual currency wallet with a 3<sup>rd</sup> party to help manage the funds, much like the current process for securities. There are also costs involved with transfers of the currency, which has no choice but to deduct from the remitted and returned property to cover those costs. The accounting for these fee adjustments can become an issue within the state's records that is already not prepared to record the coins out to the required 16-decimal place for some coins.

Additionally, any broker holding a wallet on the State's behalf is not able carry all currency types, creating another dilemma with requiring multiple wallets to collect all currency types or ask for conversions of the unique currencies to accepted currency types.

Virtual currency has been an emerging property type increasingly over the last 4 years. Binance has been restricted from activity in the State of Maine by the Maine Bureau of Consumer Credit Protection. Both companies have already voluntarily turned over the Maine owner's accounts to the State's Unclaimed Property account in the form of US Dollars.

Some other brokerage platforms, like Coinbase and Bittrex, has been reporting to the State of Maine in US dollars the last couple of years using the "all other" provision in Section 2061, Subsection 15:

"Property not specified in this section or sections 2062 to 2072, including funds in a lawyer's trust account, 3 years after the owner first has a right to demand the property or the obligation to pay or distribute the property arises, whichever is earlier."

However, not all companies are comfortable with accepting this language to report the property type to states. They prefer something more specific and protects them from owner recourse with the conversion to US dollars.

Here are the changes to each section of the statute for adopting language specific to virtual currency:

#### **§2052. Definitions**

**24. Property.** "Property" means tangible property described in section 2065 or a fixed and certain interest in intangible property held, issued or owed in the course of a holder's business or by a government or governmental subdivision, agency or instrumentality. "Property":

A. Includes all income from or increments to the property;

B. Includes property referred to as or evidenced by:

(1) Money, virtual currency, interest or a dividend, check, draft, deposit or payroll card;

**32-A. Virtual currency.** "Virtual currency" means a digital representation of value used as a medium of exchange, unit of account or store of value, which does not have legal tender status recognized by the United States. "Virtual currency" does not include:

(A) the software or protocols governing the transfer of the digital representation of value;

(B) game-related digital content; or

(C) a loyalty card or gift card.

**§2067A When virtual currency presumed abandoned; liquidation by holder**

1. **Presumed abandoned after 5 years.** Virtual currency is presumed abandoned 5 years after the latest indication of interest by the apparent owner.
2. **Determination of value; Exempt from reporting or liquidation.** The administrator may decline to accept virtual currency presumed abandoned if the administrator, in his or her discretion, determines that the virtual currency is not freely transferable, is of nominal value that is less than the estimated expenses of maintenance, notice, or sale of the property. The administrator may also prescribe by rule classes or types of virtual currency exempt from reporting or liquidation.
3. **Liquidation of unclaimed virtual currency.** A holder of unclaimed virtual currency shall liquidate the virtual currency within 30 days prior to the filing of the report under section 2091 and remit the proceeds to the administrator.
4. **Liquidation not possible.** If a holder of unclaimed virtual currency reasonably believes that the holder cannot liquidate virtual currency and cannot otherwise cause virtual currency to be liquidated, the holder shall promptly notify the administrator in writing and explain the reasons why the virtual currency cannot be liquidated as otherwise required under subsection 3. The administrator shall then direct the holder concerning an alternate disposition of such virtual currency.
5. **State and holder held harmless.** An apparent owner does not have recourse against the administrator or a holder of unclaimed virtual currency to recover any gain in value that occurs after the liquidation of the virtual currency under subsection 3. Consistent with section 2114, subsection 2, the administrator shall defend and indemnify a holder against liability on any such claim, as long as the holder has acted in good faith and substantially complied with sections 2101 and 2102.

**§2101. Notice to apparent owner by holder**

3. **Notice; tax deferred account, or security, or virtual currency.** The holder of securities presumed abandoned under section 2062, 2063 or 2068 or virtual currency presumed abandoned under section 2067A shall send to the apparent owner notice by certified United States mail that complies with section 2102 in a format acceptable to the administrator not more than 180 days nor less than 60 days before filing the report under section 2091 if:

A. The holder has in its records an address for the apparent owner that the holder's records do not disclose to be invalid and that is sufficient to direct the delivery of United States mail to the apparent owner; and

B. The value of the property is \$1,000 or more.

**§2102. Contents of notice by holder**

D. With respect to securities presumed abandoned under section 2062, 2063 or 2068 or safe deposit box contents presumed abandoned under section 2065, Sstate that the property that is not legal

tender of the United States may be sold by the administrator, and with respect to virtual currency under section 2067A state that the property will be sold by the holder prior to its reporting; and

## **SUBCHAPTER 8 - SALE OF PROPERTY BY ADMINISTRATOR**

**§ 2136. Liquidation of virtual currency.** Liquidation of virtual currency shall be undertaken in accordance with section 2067A.

## **DDA Accounts**

The language adopted from the ULC's version of RUUPA has been found confusing by holders because it lumps different banking property types into one paragraph. The existing language did not address the fact that savings and checking accounts do not have a maturity date. The process itself for businesses to comply with is not changing at all.

Title 45 Chapter 33 §2061. When property presumed abandoned

**5. Payroll card or demand, savings, or time deposit.** A payroll card or demand, savings, or time deposit, including a deposit that is automatically renewable, three years after the later of maturity, if applicable, of the card or deposit and the apparent owner's last indication of interest in the card or deposit, except a deposit that is automatically renewable is deemed matured on its initial date of maturity unless the apparent owner consented in a record on file with the holder to renewal at or about the time of the renewal.

## **Tax Benefit Accounts**

The ULC language for Tax Benefit accounts is quite lengthy and confusing for holders. There are a lot of different sections looking at the earlier and later activities to determine if a property is abandoned. This is difficult to track in databases where the information is held. The Treasurer's Office would like to simplify the language, and in turn the process for determining if an account is considered abandoned.

The first clarification in the proposed changes is to address Roth IRAs within section 2062. It is assumed by many parties, including the ULC, that this section addresses Roth IRAs. However, the language as presented by the ULC speaks to an age set by the federal government to apply penalties if there is no withdrawal of funds. The language applies to tax-deferred accounts only. Roth IRAs are tax-advantaged (free) accounts and do not have a limiting age to withdraw funds without penalty.

The changes also address the requirements to send additional mailings to owners prior to any due diligence requirements. In the current world, most of the accounts are managed online and show as active accounts regularly by the act of the user logging into their online accounts. If no transactions have been made by the owner(s) and no login activity has been made by an owner for

the designated dormancy period, then attempts to confirm contact with the owner(s) would be reaffirmed with the due diligence requirements of the statute. Additionally, these accounts will not be considered as dormant until a time where distributions are federally required to avoid penalties, or confirmation of death for the owner.

Other tax-advantaged accounts, like Health Savings Accounts and Education Savings Accounts, would also be limited to protections from federal penalties or reportable 30 years after the account was created to ensure the ability to save without interruption. All tax-advantaged and deferred accounts would need to meet the 3 years of no activity to be considered dormant for reporting to apply after the limitations were met.

The addition for terminated retirement plan accounts is needed because while the US Dept of Labor allows for terminated plans to be reported to states, states don't regularly receive them because the terminated plan won't wait 3 years to report. They need to close their books and report when terminating.

#### **§2061. When property presumed abandoned**

**14-A. Terminated retirement plan.** Funds from the termination of a defined contribution plan or other retirement plan, as soon as administratively feasible after the date of plan termination, and

#### **4516. Property not specified. ...**

#### **§2062. When tax-deferred or tax-advantaged retirement account presumed abandoned**

**1. Presumed abandoned after 3 years.** Subject to section 2070, property held in a pension account or retirement account that qualifies for tax deferral under the income tax laws of the United States is presumed abandoned if it is unclaimed by the apparent owner 3 years after the later of date a distribution is required under the federal Internal Revenue Code in order to avoid a tax penalty, including a distribution required due to the death of the apparent owner, or in the case of a tax-advantaged account 3 years after the death of the apparent owner.

~~A. The later of the following dates:~~

- ~~(1) Except as in subparagraph (2), the date a communication sent by the holder by first class United States mail to the apparent owner is returned to the holder as undeliverable by the United States Postal Service; and~~
- ~~(2) If the returned communication is resent within 30 days, the date the resent communication was returned as undeliverable by the United States Postal Service; and [PL 2019, c. 498, §22 (NEW).]~~

~~B. The earlier of the following dates:~~

- ~~(1) The date the apparent owner becomes 70 1/2 years of age; and~~
- ~~(2) If the federal Internal Revenue Code of 1986, as amended, requires distribution to avoid a tax penalty, the date the holder:~~
  - ~~(a) Receives confirmation of the death of the apparent owner in the ordinary course of its business; or~~
  - ~~(b) Confirms the death of the apparent owner under subsection 2. [PL 2019, c. 498, §22 (NEW).]~~

A.

**2. Confirmation of death of apparent owner.** If a holder in the ordinary course of its business receives notice or an indication of the death of an apparent owner and subsection 1, paragraph B applies, the holder shall attempt not later than 90 days after receipt of the notice or indication to confirm whether the apparent owner is deceased.

**3. Confirmation of apparent owner's interest.** If the holder does not send communications to the apparent owner of an account described in subsection 1 by first class United States mail on at least an annual basis, the holder shall attempt to confirm the apparent owner's interest in the property by sending the apparent owner an e-mail not later than 2 years after the apparent owner's last indication of interest in the property. However, the holder promptly shall attempt to contact the apparent owner by first class United States mail if:

- ~~A. The holder does not have information needed to send the apparent owner an e-mail or the holder believes that the apparent owner's e-mail address in the holder's records is not valid; [PL 2019, c. 498, §22 (NEW).]~~
- ~~B. The holder receives notification that the e-mail was not received; or [PL 2019, c. 498, §22 (NEW).]~~
- ~~C. The apparent owner does not respond to the e-mail within 30 days after the e-mail was sent.~~

**§2063. When other tax-deferred account presumed abandoned**

**1. Presumed abandoned after 3 years.** Subject to section 2070 and except for property described in section 2062, property held in an account or plan, including a health savings account, that qualifies for tax deferral under the income tax laws of the United States is presumed abandoned if it is unclaimed by the apparent owner 3 years after the earlier of:

- A.** The date, if determinable by the holder, specified in the income tax laws and regulations of the United States by which distribution of the property must begin to avoid a tax penalty, with no distribution having been made; and
- B.** Thirty years after the date the account or plan was opened



~~2. Presumed abandoned after 2 years. If the owner is deceased, property under subsection 1 is presumed abandoned 2 years from the earliest of:~~

~~A. The date of the distribution or attempted distribution of the property; [PL 2019, c. 498, §22 (NEW).]~~

~~B. The date of the required distribution as stated in the plan or trust agreement governing the plan; and [PL 2019, c. 498, §22 (NEW).]~~

~~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. [PL 2019, c. 498, §22 (NEW).]~~

## Uniform Gift to Minors

Similar to simplifying the law for retirement accounts and leaving them untouched until a time when need is presented to be considered for abandonment, UGMA and UTMA accounts are also looking to adopt more simplified language to what the ULC presents in RUUPA.

Both sets of language indicate that UGMA and UTMA property would not become reportable until a time the minor reaches the age established under those acts. Generally, this age is 18 years, but at times can be extended to 21 years. When the minor reaches the defined age, they become the owner of the property without needing a custodian to act on their behalf. The custodian should already be turning over full responsibility of these funds to the listed owner when they reach the designated age.

### **§2064. When custodial account for minor presumed abandoned**

**1. Presumed abandoned after 3 years.** Subject to section 2070, and except as provided in subsection 3, property held in an account established under a state's Uniform Gifts to Minors Act or Uniform Transfers to Minors Act, if it is unclaimed by or on behalf of the minor on whose behalf the account was opened, is presumed abandoned 3 years after the later of:

~~A. The date a communication sent by the holder by first class United States mail to the custodian of the minor on whose behalf the account was opened is returned as undeliverable to the holder by the United States Postal Service or, if the communication is resent within 30 days after the date the first communication is returned as undeliverable, the date the first communication was returned as undeliverable; and [PL 2019, c. 498, §22 (NEW).]~~

~~B. The date on which the custodian is required to transfer the property to the minor or the minor's estate in accordance with the Uniform Gifts to Minors Act or Uniform Transfers to Minors Act of the state in which the account was opened.~~

~~2. Confirmation of custodian's interest. If the holder does not send communications to the custodian of the minor on whose behalf an account described in subsection 1 was opened by first class United States mail on at least an annual basis, the holder shall attempt to confirm the custodian's interest in the property by sending the custodian an e-mail not later than 2 years after the custodian's last indication of interest in the property. However, the holder promptly shall attempt to contact the custodian by first class United States mail if:~~

~~A. The holder does not have information needed to send the custodian an e-mail or the holder believes that the custodian's e-mail address in the holder's records is not valid; [PL 2019, c. 498, §22 (NEW).]~~

~~B. The holder receives notification that the e-mail was not received; or [PL 2019, c. 498, §22 (NEW).]~~

~~C. The custodian does not respond to the e-mail within 30 days after the e-mail was sent. [PL 2019, c. 498, §22 (NEW).]  
[PL 2019, c. 498, §22 (NEW).]~~

~~3. If undeliverable, presumed abandoned after 3 years. If first class United States mail sent under subsection 2 is returned as undeliverable to the holder by the United States Postal Service, the property is presumed abandoned 3 years after the later of:~~

~~A. The date a 2nd consecutive communication to contact the custodian by first class United States mail is returned to the holder as undeliverable by the United States Postal Service; and [PL 2019, c. 498, §22 (NEW).]~~

~~B. The date established by subsection 1, paragraph B. [RR 2019, c. 2, Pt. A, §31 (COR).]  
[RR 2019, c. 2, Pt. A, §31 (COR).]~~

**42. No longer subject to section.** When the property in the account described in subsection 1 is transferred to the minor on whose behalf the account was opened or to the minor's estate, the property in the account is no longer subject to this section.

## Securities

One more area of overcomplicated law from the ULC's adoption is around security property. Section 2068 breaks security accounts into multiple situations requiring different activity from the holders to ensure the accounts are not abandoned and contact is not lost with the owner. Much of these catches are already verified when an account reaches the dormancy period and due diligence is performed. It becomes an overcomplicated process of sending multiple mailings to the owner. Again, this is a situation where most accounts are being activated with online activity or just the account login, which all counts as activity on the account.

Part of the changes eliminate the Returned by Post Office (RPO) provisions adopted by the ULC, which, in modern times, are not the most reliable method of determining whether an owner is aware of their securities assets. In order for the mail to be returned to the sender, the owner must have filed a change of address with the US Postal Service. The post office will forward mail for 12 months when a change of address is filed. After 12 months, it is incumbent on the current resident of the address of record, to mark mail mistakenly sent to their address, but registered to the

previous resident and send it back to the post office marking it return to sender. It is uncommon that this occurs.

In this day and age, holders are increasingly moving away from sending notifications via regular physical mail. Go Green initiatives promote email correspondence as an environmentally conscious alternative to physical mail as well as cost savings to companies. Hence, it is suggested that holders utilize email as a first option to contact owners, encouraging them to keep their account active. The owner could activate their account by responding to the email, scanning a QR code or logging into the account to keep it active. When email is returned by a server or no response is made by the owner (email also does not provide a guarantee of connection), then the need for mailing a physical due diligence letter is required.

Majority of the stock today is issued in book entry. Less than 1% of securities are held physically. Stock certificates are no longer issued or mailed to owners.

International mail is not returned to the sender. In the US, there is a 517% increase in mail being treated as waste and destroyed in the Dead Letter Office in Atlanta. The last 20 years have seen a 72% decrease in mail forwarded and 19% decrease in mail returned to the sender by the USPS. According to FINRA (Financial Industry Regulatory Authority) 38% of account owners prefer to receive communications through emails overtaking 30% by physical mail. The balance of which is a decline in-person meetings and small increase in downloading from a website.

Additionally, there is an industry decline in holders who are often coordinating through third party vendors and their operations teams flagging accounts as RPO when mail is in fact returned. The lack of marking accounts as RPO when mail returns also hinder the effects of using an RPO standard. Aggregator search data utilized when performing audits finds thousands of account owners not coded as RPO, but have been deceased for 3 or more years. Thousand more owners have not resided at the listed address in 3 or more years.

#### **§2068. When security presumed abandoned**

##### **1. If communication sent at least annually, pPresumed abandoned after 3 years of inactivity.**

Subject to section 2070, if the holder sends communication to the apparent owner of a security by first class United States mail on at least an annual basis, a security is presumed abandoned 3 years after the later of owner's last indication of interest in the security.

~~A. The date a communication sent by the holder by first class United States mail to the apparent owner is returned to the holder as undeliverable by the United States Postal Service; and [PL 2019, c. 498, §22 (NEW).]~~

~~B. If the communication is resent within 30 days after the first communication is returned, the date the resent communication is returned as undeliverable to the holder by the United States Postal Service. [PL 2019, c. 498, §22 (NEW).]~~

~~[PL 2019, c. 498, §22 (NEW).]~~

**2. If no communications sent, duty to confirm owner's interest not later than 2 years. If the holder does not send communications to the apparent owner of a security by first class United States mail, the holder shall attempt to confirm the apparent owner's interest in the security by sending the apparent owner an e-mail not later than 2 years after the apparent owner's last indication of**

interest in the security. However, the holder promptly shall attempt to contact the apparent owner by first class United States mail if:

- A. The holder does not have information needed to send the apparent owner an e-mail or the holder believes that the apparent owner's e-mail address in the holder's records is not valid;
- B. The holder receives notification that the e-mail was not received; or
- C. The apparent owner does not respond to the e-mail within 30 days after the e-mail was sent.

~~3. If confirmation returned undeliverable, presumed abandoned after 3 years. If first class United States mail sent under subsection 2 is returned to the holder as undeliverable by the United States Postal Service, the security is presumed abandoned 3 years after the latest indication of interest by the apparent owner in the security.~~  
~~[PL 2019, c. 498, §22 (NEW).]~~

#### SECTION HISTORY

~~PL 2019, c. 498, §22 (NEW).~~

## Automatic Withdrawals – Infinity Problem

The adoption of the language in 2019 included automatic withdrawals from an account to indicate a person's interest in the account. The language is part of the ULC's original RUUPA. However, I am going to explain why adopting this provision is an issue and provide some examples of how it is not a reasonable gauge of the owner's indication of interest.

Considering automatic transactions on an account has been known to produce what is considered the Infinity Problem or Infinity Rule. An individual can have an account that takes automatic payments which can continue years after the owner is deceased. There are cases where an owner set up automatic payments for their bills and receives income electronically through social security or some other method. The owner passed and the bills kept getting paid. Except in some cases the taxes on the property were not paid and the owner was discovered after the property went through auction once seized by the municipality. Below are some similar stories.

### Michigan woman's auto-payments hid her death for over 5 years

The woman, who the sheriff's office believes to be Pia Farrenkopf, paid her bills from her bank account through auto-pay...At some point, her bank account ran dry. The bills stopped being paid. After its warnings went unanswered, the bank holding the mortgage foreclosed on the house...

### Man found in Dallas apartment 'died three years ago'

Pete Schulte, a detective with the DeSoto Police Department, said Mr. White's month-to-month lease on the apartment had been paid from an account into which his Navy retirement fund was regularly paid.

### **New homeowner finds corpse of former resident in house**

The new owner bought the house, on Upland Avenue in District Heights, at a foreclosure auction but only last Saturday discovered the body of the 39-year-old woman who had called the property home. It's unclear how long she had been dead, according to the local NBC affiliate.

### **Man buys foreclosed property, finds previous owner's dead body**

Cape Coral, Florida man won a foreclosure auction. The home was purchased in a tax-deed auction and it was assumed that the reason for the unpaid taxes was due to the owner's death.

### **Man finds decomposing body of previous homeowner inside new house**

The office of the city's medical examiner later identified the deceased as 71-year-old Nina Fielden, who was listed as the owner of the same property, according to Cuyahoga County records.

### **§2070. Indication of apparent owner**

**2. Indication of interest.** Under this Act, an indication of an apparent owner's interest in property includes:

C. Presentment by the apparent owner of a check or other instrument of payment of a dividend, interest payment or other distribution, or evidence of receipt of a distribution made by electronic or similar means, with respect to an account, underlying security or interest in a business association:

E. A deposit into or withdrawal from an account at a financial organization business association by the apparent owner, except for a recurring Automated Clearing House (ACH) debit or credit previously authorized by the apparent owner or an automatic reinvestment of dividends or interest; including an automatic withdrawal previously authorized but not including an automatic reinvestment of dividends or interest or an automatic withdrawal of disclosed fees.

**3. Action of agent.** Action by an authorized agent of an apparent owner, other than the holder acting as the apparent owner's agent, is presumed to be an action on behalf of the apparent owner.

## **Retained Asset Accounts**

This change clarifies that asset accounts related to or arising from an insurance policy or annuity contract will be subject to the same presumption of abandonment that is applied to the underlying policy or contract, or the last indication of interest in the account by the beneficiary after the account is established.

## **Title 45 Chapter 33 §2071. Deposit account for proceeds of insurance policy or annuity**

If proceeds payable under a life or endowment insurance policy or annuity contract are deposited into an account with check-writing or draft-writing privileges for the beneficiary of the policy or contract and, under a supplementary contract not involving annuity benefits other than death benefits, the proceeds are retained by the insurance company or the financial organization where the account is held, the policy or contract includes the assets in the account, and the account proceeds will be presumed abandoned in accordance with Section 2061(7), or three years after the beneficiary's last indication of interest in the account, whichever is later.

For Reference: §2061. When property presumed abandoned

7. Amount owed on insurance policy or annuity contract. An amount owed by an insurance company on a life or endowment insurance policy or an annuity contract that has matured or terminated, 3 years after the obligation to pay arose under the terms of the policy or contract or, if a policy or contract for which an amount is owed on proof of death has not matured by proof of the death of the insured or annuitant:

A. With respect to an amount owed on a life or endowment insurance policy, 3 years after the earlier of the date:

(1) The insurance company has knowledge of the death of the insured; and

(2) The insured has attained, or would have attained if living, the limiting age under the mortality table on which the reserve for the policy is based; and

B. With respect to an amount owed on an annuity contract, 3 years after the date the insurance company has knowledge of the death of the annuitant;

## **Determine Authorizing State**

The language further clarifies for holders what to do when there is a beneficiary on the account, but the address for the beneficiary is not known. The property would revert to the state of last known address for the insured, which many times is the most likely state for the beneficiary. It should things easier for a beneficiary to come across the property as available to claim in a familiar state than if the property went to the state of incorporation where the family had no connection.

### **§2081. Address of apparent owner to establish priority**

**5. Other beneficiary.** The address of the owner of other property where ownership vests in a beneficiary upon the death of the owner is presumed to be the address of the deceased owner if the address of the beneficiary is not known by the holder and cannot be determined under section 2082.

## Escheat Fees

Increasingly financial institutions have been charging dormancy charges to owners for their accounts, traveler checks, or money orders. There are already inactivity fees at many of the financial institutions after 6 months or 1-year of no activity. Dormancy charges place a fee on an account being turned over to the state once it reaches the dormancy period.

The addition of subsection 3 covers the use of escheat fee for the same transaction to get around the limitations set in subsection 2. An “escheat fee” is customarily charged in conjunction with the reporting of an account to the state as unclaimed property. However, the terms and conditions of financial institutions charging these fees rarely explain to a depositor what the fee is, or how it can be avoided.

Current fees seen tend to be as much as \$25 to \$126 per property. These fees are a source of revenue for those financial institutions, but our ask of the legislature is “Do these fees which require little cost and service count as “junk fees” which have become an industry issue? Should a financial institution be permitted to charge an owner for complying with a long-standing state law?

### **SUBCHAPTER 6 - TAKING CUSTODY OF PROPERTY BY ADMINISTRATOR**

#### **§2112. Dormancy charge; escheat fee prohibited**

**1. Deduct dormancy charge.** A holder may deduct a dormancy charge from property required to be paid or delivered to the administrator if:

- A. A valid contract between the holder and the apparent owner authorizes imposition of the charge for the apparent owner's failure to claim the property within a specified time; and
- B. The holder regularly imposes the charge and regularly does not reverse or otherwise cancel the charge.

**2. Not unconscionable amount.** The amount of the deduction under subsection 1 is limited to an amount that is not unconscionable considering all relevant factors, including the marginal transactional costs incurred by the holder in maintaining the apparent owner's property and any services received by the apparent owner.

**3. Prohibition on “escheat fees.”** A holder may not deduct an escheat fee, unclaimed property reporting fee, or other similar charge imposed solely by virtue of the property becoming subject to reporting under this Act.

## Duty to Report

The proposed addition as a new subsection (4) results from litigation in Michigan, where the court was asked to consider whether the commencement of an examination tolls the statute of limitation on enforcement. That decision is not binding on Maine, but the same question exists with respect to Maine's unclaimed property law. As such, it is proposed that the statute be amended to provide that commencement of an examination tolls the statute of limitations on enforcing non-compliance. In the absence of such a provision, a holder could unnecessarily delay an audit until



the statute had run, and unreported obligations either eliminated or reduced. It is simply not practical for the state to bring suit in each audit to toll the statute of limitations.

#### **§2120. Periods of limitation and repose**

**1. Holder's duty to pay or deliver.** Expiration, before, on or after October 1, 2019, of a period of limitation on an owner's right to receive or recover property, whether specified by contract, statute or court order, does not prevent the property from being presumed abandoned or affect the duty of a holder under this Act to file a report or pay or deliver property to the administrator.

**2. Proceeding within 5 years after nonfraudulent report.** The administrator may not commence an action or proceeding to enforce this Act with respect to the reporting, payment or delivery of property more than 5 years after the holder filed a nonfraudulent report under section 2091 with the administrator. The parties may agree in a record to extend the limitation in this subsection.

**3. Proceeding within 10 years after duty arose.** The administrator may not commence an action, proceeding or examination with respect to a duty of a holder under this Act more than 10 years after the duty arose.

**4. Commencement of an action; tolling.** The commencement of an examination by the administrator or the administrator's agent shall toll the running of this period of limitation under subsection 3.

## **Property pending reporting is held in Trust**

This section is an adoption from a Texas provision that may protect property held by a debtor in a bankruptcy proceeding, where the debtor failed to timely report and remit the property when due to the state. The intent is to cause the unreported property to be held in trust and not part of a bankruptcy proceeding. It is a protection of the owner's assets which should not be in the business's possession per law.

#### **§2121. Property held in trust**

A holder who on May 1 for insurance property and stored-value obligations and November 1 for all other property types holds property presumed abandoned under Subchapter 2 holds the property in trust for the benefit of the state on behalf of the missing owner and is liable to the state for the full value of the property, plus any accrued interest and penalty as defined in Section 2194. A holder is not required by this section to segregate or establish trust accounts for the property as long as the property is timely delivered to the administrator in accordance with Section 2113.

## **Time to Claim**

The language is to codify that reported property can always be claimed by the owners or their heirs until the liability has been paid by the State.

#### **§2153. Claim for property by person claiming to be owner**



**1. Claim for property.** A person claiming to be the owner of property held under this Act by the administrator may file a claim at any time for the property on a form prescribed by the administrator. The claimant must verify the claim as to its completeness and accuracy.

## Audit Changes

The change to the language in Section 2164 as well as Sections 2212-2214 are to add 3<sup>rd</sup> Party Auditors responsibility in confidentiality agreements with audits and assist with NDA requirements from putative holders.

Section 2165 removes the “course of dealing” provision which makes for some very loose standards to doing business. An example would be “We have an understanding with our customers that if there is a credit balance, we’re entitled to keep it.” It’s a slippery slope into conjecture and grey areas as opposed to documented procedures and contracts. We’re opposing it because it just leads to tall tales, generally unsubstantiated, which just then leads into endless negotiations about reducing liability.

The addition to Section 2166 was accidentally omitted from the initial bill submitted in December. We would like to present the following addition as an amendment to the current bill. This addition clarifies the requirement of a holder to remit an estimated payment when records are unavailable to prove reporting compliance.

### **§2164. Records obtained in examination**

Records obtained and records compiled, including work papers, by the administrator or the administrator’s agent in the course of conducting an examination under section 2162:

### **§2165. Evidence of unpaid debt or undischarged obligation**

~~4. Evidence of course of dealing. In asserting a defense under this section, and subject to section 2094, a putative holder may present evidence of a course of dealing between the putative holder and the apparent owner.~~

~~[PL 2019, c. 498, §22 (NEW).]~~

### **§2166. Failure of person examined to retain records**

**1.** If a person subject to examination under section 2162 does not retain the records as required by section 2094, the administrator may determine the value of property due using a reasonable method of estimation based on all information available to the administrator, including extrapolation and use of statistical sampling when appropriate and necessary, consistent with examination procedures and standards adopted under and in accordance with section 2163. [PL 2019, c. 498, §22 (NEW).]

**2.** A payment made based on estimation under subsection (a) is a penalty for failure to maintain the records as required by section 2094 and does not relieve a person from an obligation to report and deliver property to the state in which the holder is domiciled.

### **§2212. Confidential information**

**1. Confidential.** Except as otherwise provided in this Act, the following are confidential and exempt from public inspection and disclosure:

- A. Records of the administrator and the administrator's agent related to the administration of this Act;
- B. Reports and records of a holder in the possession of the administrator or the administrator's agent, as long as such reports and records are not otherwise available in the public domain;
- C. Personal information and other information derived or otherwise obtained by or communicated to the administrator or the administrator's agent from an examination under this Act of the records of a person; and
- D. The identity of a person subject to an examination under section 2162; and
- E. Records, including work papers, monthly work in progress updates and other examination records, compiled by the administrator or administrator's agent in the course of conducting examinations authorized under this Act.

**2. Continues to be confidential.** A record or other information that is confidential under the laws of this State other than this Act, of another state or of the United States continues to be confidential when disclosed or delivered under this Act to the administrator or administrator's agent.

#### **§2213. When confidential information may be disclosed**

**1. To enforce or implement Act.** When reasonably necessary to enforce or implement this Act, the administrator may disclose confidential information concerning property held by the administrator or the administrator's agent only to:

- A. An apparent owner or the apparent owner's attorney, other legal representative or relative;
- B. The personal representative, executor, other legal representative or relative of a deceased apparent owner or a person entitled to inherit from a deceased apparent owner;
- C. Another department or agency of this State or the United States;
- D. The person that administers the unclaimed property law of another state, if the other state accords substantially reciprocal privileges to the administrator and if the other state is required to maintain the confidentiality and security of obtained information in a manner substantially equivalent to that under this subchapter; or
- E. Pursuant to section 2164, subsection 6, the person subject to an examination; or
- F. The administrator's agent predecessor or successor.

**2. Name of apparent owners; additional information.** Except as otherwise provided in section 2212, subsection 1, the administrator shall include on the website required by section 2103, subsection 1 the name of each apparent owner of property held by the administrator. The administrator may include in published notices, printed publications, telecommunications, the Internet or other media and on the website or in the database additional information concerning the apparent owner's property if the administrator believes the information will assist in identifying and returning property to the owner and does not disclose personal information except the home or physical address of an apparent owner.

**3. No use of confidential information; exception.** The administrator and the administrator's agent may not use confidential information provided to them or in their possession except as expressly authorized by this Act or required by law other than this Act.

#### **§2214. Confidentiality agreement**

A person to be examined under section 2162 may request, as a condition of disclosure of the records of the person to be examined, that the administrator or the administrator's agent execute and deliver to the person to be examined a confidentiality agreement that:

1. **Form.** Is in a standard form that is reasonably satisfactory to approved for use by the administrator; and
2. **Compliance with subchapter.** Requires the person having access to the records to comply with the provisions of this subchapter applicable to the person.

If the person examined elects not to execute a confidentiality agreement that has been approved for use by the administrator, and the person to be examined is unable to reach agreement on the terms of a confidentiality agreement within 90 days of the administrator's authorization of the examination, the examination shall proceed without a confidentiality agreement in place and the person to be examined shall rely up the confidentiality provisions of this subchapter.

## **Confidentiality of records**

The proposed subsection 3 of Section 2211 is looking to readopt language lost with the repeal and replace process of the statute in 2019. Without this subsection, the full unclaimed property list (including personal financial information) becomes subject to FOIA, including PII information for the listed owners. The full list data will once again be available only to parties who are vetted to have the owner's interest in mind, such as the Treasurer's Office, the Legislative members, Town Clerk offices, and Private Investigators acting as a finder.

#### **§2211. Definitions; applicability; confidentiality and use of documents and working papers**

##### **1. Personal information defined.** As used in this subchapter, "personal information" means:

A. Information that identifies or reasonably can be used to identify an individual, such as first and last name in combination with the individual's:

- (1) Social security number or other government-issued number or identifier;
- (2) Date of birth;
- (3) Home or physical address;
- (4) E-mail address or other online contact information or Internet protocol address;
- (5) Financial account number or credit or debit card number;
- (6) Biometric data, health or medical data or insurance information; or
- (7) Passwords or other credentials that permit access to an online or other account;

B. Personally identifiable financial or insurance information, including nonpublic personal information defined by applicable federal law; and

C. Any combination of data that, if accessed, disclosed, modified or destroyed without authorization of the owner of the data or if lost or misused, would require notice or reporting

under Title 10, section 1348 and federal privacy and data security law, whether or not the administrator or the administrator's agent is subject to the law

**2. Applies to administrator's agent.** A provision of this subchapter that applies to the administrator or the administrator's records applies to an administrator's agent.

**3. Confidentiality and use of documents and working papers.** Information derived from annual reports from holders or otherwise communicated to the administrator or the administrator's agents concerning abandoned unclaimed property is confidential and not available for public inspection to the extent the administrator finds necessary to protect the interests of the holder, the owner, this State and the public welfare. Documents and working papers obtained or compiled by the administrator or the administrator's agents, employees or designated representatives in the course of conducting an examination are confidential and are not public records, but the documents and papers may be:

A. Used by the administrator in the course of an action to collect unclaimed property or otherwise enforce this Act;

B. 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;

C. Produced pursuant to subpoena or court order; or

D. Disclosed to the abandoned or unclaimed 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.