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HOUSE BILL 386

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

INTRODUCED BY

Janice E. Arnold-Jones

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

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

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1 [~~(b)~~] B. The report must be verified and must
2 contain:

- 3 (1) a description of the property;
- 4 (2) except with respect to a traveler's check
5 or money order, the name, if known, and last known address, if
6 any, and the social security number or taxpayer identification
7 number, if readily ascertainable, of the apparent owner of
8 property of the value of fifty dollars (\$50.00) or more;
- 9 (3) an aggregated amount of items valued under
10 fifty dollars (\$50.00) each;
- 11 (4) in the case of an amount of fifty dollars
12 (\$50.00) or more held or owing under an annuity or a life or
13 endowment insurance policy, the full name and last known
14 address of the annuitant or insured and of the beneficiary;
- 15 (5) in the case of property held in a safe
16 deposit box or other safekeeping depository, an indication of
17 the place where it is held and where it may be inspected by the
18 administrator and any amounts owing to the holder;
- 19 (6) the date, if any, on which the property
20 became payable, demandable or returnable and the date of the
21 last transaction with the apparent owner with respect to the
22 property; and
- 23 (7) other information that the administrator
24 by rule prescribes as necessary for the administration of the
25 Uniform Unclaimed Property Act (1995).

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1 ~~[(e)]~~ C. If a holder of property presumed abandoned
2 is a successor to another person who previously held the
3 property for the apparent owner or the holder has changed its
4 name while holding the property, the holder shall file with the
5 report its former names, if any, and the known names and
6 addresses of all previous holders of the property.

7 ~~[(d)]~~ D. The report must be filed before November 1
8 of each year and cover the twelve months next preceding July 1
9 of that year, but a report with respect to a life insurance
10 company must be filed before May 1 of each year for the
11 calendar year next preceding.

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

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

23 (1) the holder has in its records an address
24 for the apparent owner which the holder's records do not
25 disclose to be inaccurate;

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

3 (3) the value of the property is fifty dollars
4 (\$50.00) or more.

5 [~~f~~] G. Before the date for filing the report, the
6 holder of property presumed abandoned may request the
7 administrator to extend the time for filing the report. The
8 administrator may grant the extension for good cause. The
9 holder, upon receipt of the extension, may make an interim
10 payment on the amount the holder estimates will ultimately be
11 due, which terminates the accrual of additional interest on the
12 amount paid.

13 [~~g~~] H. The holder of property presumed abandoned
14 shall file with the report an affidavit stating that the holder
15 has complied with Subsection [~~e~~] F of this section."

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

18 "7-8A-12. PUBLIC SALE OF ABANDONED PROPERTY.--

19 [~~a~~] A. Except as otherwise provided in this
20 section, the administrator, within three years after the
21 receipt of abandoned property, shall sell it to the highest
22 bidder at public sale at a location in [~~the~~] this state or by
23 any reasonable method, which in the judgment of the
24 administrator affords the most favorable market for the
25 property. The administrator may decline the highest bid and

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1 re-offer the property for sale if the administrator considers
2 the bid to be insufficient. The administrator need not offer
3 the property for sale if the administrator considers that the
4 probable cost of sale will exceed the proceeds of the sale. A
5 sale held under this section must be preceded by a single
6 publication of notice, at least three weeks before sale, in a
7 newspaper of general circulation in the county in which the
8 property is to be sold.

9 [~~(b)~~] B. Securities listed on an established stock
10 exchange must be sold at prices prevailing on the exchange at
11 the time of sale. Other securities may be sold over the
12 counter at prices prevailing at the time of sale or by any
13 reasonable method selected by the administrator. If securities
14 are sold by the administrator before the expiration of three
15 years after their delivery to the administrator, a person
16 making a claim under the Uniform Unclaimed Property Act (1995)
17 before the end of the three-year period is entitled to the
18 proceeds of the sale of the securities or the market value of
19 the securities at the time the claim is made, whichever is
20 greater, plus dividends, interest and other increments thereon
21 up to the time the claim is made, less any deduction for
22 expenses of sale. A person making a claim under the Uniform
23 Unclaimed Property Act (1995) after the expiration of the
24 three-year period is entitled to receive the securities
25 delivered to the administrator by the holder, if they still

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1 remain in the custody of the administrator, or the net proceeds
2 received from sale and is not entitled to receive any
3 appreciation in the value of the property occurring after
4 delivery to the administrator except in a case of intentional
5 misconduct or malfeasance by the administrator.

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

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

15 "7-8A-25. AGREEMENT TO LOCATE PROPERTY.--

16 [~~a~~] A. An agreement by an owner, the primary
17 purpose of which is to locate, deliver, recover or assist in
18 the recovery of property that is presumed abandoned, is void
19 and unenforceable if it was entered into during the period
20 commencing on the date the property was presumed abandoned and
21 extending to a time that is [~~twenty-four~~] forty-eight months
22 after the date the property is paid or delivered to the
23 administrator. This subsection does not apply to an owner's
24 agreement with an attorney to file a claim as to identified
25 property or contest the administrator's denial of a claim.

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1 ~~[(b)]~~ B. An agreement by an owner, the primary
2 purpose of which is to locate, deliver, recover or assist in
3 the recovery of property, is enforceable only if the agreement
4 is in writing, clearly sets forth the nature of the property
5 and the services to be rendered, is signed by the apparent
6 owner and states the value of the property before and after the
7 fee or other compensation has been deducted.

8 ~~[(c)]~~ C. If an agreement covered by this section
9 applies to mineral proceeds and the agreement contains a
10 provision to pay compensation that includes a portion of the
11 underlying minerals or any mineral proceeds not then presumed
12 abandoned, the provision is void and unenforceable.

13 ~~[(d)]~~ D. An agreement covered by this section which
14 provides for compensation that is unconscionable is
15 unenforceable except by the owner. An owner who has agreed to
16 pay compensation that is unconscionable or the administrator on
17 behalf of the owner may maintain an action to reduce the
18 compensation to a conscionable amount. The court may award
19 reasonable ~~[attorney's]~~ attorney fees to an owner who prevails
20 in the action.

21 ~~[(e)]~~ E. This section does not preclude an owner
22 from asserting that an agreement covered by this section is
23 invalid on grounds other than unconscionable compensation."

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

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"7-8A-30. SHORT TITLE.--~~[This act]~~ 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.