

#26

1/3/67

Fourth Supplement to Memorandum 67-3

Subject: Study 26 - Escheat (Travelers Checks)

At the last meeting, the Commission rejected a suggestion that travelers checks escheat to the state of the place of issuance. The Commission concluded that this suggestion was inconsistent with the last-address rule of Texas v. New Jersey.

The effect of this decision is to give up any claim to travelers checks issued by American Express since American Express does not maintain records of the last known address of the "owner." The office of the State Controller points out that this is the only significant gap in the proposed law.

The staff has given further thought to this matter with a view to devising legislation that would permit California to escheat travelers checks. We have devised (and included in the draft legislation) two alternative methods of dealing with this problem.

We have added a new Section 1581 (page 88) to require the issuer of a travelers check or money order to maintain a record indicating whether or not the last known address of the person to whom the travelers check or money order is issued is in this state. This would require only a minimum of record keeping. The form used when the travelers check or money order is issued could have a box to be checked if the travelers check or money order is issued to a person whose last known address is not in California. This would permit destruction of all records of last known addresses where the instrument is issued to a person whose address is in California and in such cases the report would be made to California and the instrument would escheat to this state. We anticipate that American Express will object to the additional record keeping required

by this provision. We have written to their representative to determine whether they believe that this provision would solve the problem. No response had been received when this supplement was prepared.

A second method of dealing with the problem is to create a series of presumptions that would apply in the absence of contrary records in the hands of the issuer of the travelers check or money order. We have modified subdivision (a) of Section 1510 to provide these presumptions. We believe that these presumptions would be held valid and within the holding of Texas v. New Jersey. In any case, if these presumptions were included in the statute, California would have a basis for claiming travelers checks and money orders issued in this state. Absent such presumptions, California would have no basis for claiming travelers checks and money orders issued in this state unless the holder maintained records showing the last known address of the person to whom issued. And, even if such records were maintained, the presumption that the person to whom the check or money order was issued is the "owner" would be needed. Since this method of dealing with the problem requires American Express to keep no additional records and since it is in substance the same as the suggestion made by their representative, we believe that this method should meet the approval of American Express.

American Express and others urge the restoration of what is now subdivision (b) of Section 1560 (page 67) to its original form. In the prior draft, the staff had proposed to eliminate the right of the holder to make payment to the person entitled thereto and to claim reimbursement from the State Controller. In the latest draft, we have restored the prior language. In the case of American Express and other institutions which issue instruments similar to travelers checks, it is pointed out that we are proposing

to give the holder of the instrument a cause of action against the Controller instead of a right to payment from the drawee. We think the point is well taken and have restored the deleted language to Section 1560.

American Express also points out that the reporting requirements (and the publication requirements) are not useful in connection with travelers checks because information as to the owner of the check is not available. This problem was recognized by the Uniform Commissioners and the Uniform Act has been modified to change the reporting and publication requirements. The Uniform Act has been amended to eliminate the requirement that the issuer report the owner of the travelers check or money order and also to eliminate the required notice and publication of travelers checks and money orders in the list of abandoned property. Other technical conforming changes are also made in the Uniform Act. See Exhibit II attached.

We have incorporated the changes made in the Uniform Act in the latest draft. These changes are the same in substance as those suggested by American Express. See paragraph (1) of subdivision (b) of Section 1530 (page 42) and subdivision (g) of Section 1531. See also subdivision (c) of Section 1532 (page 50) for a conforming change.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

EXHIBIT I

LAW OFFICES OF
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LOS ANGELES, CALIFORNIA 90014
TELEPHONE 620-1240

November 4, 1966

California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Re: California Uniform Disposition
of Unclaimed Property Act

Gentlemen:

In response to your letter dated October 18, 1966, we would like to submit on behalf of our client, American Express Company, the following comments on your Tentative Recommendation Relating to the Escheat of Personal Property, Preliminary Staff Draft, dated August 25, 1966 (the "Draft"). These comments are not intended to be exhaustive; they simply represent our preliminary reaction to certain of the salient features of the Draft dealing with travelers cheques, the issuance of which is the primary business of American Express. It is hoped that these comments will prove helpful to you.

INTRODUCTION

American Express originated the travelers cheque in 1891. It was designed to provide travelers with an instrument which would protect their funds against loss or theft, be readily negotiable and be convertible into the currency of any country in which its holder chose to cash it. Travelers cheques are sold in every state of the United States and throughout most of the world. Travelers - intra-state, interstate and foreign - are the principal purchasers, and substantial purchases are also made by business enterprises and by other persons who wish to have funds readily available in case of emergencies.

Travelers cheques are intended to and do circulate as freely as money. They are expressly designed to be valid for an indefinite period, and have always been so represented to the public. Everything about them, including their appearance, creates the impression that they are good until

used. They bear no date of sale and no date of maturity. (See Exhibit 1 attached.) Sometimes the purchaser of a travelers cheque will date it when he negotiates it; sometimes he will not. But whether he does or not is immaterial insofar as the instrument's validity, negotiability and length of life are concerned. Since travelers cheques are sold all over the world and are accepted without question in every country in the world, there is no limit to the number of hands through which they may pass or the number of state and national borders which they may cross before they are finally presented for payment, in the case of American Express Company, at New York, New York.

PRELIMINARY COMMENTS

A. Re Permanent Escheat.

As noted at page 3 of the Draft, existing California law regarding abandoned property is custodial in nature, granting to the owner of abandoned property and his successors a perpetual right to reclaim such property (Uniform Disposition of Unclaimed Property Act, California Code of Civil Procedure, Sections 1500 et seq. /all section references herein refer to said Code unless preceded by the term "Proposed", in which event they refer to new sections proposed or revised by the Draft/).

The Draft proposes, without discussion, to reject the custodial concept in favor of a permanent escheat law, denying the owner of the property or his successors the right to reclaim the property.

The Draft would require American Express to pay the State Controller all sums due on travelers cheques outstanding for fifteen years (Proposed Section 1511(c)); five years thereafter, such sums would permanently escheat to the State (Proposed Section 1550). In effect, the Draft proposes that a travelers cheque would only be negotiable for fifteen years; for five additional years, it would merely evidence a right to attempt to obtain payment from the State (Proposed Section 1550). By so providing, the Draft fails to recognize the nature of travelers cheques, and the understanding of the

public in purchasing them and in accepting them as payment.

American Express has always sold travelers cheques upon the representation, appearing on the face thereof, that they are "good until used - no time limit", (See Exhibit 1 attached), i.e., that the purchaser or any subsequent holder may keep them as long as he likes without forfeiting his right to ultimate payment. This representation is stressed in advertising and sales materials. The instructions issued by American Express to its nearly 40,000 selling agents direct those agents to tell purchasers that travelers cheques can be held indefinitely and that they are good until used.

Purchasers of travelers cheques and the public have come to rely upon this representation and act upon it. We base this statement primarily upon two basic facts. First, countless travelers cheques are cashed daily by persons who have no way of knowing how long they have been outstanding. Second, the record shows that a great many years may elapse between the purchase of a travelers cheque and its presentation for payment. It is American Express' experience that approximately 85% of those travelers cheques which are still outstanding five years after their issuance are presented for payment within the next ten years. Insofar as those still outstanding after fifteen years are concerned, over 60% are presented for payment within the next twelve years, i.e., by the time they are 27 years old. Although exact percentages have not been computed for the post 27-year period, the number of travelers cheques presented for payment in that period is known to be substantial. For example, in 1950 American Express paid into the New York State Abandoned Property Fund \$146,390 on account of travelers cheques sold in the year 1934. Through the year 1965, New York State has refunded to American Express \$95,330 of this amount, \$2,050 being refunded in 1965, 31 years after the date of sale.

Therefore, we submit that the Draft, particularly Proposed Section 1550, and the permanent escheat features which it proposes to introduce into California law, would if adopted cause irreparable injury to purchasers of travelers cheques who have held them for extended periods on the basis

of the well-established indefinite negotiability and substantial equivalence to money thereof, to merchants and other persons or entities throughout the world which have accepted long outstanding travelers cheques on the same basis (having no way of knowing how long the travelers cheque has been issued), and to American Express.

It is submitted that the custodial nature of the present California law should be retained, at least as it relates to travelers cheques. The inability of the State Controller to close his books permanently would not appear to create problems of sufficient magnitude to justify such a drastic and far-reaching change in the fundamental nature of the California law. This is especially true in the case of travelers cheques, where indefinite and free world-wide negotiability is the keystone of their existence.

The Commissioners of the Uniform Disposition of Unclaimed Property Act chose a custodial rather than a permanent escheat framework for that Act after long and careful deliberation. We suggest that the considerations which impelled their choice have not changed.

B. Re Claim Requirements.

Existing California law allows the holder, e.g., American Express, to deliver custody of sums in the amount of the obligations represented by abandoned travelers cheques to the State Controller and then honor any such cheques subsequently presented by the owner thereof. Thereafter, American Express may apply directly to the State Controller for reimbursement (Sections 1512 and 1513).

The Draft drastically revises this procedure to the substantial detriment of the public which purchases travelers cheques and accepts them as payment, and American Express. It is proposed that after such payment to the State Controller, American Express may not subsequently honor the travelers cheques. Rather, the owner must personally apply to the State Controller for the funds, and even this "right" is limited for a period of five years (Proposed Sections 1550 and 1560). This proposed change in California law would

destroy the world-wide basic concept and acceptance of travelers cheques.

As discussed above, it is essential to issuers of travelers cheques and similar instruments that an abandoned property law be a custodial-type statute. Similarly, such a law should grant to issuers the right to reimbursement from the state when they make payments to owners of instruments whose proceeds the state has previously taken custody of. Unless issuers are afforded this right of reimbursement, they must either undertake to pay the instruments twice, once to the state and once to the owner, thereby inviting financial disaster, or they must refuse to honor the instruments previously abandoned to the state, thereby destroying their businesses by impairing the ready negotiability of their financial paper.

As a practical matter, this problem is not remedied by giving the owners - rather than the issuers - of such financial instruments the right to recover from the state (as proposed in the Draft). Such a procedure destroys the negotiability of instruments by putting burdensome restrictions on hitherto unobstructed channels of payment. As we have previously pointed out, purchasers will buy travelers cheques and similar instruments - and others will cash them - only so long as they know that the instruments will be paid immediately upon presentation. American Express has succeeded through the past half century in gaining world-wide confidence in and unquestioned acceptance of its travelers cheques. The Draft places this achievement in jeopardy, since it is one thing to offer a negotiable instrument to the public, but quite another to offer a claim against the state (with its attendant delay and expense), especially a claim which may already have been barred when the cheque was accepted as payment.

The comments with respect to these sections, however, seek to justify this revision of the existing claims procedure on the basis that a holder seeking reimbursement is not as likely to scrutinize the claim of the alleged owner as is the State Controller. This argument fails to recognize the qualities of travelers cheques; ownership is conclusively established by simple possession.

C. Re Reporting Requirements.

Proposed Section 1510 provides for escheat of property held by a non-domiciliary only if the last known address of the owner appearing on the records of the holder is in the State of California.

The only record which American Express has as to the identity of the purchaser of a travelers cheque is the application form which he completes at the time of purchase and which contains his signature and address. However, due to the expense of storing the millions of applications which accumulate yearly, they are retained for only six years. The signatures on the applications are frequently illegible and therefore of no value at all as to the identity of the purchaser. In addition, purchasers often fail to insert their addresses on the forms. Finally, the name and address of the original purchaser of a travelers cheque (or money order) is of no real value to the administrator of an abandoned property law because the original purchaser will in many cases have negotiated the instrument by the time the abandonment period has elapsed, and after negotiation by the original purchaser there is no way of tracing ownership.

We submit that information as to the identity of the owner of a travelers cheque serves no useful purpose even if (as is not the case) it could be obtained. Information as to ownership of property deemed abandoned under most abandoned property laws is significant for only two reasons. First, it is utilized to satisfy the notice-by-mail provisions. Second, it is utilized to assist the state in disposing of applications made by those claiming to be owners of property within its custody. Neither of those purposes is applicable to travelers cheques. Notice of abandonment is unnecessary because issuers do not deem themselves to be released from their obligation to make payment by virtue of a change in custodianship of the underlying funds. Issuers must necessarily follow this policy, for if they were to avail themselves of the release-from-liability clause contained in most statutes (such as is provided in Section 1513 and Proposed Section 1560), they would destroy the negotiability and thus

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the value of the instruments. Also, if a statute contains an appropriate refund procedure as California now has, refund claims against the state will be made by the issuer who has paid the owner and not by the owner himself, so that a record of ownership is not needed to assist the state in the disposition of claims.

For the foregoing reasons, we believe that reports to the state by the issuers of travelers cheques and similar instruments should contain only the serial numbers of the instruments, their amounts and the dates on which they were sold. For the same reasons, there is no reason for any notice provisions to apply in the case of such instruments.

We recognize that this aspect of our discussion is in apparent conflict with your desire to adopt the last-address rule of Texas v. New Jersey. The Draft now, in effect, exempts all travelers cheques from its provisions because no address is known. State officials in other states which have heretofore considered this problem have concluded that the holding in Texas v. New Jersey is broad enough to include place of issuance as an alternative to last known address, under these circumstances. It is suggested that this alternative be given careful consideration.

When we have had an opportunity to examine the Draft in more detail and to discuss it with our client, we will forward to you a more detailed discussion of the above and other points.

Respectfully submitted,
ADAMS, DUQUE & HAZELTINE

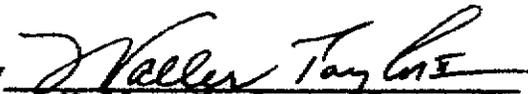
By 
Waller Taylor, II

Exhibit 1

KEEP UNUSED CHEQUES FOR FUTURE TRIPS
AND UNEXPECTED EXPENSES
Good Until Used - No Time Limit

CANADIAN DOLLAR TRAVELERS CHEQUE

WHEN COUNTERSIGNED BELOW WITH THIS SIGNATURE

WO-0000-000

BEFORE CASHING WRITE HERE CITY AND STATE

AMERICAN EXPRESS COMPANY
150 BROADWAY, NEW YORK, N.Y.

Pay this Cheque to the Order of

NOT NEGOTIABLE

IN CANADA PAY IN CANADIAN DOLLARS IN OTHER COUNTRIES PAY IN U.S. DOLLARS

COUNTERSIGNED HERE IN THE PRESENCE OF PERSON CASHING

[Signature]
PRESIDENT

⑆0000⑆⑆069⑆66⑆0000000000⑆

KEEP UNUSED CHEQUES FOR FUTURE TRIPS
AND UNEXPECTED EXPENSES
Good Until Used - No Time Limit

U.S. DOLLAR TRAVELERS CHEQUE

WHEN COUNTERSIGNED BELOW WITH THIS SIGNATURE

RD00-0000-000

BEFORE CASHING WRITE HERE CITY AND STATE

AMERICAN EXPRESS COMPANY
150 BROADWAY, NEW YORK, N.Y.

Pay this Cheque to the Order of

NOT NEGOTIABLE

IN THE UNITED STATES PAY IN HUNDRED DOLLARS IN OTHER COUNTRIES PAY IN U.S. DOLLARS

COUNTERSIGNED HERE IN THE PRESENCE OF PERSON CASHING

[Signature]
PRESIDENT

⑆8000⑆0005⑆94⑆0000000000⑆

Exhibit II

Suggested State Legislation

D-31

AMENDMENTS TO UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT

In 1954, the Conference promulgated a Uniform Disposition of Unclaimed Property Act. In the operation of this Uniform Act and similar Acts, special problems have arisen concerning money orders and travelers checks, particularly those issued by an organization not properly classified as a "banking or financial institution". The amendments here proposed are to take care of these problems. The first amendment (of Section 2) indicates the nature of the amendments by adding to the persons covered by Section 2, the phrase property held or owing by "a business association". In Subsection (c) the phrase "money orders" is added to the types of sums payable and a special rule concerning the time at which abandonment is presumed is established for travelers checks. For all property subject to the section, other than travelers checks, seven years from the date payable raising the presumption of abandonment but a longer period, 15 years from the date of issuance, is established for travelers checks.

Section 11 of the original Act requires a report by the holder of abandoned property and that section is amended to eliminate the requirement of a report with respect to "travelers checks and money orders". Section 12 of the Act which required notice and publication of lists of abandoned property is also amended to eliminate travelers checks and money orders from the requirement of publication of a list. Both of these amendments are necessary because of the inability of the issuer of money orders and travelers checks to know who the holder is in most cases.

Section 13 of the original Act obligating the holder of the sums to pay or deliver the abandoned property to the state is amended so that the obligation to pay is, in the case of travelers checks or money orders, not tied to publication of the list but rather to the filing of the appropriate type of report.

Amendments to Uniform Disposition of Unclaimed Property Act

1. Section 2 of the Uniform Disposition of Unclaimed Property Act should be amended to read as follows:

1 SECTION 2. [Property Held by Banking or Financial Organi-
2 zations or by Business Associations.] The following property
3 held or owing by a banking or financial organization or by a busi-
4 ness association is presumed abandoned:

5 (a) Any demand, savings, or matured time deposit made in
6 this state with a banking organization, together with any interest
7 or dividend thereon, excluding any charges that may lawfully be
8 withheld, unless the owner has, within 7 years:

9 (1) Increased or decreased the amount of the deposit, or
10 presented the passbook or other similar evidence of the deposit
11 for the crediting of interest; or

12 (2) Corresponded in writing with the banking organization
13 concerning the deposit; or

14 (3) Otherwise indicated an interest in the deposit as evi-
15 denced by a memorandum on file with the banking organization.

16 (b) Any funds paid in this state toward the purchase of shares
17 or other interest in a financial organization [or any deposit made
18 therewith in this state], and any interest or dividends thereon,
19 excluding any charges that may lawfully be withheld, unless the
20 owner has within 7 years:

21 (1) Increased or decreased the amount of the funds [or
22 deposit], or presented an appropriate record for the crediting
23 of interest or dividends; or

24 (2) Corresponded in writing with the financial organiza-
25 tion concerning the funds [or deposit]; or

26 (3) Otherwise indicated an interest in the funds [or de-
27 posit] as evidenced by a memorandum on file with the financial
28 organization.

29 (c) Any sum payable on checks certified in this state or on
30 written instruments issued in this state on which a banking or
31 financial organization or business association is directly liable,
32 including, by way of illustration but not of limitation, certifi-
33 cates of deposit, drafts, money orders, and travelers checks,
34 that, with the exception of travelers checks, has been outstand-
35 ing for more than 7 years from the date it was payable, or from
36 the date of its issuance if payable on demand, or, in the case of
37 travelers checks, that has been outstanding for more than 15
38 years from the date of its issuance, unless the owner has within
39 7 years, or within 15 years in the case of travelers checks, cor-
40 responded in writing with the banking or financial organization
41 or business association concerning it, or otherwise indicated an
42 interest as evidence by a memorandum on file with the banking
43 or financial organization or business association.

44 (d) Any funds or other personal property, tangible or intan-
45 gible, removed from a safe deposit box or any other safekeeping
46 repository [or agency or collateral deposit box] in this state on
47 which the lease or rental period has expired due to nonpayment
48 of rental charges or other reason, or any surplus amounts aris-
49 ing from the sale thereof pursuant to law, that have been un-
50 claimed by the owner for more than 7 years from the date on
51 which the lease or rental period expired.

2. Section 11 of the Uniform Disposition of Unclaimed Prop-
erty Act should be amended to read as follows:

1 SECTION 11. [Report of Abandoned Property.]

2 (a) Every person holding funds or other property, tangible
3 or intangible, presumed abandoned under this Act shall report
4 to the [State Treasurer] with respect to the property as herein-
5 after provided.

6 (b) The report shall be verified and shall include:

7 (1) Except with respect to travelers checks and money
8 orders, the name, if known, and last known address, if any, of
9 each person appearing from the records of the holder to be the
10 owner of any property of the value of [\$3.00] or more presumed
11 abandoned under this Act;

12 (2) In case of unclaimed funds of life insurance corpora-
13 tions, the full name of the insured or annuitant and his last known
14 address according to the life insurance corporation's records;

15 (3) The nature and identifying number, if any, or descrip-
16 tion of the property and the amount appearing from the records
17 to be due, except that items of value under [\$3.00] each may be
18 reported in aggregate;

19 (4) The date when the property became payable, demand-
20 able, or returnable, and the date of the last transaction with the
21 owner with respect to the property; and

22 (5) Other information which the [State Treasurer] pre-
23 scribes by rule as necessary for the administration of this Act.

24 (c) If the person holding property presumed abandoned is a
25 successor to other persons who previously held the property for
26 the owner, or if the holder has changed his name while holding
27 the property, he shall file with his report all prior known names
28 and addresses of each holder of the property.

29 (d) The report shall be filed before November 1 of each year
30 as of June 30 next preceding, but the report of life insurance
31 corporations shall be filed before May 1 of each year as of

32 December 31 next preceding. The [State Treasurer] may post-
 33 pone the reporting date upon written request by any person re-
 34 quired to file a report.

35 (e) If the holder of property presumed abandoned under this
 36 Act knows the whereabouts of the owner and if the owner's
 37 claim has not been barred by the statute of limitations, the
 38 holder shall, before filing the annual report, communicate with
 39 the owner and take necessary steps to prevent abandonment from
 40 being presumed. The holder shall exercise due diligence to
 41 ascertain the whereabouts of the owner.

42 (f) Verification, if made by a partnership, shall be executed
 43 by a partner; if made by an unincorporated association or private
 44 corporation, by an officer; and if made by a public corporation,
 45 by its chief fiscal officer.

46 (g) The initial report filed under this Act shall include all
 47 items of property that would have been presumed abandoned if
 48 this Act had been in effect during the 10 year period preceding
 49 its effective date.

3. Section 12 of the Uniform Disposition of Unclaimed Prop-
 erty Act should be amended by adding a new paragraph (f) so that
 the Section will read as follows:

1 SECTION 12. [Notice and Publication of Lists of Abandoned
 2 Property.]

3 (a) Within [120] days from the filing of the report required
 4 by Section 11, the [State Treasurer] shall cause notice to be
 5 published at least once each week for 2 successive weeks in an
 6 English language newspaper of general circulation in the county
 7 in this state in which is located the last known address of any
 8 person to be named in the notice. If no address is listed or if
 9 the address is outside this state, the notice shall be published in
 10 the county in which the holder of the abandoned property has his
 11 principal place of business within this state.

12 (b) The published notice shall be entitled "Notice of Names of
 13 Persons Appearing to be Owners of Abandoned Property," and
 14 shall contain:

15 (1) The names in alphabetical order and last known ad-
 16 dresses, if any, of persons listed in the report and entitled to
 17 notice within the county as hereinbefore specified.

18 (2) A statement that information concerning the amount or
 19 description of the property and the name and address of the hold-
 20 er may be obtained by any persons possessing an interest in the

21 property by addressing an inquiry to the [State Treasurer].

22 (3) A statement that if proof of claim is not presented by
23 the owner to the holder and if the owner's right to receive the
24 property is not established to the holder's satisfaction within
25 [65] days from the date of the second published notice, the aban-
26 doned property will be placed not later than [85] days after such
27 publication date in the custody of the [State Treasurer] to whom
28 all further claims must thereafter be directed.

29 (c) The [State Treasurer] is not required to publish in such
30 notice any item of less than [\$25.00] unless he deems such
31 publication to be in the public interest.

32 (d) Within [120] days from the receipt of the report required
33 by Section 11, the [State Treasurer] shall mail a notice to each
34 person having an address listed therein who appears to be en-
35 titled to property of the value of [\$25.00] or more presumed
36 abandoned under this Act.

37 (e) The mailed notice shall contain:

38 (1) A statement that, according to a report filed with the
39 [State Treasurer], property is being held to which the addressee
40 appears entitled.

41 (2) The name and address of the person holding the prop-
42 erty and any necessary information regarding changes of name
43 and address of the holder.

44 (3) A statement that, if satisfactory proof of claim is not
45 presented by the owner to the holder by the date specified in the
46 published notice, the property will be placed in the custody of
47 the [State Treasurer] to whom all further claims must be di-
48 rected.

49 (f) This section is not applicable to sums payable on travel-
50 ers checks or money orders presumed abandoned under Section
51 2.

4. Section 13 of the Uniform Disposition of Unclaimed Prop-
erty Act should be amended to read as follows:

1 SECTION 13. [Payment or Delivery of Abandoned Property.]
2 Every person who has filed a report under Section 11, within [20]
3 days after the time specified in Section 12 for claiming the prop-
4 erty from the holder, or in the case of sums payable on travelers
5 checks or money orders presumed abandoned under Section 2
6 within [20] days after the filing of the report, shall pay or de-
7 liver to the [State Treasurer] all abandoned property specified
8 in this report, except that, if the owner establishes his right to