

AN ACT

RELATING TO PROPERTY; CREATING ELECTRONIC REPORTING REQUIREMENTS FOR CERTAIN HOLDERS OF PROPERTIES PRESUMED ABANDONED; PERMITTING THE TAXATION AND REVENUE DEPARTMENT TO SELL BY REASONABLE METHOD PROPERTIES PRESUMED ABANDONED; EXTENDING THE TIME PERIOD DURING WHICH AN AGREEMENT TO RECOVER PROPERTY IS INVALID; MAKING A CORRECTION TO THE SCOPE OF THE UNIFORM UNCLAIMED PROPERTY ACT (1995).

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 7-8A-7 NMSA 1978 (being Laws 1997, Chapter 25, Section 7) is amended to read:

"7-8A-7. REPORT OF ABANDONED PROPERTY.--

A. A holder of property presumed abandoned shall make a report to the administrator concerning the property.

B. The report must be verified and must contain:

(1) a description of the property;

(2) except with respect to a traveler's check or money order, the name, if known, and last known address, if any, and the social security number or taxpayer identification number, if readily ascertainable, of the apparent owner of property of the value of fifty dollars (\$50.00) or more;

(3) an aggregated amount of items valued under fifty dollars (\$50.00) each;

(4) in the case of an amount of fifty dollars (\$50.00) or more held or owing under an annuity or a life or endowment insurance policy, the full name and last known address of the annuitant or insured and of the beneficiary;

(5) in the case of property held in a safe deposit box or other safekeeping depository, an indication of the place where it is held and where it may be inspected by the administrator and any amounts owing to the holder;

(6) 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; and

(7) other information that the administrator by rule prescribes as necessary for the administration of the Uniform Unclaimed Property Act (1995).

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

D. The report must be filed before November 1 of each year and cover the twelve months next preceding July 1 of that year, but a report with respect to a life insurance

company must be filed before May 1 of each year for the calendar year next preceding.

E. A holder of more than twenty-five properties presumed abandoned shall report the properties in an electronic media and in a format determined by the administrator to be compatible with computer programming and equipment used by the administrator for processing.

F. The holder of property presumed abandoned shall send written notice to the apparent owner, not more than one hundred twenty days or less than sixty days before filing the report, stating that the holder is in possession of property subject to the Uniform Unclaimed Property Act (1995), if:

(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; and

(3) the value of the property is fifty dollars (\$50.00) or more.

G. Before the date for filing the report, the holder of property presumed abandoned may request the administrator to extend the time for filing the report. The administrator 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 additional interest on the amount paid.

H. The holder of property presumed abandoned shall file with the report an affidavit stating that the holder has complied with Subsection F of this section."

Section 2. Section 7-8A-12 NMSA 1978 (being Laws 1997, Chapter 25, Section 12) is amended to read:

"7-8A-12. PUBLIC SALE OF ABANDONED PROPERTY.--

A. Except as otherwise provided in this section, the administrator, within three years after the receipt of abandoned property, shall sell it to the highest bidder at public sale at a location in this state or by any reasonable method, which in the judgment of the administrator affords the most favorable market for the property. The administrator may decline the highest bid and re-offer the property for sale if the administrator considers the bid to be insufficient. The administrator need not offer the property for sale if the administrator considers that the probable cost of sale will exceed the proceeds of the sale. A sale held under this section must 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 administrator. If securities are sold by the administrator before the expiration of three years after their delivery to the administrator, a person making a claim under the Uniform Unclaimed Property Act (1995) before the end of the three-year period is entitled to the proceeds of the sale of the securities or the market value of the securities at the time the claim is made, whichever is greater, plus dividends, interest and other increments thereon up to the time the claim is made, less any deduction for expenses of sale. A person making a claim under the Uniform Unclaimed Property Act (1995) after the expiration of the three-year period is entitled to receive the securities delivered to the administrator by the holder, if they still remain in the custody of the administrator, or the net proceeds received from sale and is not entitled to receive any appreciation in the value of the property occurring after delivery to the administrator except in a case of intentional misconduct or malfeasance by the administrator.

C. A purchaser of property at a sale conducted by the administrator pursuant to the Uniform Unclaimed Property Act (1995) takes the property free of all claims of the owner or previous holder and of all persons claiming through or under them. The administrator shall execute all documents necessary to complete the transfer of ownership."

Section 3. Section 7-8A-25 NMSA 1978 (being Laws 1997, Chapter 25, Section 25) is amended to read:

"7-8A-25. 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 forty-eight months after the date the property is paid or delivered to the administrator. This subsection does not apply to an owner's agreement with an attorney to file a claim as to identified property or contest the administrator'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, is signed by the apparent owner and states the value of the property before and after the fee or other compensation has been 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. An agreement covered by this section which provides for compensation that is unconscionable is unenforceable except by the owner. An owner who has agreed to pay compensation that is unconscionable or the administrator on behalf of the owner may maintain an action to reduce the compensation to a conscionable amount. The court may award reasonable attorney fees to an owner who prevails in the action.

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."

Section 4. Section 7-8A-30 NMSA 1978 (being Laws 1997, Chapter 25, Section 30) is amended to read:

"7-8A-30. SHORT TITLE.--Chapter 7, Article 8A NMSA 1978 may be cited as the "Uniform Unclaimed Property Act (1995)"."

Section 5. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2006.