

LFC Requester:

Ginger Anderson

**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

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and

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SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute, or a correction of a previous bill}

Check all that apply:

Original **Amendment**
Correction **Substitute**

Date 2/1/2024

Bill No: SB 237

Sponsor: Sen. Greg Nibert/Sen. Joseph Cervantes

Agency Name and Code Number:

Regulation & Licensing Department - 420

Short Title: Revised Uniform Unclaimed Property Act (RUUPA)

Person Writing Analysis:

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
N/A	N/A		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
N/A	N/A	N/A		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	N/A	N/A	N/A	N/A		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: None

Duplicates/Relates to Appropriation in the General Appropriation Act: N/A

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis of the bill:

Senate Bill 237 (SB 237) repeals the Uniform Unclaimed Property Act (UUPA), NMSA 1978, Section 7-8A-1 to -31 (as amended through 2007) and replaces that act with a new Article 8(B) entitled, "Revised Uniform Unclaimed Property Act" (RUUPA). Existing references to the UUPA in New Mexico statutes are amended to reference the new RUUPA.

SB 237 modernizes, clarifies, and adds additional definitions of unclaimed property types and shortens the abandonment period for several types of property from five years to three years.

SB 237, in the new RUUPA, defines a number of terms related to modern electronic payment systems and technology, while also revising the definitions of traditional "property law" terms such as "domicile," "good faith," and "property" (which definition is amended to exclude (i) property held in a plan described in Section 529A of the federal Internal Revenue Code of 1986, as amended; (ii) game-related digital content; or (iii) a loyalty card, or financial organization loyalty card). It also significantly expands the definition of "security".

More specifically:

Section 6 describes the applicability to RUUPA with regard to foreign transactions; funds in member's share accounts if the bylaws of the credit union allow unclaimed funds to be used for educational or charitable purposes; and interests in specific utility cooperations if the bylaws of the cooperative allow unclaimed patronage capital or other tangible ownership interest to be used for scholarships or charitable purposes.

Section 7 grants rule making authority to the administrator, which is the Taxation and Revenue Department (TRD).

Sections 8 - 17 provide specific details as to when various property types are assumed to be abandoned.

Sections 18-19 relate to knowledge of death of an insured person or annuitant and disposition of the related proceeds.

Sections 20-24 prescribes the methodology to determine the address(es) of apparent owners,

establish priority, and disposition of abandoned property.

Section 25 grants the TRD right to take custody of sums payable by traveler's check, money order, or similar instruments presumed abandoned to the extent permissible by federal law.

Section 26 relates to the legal elements necessary to establish the TRD's right to custody.

Sections 27-30 describes the required report of abandoned property by the holder of that property, the timing of the report, and retention of records.

Section 31 relates to reportability and deliverability of abandoned property absent owner demand.

Sections 32-35 describe the due diligence, liability, and notice requirements afforded to the apparent owner of the abandoned property.

Section 36 mandates, unless otherwise prohibited by law, cooperation among state officers and agencies to locate apparent owners.

Section 37 details the definition and requirements of "good faith."

Section 38 allows holders to deduct dormancy charges upon certain conditions.

Section 39 describes payment or delivery of abandoned property to the TRD by the holder.

Section 40 details the effect of payment or delivery of property to the TRD and indemnification of liability against the holder.

Section 41 provides for recovery of property by the holder from the TRD if the payment or delivery was made to the TRD in good faith and the apparent owner subsequently claims the property from the holder.

Section 42 states the administrator is responsible for liquidating property removed from a safe deposit box, rather than the holder of the safe deposit box.

Section 43 requires that income or gain be credited to an owner's account for up to ten years at the lesser of five percent or the rate the property earned while in the possession of the holder.

Sections 44-45 describe specific requirements regarding the TRD's rights to decline to take custody of property, disposition of property having no substantial value, and immunity from liability.

Section 46 mandates the period of limitation and repose of the RUUPA.

Sections 47-48 mandate the requirements related to the public sale of property, disposal of securities, recovery of securities or values by owners, and rights of a purchaser of property after the sale.

Section 49 mandates specific handling and disposition of military medals or decorations and forbids the selling of those items.

Section 50 mandates deposit of funds by the TRD and retention of at least \$100,000 in the unclaimed property fund.

Section 51 mandates the record the TRD must retain relating to unclaimed property.

Section 52 discusses deduction of expenses and service charges by the TRD prior to depositing funds into the tax administration suspense fund.

Section 53 provides that the TRD is a custodian, for the benefit of the owner, of property received under RUUPA and that the property is not owned by New Mexico.

Sections 54-55 relate to the disposition of superior claims of other states to abandoned property held by the TRD.

Sections 56-59 relate to claims for property by persons claiming to be owners.

Section 60 details procedures for verified reports of property if the TRD believes that a person may have filed an inaccurate, incomplete, or false report.

Sections 61-77 address the examination of records to determine compliance with RUUPA; allows the TRD to estimate, extrapolate, or use statistical sampling to determine the value of the unclaimed property when the holders records are insufficient; describes reports of examination due to the holder; complaint, administrative review, and appeal procedures; allows the TRD to contract with other entities to conduct these examinations and conditions surrounding that option, including determinations of liability; and judicial enforcement to enforce those liabilities.

Sections 78-79 allow the TRD to exchange information and join actions with other states/foreign countries with regard to abandoned property.

Sections 80-82 prescribe interest, penalties, or other civil penalties for a holder's failure to timely act and allows the TRD to waive interest and penalties in whole or part.

Sections 83-85 detail the conditions for enforcing agreements by apparent owners and other person(s) to locate, deliver, or recover property held by the TRD.

Section 86 defines "personal information."

Sections 87-93 relate to the handling of confidential information and security breach protocols.

Section 94 states when applying and construing the RUUPA consideration should be given to promote uniformity with other states that enact the RUUPA.

Section 95 relates to electronic signatures.

Section 96 provides a for a transitional period and a 10 year "look back" period for applying the RUUPA.

Sections 97-106 amend other various provisions of existing law which currently reference UUPA to the RUUPA, as well as modernize the language in those sections (such as replacing gender specific wording with gender neutral wording, replacing "commissioner" of the Financial

Institutions Division (FID) to “director” of the FID, and other similar stylizations).

Section 107 repeals the existing UUPA.

Section 108 restricts the provisions of Section 69 of the RUUPA to the examination of contracts executed by the Secretary of the Taxation and Revenue executed on or after January 1, 2026.

The effective date of SB 237 is January 1, 2026.

FISCAL IMPLICATIONS

The Regulation and Licensing Department (RLD) does not believe that there will be any direct fiscal implications to the RLD or its financial industry-related divisions [i.e., the Financial Institutions Division (FID) and the Securities Division (SD)].

SIGNIFICANT ISSUES

Financial institutions and the securities industry are already subjected to regular, vigorous examination by both state and federal examiners (such as the New Mexico Regulation and Licensing Department, the Office of the Comptroller of the Currency, the Federal Reserve Banks, the Federal Deposit Insurance Corporation, the Securities and Exchange Commission, and others). SB 237 would increase the regulatory burden on these already highly regulated entities on information already subject to routine scrutiny by federal and state regulatory bodies.

SB 237 § 7-8B-1002.1 allows the TRD to request that the FID examine “federally insured, state-regulated financial organizations” if it has not done so within the past five years. The FID is currently the primary regulator of these entities, which represent only 0.26% of the total entities for which the FID is the primary regulator. The examination of only “federally insured, state-regulated financial organizations” represents a potential duplication of effort on almost 1,600 companies representing nearly 17,000 licensees.

The State of Illinois, where the Uniform Law Commission is headquartered, has recognized the duplication of state agencies examination efforts regarding state-chartered, certified, or licensed financial organizations. Illinois enacted legislation allowing for exemption of examination by the administrator for all financial entities for which the state’s equivalent of the FID is the primary regulator (see the “Amendments” section of this FIR for detailed language). Additionally, confidential financial and personal records held by non-federally insured, state-regulated financial organizations are typically protected by federal law and any third parties retained by the TRD viewing those records may conflict with federal law.

SB 237 seems to contain contradictory subsections as to when a security is assumed abandoned. Section 7-8B-201(13) states that property that is not specified in Sections 7-8B-201 or 7-8B-202 through 7-8B-207 is presumed abandoned “the earlier of three years after the owner first has a right to demand the property or the obligation to pay or distribute the property arises.” (p. 22). Securities are not specified in Sections 7-8B-201 or 7-8B-202 through 7-8B-207 and would seemingly fall under that default timeline. However, Section 7-8B-208 specifies in detail when a security is presumed abandoned and seemingly contradicts Section 7-8B-201(13). (pp. 30-31).

SB 237 also contains contradictory language regarding selling or liquidating a security at the request of the owner. Section 7-8B-905 states “[o]n request of the owner, the administrator may

sell or liquidate a security and pay the net proceeds to the owner, even if the security had been held by the administrator for less than three years or the administrator has not complied with the notice requirements pursuant to Section 7-8B-701 NMSA 1978.” (p. 76). Section 7-8B-701 does not contain notice requirements regarding securities.

The sale of most securities is detailed in the New Mexico Uniform Securities Act, NMSA 1978, Sections 58-13C-101 to -701 (2010). The legal requirements regarding the offer and sale of securities depend on a variety of factors such as the amount and type of sale and the method of sale. SB 237 makes no reference to existing state or federal securities laws. SB 237 specifies the procedure to dispose or sell abandoned securities in Section 7-8B-701(B). (pp. 66-67). Additionally, SB 237 states in Section 7-8B-603(f) that “[t]he administrator shall establish procedures for registration, issuance, method of delivery, transfer and maintenance of securities delivered to the administrator by a holder.” (pp. 57-58). Still no reference is made to existing securities laws.

PERFORMANCE IMPLICATIONS

The RLD does not believe that there will be any performance implications for the RLD/FID/SD; however, licensees of the FID/SD may be impacted. [Please see the information provided in the “Significant Issues” and “Other Substantive Issues” sections, above and below.]

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

See “Significant Issues” for potential conflicts with existing law and proposed provisions of SB 237.

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

SB 237 Section 7-8B-210(B)(2) includes an “indication of apparent owner interest in property” as “an oral communication by the apparent owner to the holder or agent of the holder concerning the property or the account in which the property is held, if the holder or its agent contemporaneously makes and preserves a record of the fact of the apparent owner’s communication.” This clause may be problematic. Financial institutions typically require identification and/or a signature to compare with the signature card of the owner on file prior to removing a “freeze” on the inactive/dormant account. This process protects funds from being fraudulently obtained by persons other than the owner(s). Removing the signature requirement, SB 237 increases the potential for fraud by either internal or external perpetrators with regard to property otherwise considered abandoned.

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

The current Uniform Unclaimed Property Act, NMSA 1978, Sections 7-8A-1 to -31 (1990, as amended through 2021), will remain in effect.

AMENDMENTS

As noted in the “Significant Issues” section of this FIR, there is a potential for significant duplication of state effort regarding non-federally insured, state-regulated financial organizations. To eliminate this duplication of effort and to avoid potential conflict with other state and federal regulations, the FID recommends that the proposed language in SB 237, Section 7-8B-102(8) (p. 9, lines 4 - 6) and Section 7-8B-1002.1 (p. 79, line 25 through p. 81, line 5) be amended to include all financial organizations which are already vigorously examined by the FID and that a definition for “state-regulated financial organizations” be added as Section 7-8B-102(29) beginning on page 17, line 6, which the following definitions renumbered to reflect the additional definition. The FID proposes the amended language read as follows:

[7-8B-102]

- (8) “financial organization” means a bank, savings bank, foreign bank, corporate fiduciary, currency exchange, money transmitter, or credit union;
- (29) “state-regulated financial organization” means any financial organization or other entity for which the financial institutions division of the regulation and licensing department is the chartering, certifying, or licensing regulator;”

7-8B-1002.1 EXAMINATION OF STATE-REGULATED FINANCIAL ORGANIZATIONS

- (a) Notwithstanding Section 7-8B-1002 NMSA 1978, for state-regulated financial institutions, the administrator may request that the financial institutions division examine the financial organization if the administrator has consulted with the director of the financial institutions division and the division has not conducted an examination of the state-regulated financial organization for compliance with the Revised Uniform Unclaimed Property Act within the past five years.
- (b) Notwithstanding Subsection (a) of this section, the administrator may, at reasonable times and upon reasonable notice:
 - (1) request that the financial institutions division examine the records of a state-regulated financial organization, if the administrator has reasonable grounds to believe that the state-regulated financial organization has failed to comply with the Revised Uniform Unclaimed Property Act; and
 - (2) adopt rules that describe conditions under which the administrator may have reason to believe that a financial institution is not in compliance with the Revised Uniform Unclaimed Property Act.
- (c) An examination pursuant to Subsection (a) or (b) of this section shall be governed by Sections 7-8B-1001 through 7-8B-1104 NMSA 1978 in addition to applicable state and federal laws.
- (d) Nothing in this Section shall be construed to limit the authority of the financial institutions division to examine state-regulated financial organizations.

The SD proposes that § 7-8B-201(13) revised to state: “property not specified in this section or Sections 7-8B-202 through 7-8B-208 NMSA 1978, the earlier of three years after the owner first has a right to demand the property or the obligation to pay or distribute the property arises.”

Further, the SD proposes that a requirement to be added to SB 237 that securities must be sold or otherwise disposed of in accordance with applicable securities laws.