

#26

3/14/67

Memorandum 67-13

Subject: Study 26 - Escheat

You will receive with this memorandum a revised tentative recommendation relating to escheat. This revised version reflects the decisions made at the last meeting. If no questions are raised concerning this draft, it will not be discussed at the meeting. We point out below the significant revisions to which you should pay particular attention as you go through the draft.

Comments received on utilities exemption (Section 1502)

Since the last meeting, we have received five letters relating to the utilities exemption, and we have attached them as exhibits to this memorandum. The criticism made of the former language which required unclaimed funds to be regarded as revenue seems (to us) to have been met by the revision exempting unclaimed property that is used or applied, directly or indirectly, in determining the rates to be charged. See Section 1502.

The Public Utilities Commission secretary suggests the restoration of Section 4 of the original Uniform Act. We do not see any need for doing so. The exemption in Section 1502 removes the property described by Section 4 from the operation of the escheat statute. The restoration of Section 4 would provide a direct conflict as to the disposition to be made of unclaimed service deposits.

Southern Pacific and Union Pacific both object to the exclusion of transportation utilities from the definition of a "utility." They claim that the distinction made is unconstitutional. We think there is a justifiable distinction between monopolistic utilities furnishing electricity, water, steam, or gas and the transportation utilities that are in active

competition with each other. The rates of the former are fixed at a level designed to provide a fair rate of return on the capital investment. The rates of the latter are not designed to provide a fair return to the particular carrier. Thus, exempting unclaimed property in the hands of a transportation utility would not necessarily improve the position of the consuming public.

Southern Pacific and Union Pacific also argue that California has no right to escheat property unless the owner's last known address is in California. It is difficult to understand this objection. Unless these companies are incorporated in California, we claim only the property they hold for owners with last known addresses in California. Section 1510 follows Texas v. New Jersey quite strictly. The only places in the proposed statute where we depart from the Supreme Court rules are in the provisions dealing with travelers' checks and life insurance policies. As Union Pacific and Southern Pacific are not concerned with either of those items, their objection must be based on a failure to understand the proposed statute. We plan to write to each of them to point out how the proposed legislation will operate when we send them the revised tentative recommendation.

All of the utilities, of course, argue that no revision of the utility exemption is necessary. But, as indicated in the P. G. & E. letter, they are sorely pressed to justify their position. They argue that the property now exempted must somehow inure to the benefit of the rate payers "in one way or another."

Text of recommendation

Note the revised recommendation # 2 on page 4 and the following text.

Pursuant to the Commission's instructions, we have attempted to revise this to point out the uncertainty concerning the validity of the sections relating to travelers checks and insurance proceeds.

#### Section 1501

We have added a definition of "apparent owner" to permit convenient reference when we mean the last owner identified on the holder's books as opposed to the actual owner. In the remainder of the chapter, "apparent owner" is referred to in Sections 1510, 1511, 1512, 1531, and 1542. Other references to owner that appear in the chapter mean either the present owner or whoever may have been the actual owner during the period when no claim was made. The comment on subdivision (a) is new. An explanation for the deletion of "owner" has been added.

#### Section 1502

Note once more the language of the utilities exemption. This language must be quite precise because it will be scrutinized with extreme care by the utility companies. The language of the comment has been revised slightly because of the change in the language of the exemption.

#### Section 1510

In subdivision (b), we have added language to claim property where the owner's last known address is not shown on the holder's books, the holder is not domiciled in California, but the owner's actual last known address is in California. We had omitted a provision for the escheat of this property, but it is property that this state is entitled to escheat under Texas v. New Jersey. See 379 U.S. 682. We have a provision permitting other states to claim property under similar circumstances in Section 1542. The comment has been expanded to explain Texas v. New Jersey in greater detail.

#### Section 1511

The comment has been revised to eliminate any justification for the

section. It merely describes how the section works. Policy discussion appears in the preliminary portion of the recommendation.

#### Section 1512

The comment has been revised in the same manner that the comment to Section 1511 was revised. See above.

The text of the section has been recast to eliminate some of the drafting problems pointed out at the last meeting. As revised, Section 1510 provides the basic rule for the escheat of life insurance funds that escheat under Section 1515. Section 1512 provides an exception to the rules stated in Section 1510. If the conditions specified in Section 1512 apply, Section 1512 must be applied. If they do not, then Section 1510 must be applied to determine whether life insurance funds escheat to this state under Section 1515.

#### Section 1530

The explanation for the deletion of subdivision (e) has been revised because of the Commission's revision of subdivision (e) in Section 1531.

#### Section 1532

The language at the beginning of subdivision (e) is new, but has been approved in substance. The comment has been changed to explain the new language.

#### Section 1540

The comment has new language to explain the elimination of the requirement of findings.

#### Section 1542

In subdivision (a)(2), we eliminated as unnecessary "the property escheated to this state under subdivision (c) of Section 1510" which formerly appeared before the word "and."

Section 1561

Subdivision (b) has been added to carry out the Commission's decision to add a refund provision.

Section 1563

The comment has been revised to explain the new language added at the last meeting.

Section 1565

The words "or against the holder" have been stricken for the reason stated in the last sentence of the comment.

Section 1572

The word "of" has been substituted for "located in" in subdivision (b)(1).

Section 1581

The language has been revised somewhat in the interest of clarity.

Probate Code Sections 234, 236

The last paragraph of the comment to each of these sections has been revised slightly in the interest of clarity.

Respectfully submitted,

Joseph B. Harvey  
Assistant Executive Secretary

COMMISSIONERS  
PETER E. MITCHELL, PRESIDENT  
WILLIAM M. BENNETT  
A. W. GATOV  
WILLIAM SYMONS, JR.  
FRED P. MORRISSEY



ADDRESS ALL COMMUNICATIONS  
TO THE COMMISSION

CALIFORNIA STATE BUILDING  
SAN FRANCISCO, CALIF. 94102

## Public Utilities Commission

STATE OF CALIFORNIA

FILE NO.

March 10, 1967

Mr. John H. DeMouilly  
Executive Secretary  
California Law Revision Commission  
School of Law  
Stanford, California

Dear Mr. DeMouilly:

This will confirm your telephone conversation with our Chief Counsel on March 7.

In response to your letter of February 8, 1967, requesting comments on your proposed revisions of the Uniform Disposition of Unclaimed Property Act, the Commission requires that unclaimed deposits that may be written off as unrefundable are to be credited to a "Reserve for Uncollectible Accounts". Through this method of accounting, these unclaimed funds are taken into account in setting rates. The ratepayers obtain the benefit of these unclaimed deposits. The exemption of these funds from Uniform Disposition of Unclaimed Property Act should be continued as long as these funds are taken into account in setting rates.

The proposed utility exception as worded might not exempt these funds. For practical purposes, these funds are treated accounting-wise as an offset to "Uncollectible Accounts" which in turn are offset against revenue. These funds are not treated as income.

The legislation now totally exempts utilities. The limited exemption which you now propose should only be added if you intend to add a provision to the Act covering utilities such as Section 4 of the original Act which was not adopted in California.

§4. Deposits and Refunds Held by Utilities. --  
The following funds held or owing by any utility are presumed abandoned:

(a) Any deposit made by a subscriber with a utility to secure payment for, or any sum paid in advance for, utility services to be furnished in this

Mr. John H. DeMouilly - 2

March 10, 1967

state, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than seven years after the termination of the services for which the deposit or advance payment was made.

(b) Any sum which a utility has been ordered to refund and which was received for utility services rendered in this state, together with any interest thereon, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than seven years after the date it became payable in accordance with the final determination or order providing for the refund.

The exemption for utilities could be added as part (c) of Section 4.

I hope this analysis will aid you in your revision of this Act.

Very truly yours,

PUBLIC UTILITIES COMMISSION  
STATE OF CALIFORNIA

By   
WILLIAM W. DUNLOP, Secretary

# PACIFIC GAS AND ELECTRIC COMPANY

PG&E + 245 MARKET STREET · SAN FRANCISCO, CALIFORNIA 94106 · TELEPHONE 781-4211

R. IARD H. PETERSON  
SENIOR VICE PRESIDENT  
AND GENERAL COUNSEL  
FREDERICK T. SEARLS  
GENERAL ATTORNEY

WILLIAM S. KILGER  
WILLIAM E. JOHNS  
MALCOLM H. FURBUSH  
JOHN A. BRONL  
PHILIP A. BRANE, JR.  
HENRY J. LAPLANTE  
EDWARD J. MCCORMY  
JOHN S. BISSON  
ARTHUR L. MILLMAN, JR.  
ROBERT M. DELLA VALLE  
RICHARD J. KUHLMAN  
SANFORD M. BEAGUS  
JOHN D. MORRISSEY  
RICHARD A. BAILEY  
CHARLES T. VAN OELSEN  
MALCOLM A. MACKILLIP  
NICK KELLY  
DILBERT L. HARRIS  
JOHN S. DROPER  
GLENN WEST, JR.  
CHARLES W. TRIGGALI  
ROBERT WORMAN  
ROBERT DRISBACH  
STANLEY T. BRINLEY  
ATTORNEYS

March 6, 1967

Mr. John H. DeMouilly  
Executive Secretary  
California Law Revision Commission  
School of Law  
Stanford University  
Stanford, California 94305

Dear Mr. DeMouilly:

In reply to your letter of February 8, 1967, regarding proposed revisions of the Uniform Disposition of Unclaimed Property Act, we have no particular problem with the proposed revision of the definition of "utility" as it appears under item (1) on page 1 of your letter.

With respect to the proposed revision of the exception for utilities as it appears under item (2) on page 2 of your letter, we feel some of the concern expressed by Mr. Sturgis of Southern California Edison Company with respect to the use of the word "revenue". For example, unclaimed checks for customer deposits are credited to the uncollectible account reserve. This has the effect of decreasing the net charge to that reserve, which thereby benefits our rate payers. Whether this would be considered as "revenue", such as might appear under an income account, might be open to question. We believe, therefore, that if a revision of the utility exception is found to be absolutely necessary, the words "as a part of the revenues of the utility" should be deleted from the proposal appearing on page 2 of your letter. We believe that such deletion would not change the substance of what you propose.

We also concur, however, with Mr. Sturgis' belief that no revision of the utility exemption is necessary. As I indicated in my letter to you of November 2, 1966, extensive

Mr. John H. DeMouilly  
Executive Secretary  
California Law Revision Commission

Page 2  
March 6, 1967

presentations were made before the Assembly Interim Committee on the Judiciary in October of 1958 and again before the full committee in March of 1959, as a result of which the Legislature obviously concluded, and I believe correctly, that because of the regulated nature of the utilities and the accounting requirements established by the various regulatory commissions, the rate payers, in one way or another, are the ultimate beneficiaries of unclaimed funds, and the attempts to describe accounting requirements in the statutes would be not only difficult but unnecessary. We believe, therefore, that it would be preferable to leave the wording of the utility exemption, as it now appears in the statute, unchanged.

I thank you very much for giving us this opportunity to comment.

Very truly yours,

  
MALCOLM A. MACKILLOP

MAM:blw

**UNION PACIFIC RAILROAD COMPANY**

LAW DEPARTMENT

EDWARD C. RENWICK  
GENERAL SOLICITOR  
C. A. ZUBIETA  
MARSHALL W. YORKINK  
WM. IRL KENNEDY  
GENERAL ATTORNEYS  
WILLIAM R. MORTON  
BYRON J. LAWLER  
RALPH R. LEPERA  
ATTORNEYS

3480 FERGUSON DRIVE  
LOS ANGELES, CALIFORNIA 900

685-4350  
722-1200

March 3, 1967

249

Mr. John H. DeMouilly, Executive Secretary  
California Law Revision Commission  
School of Law  
Stanford University  
Palo Alto, California 94305

Dear Mr. DeMouilly:

This is in reply to your letter of February 8, 1967, where you kindly offered me the opportunity to comment on the proposed revisions to the Uniform Disposition of Unclaimed Property Act.

As I understand it, the proposed revision would tighten the utility exemption by allowing the exemption only with respect to receipts from property which the Public Utilities Commission would consider in connection with rate determinations for the particular utility. The Commission has, therefore, apparently not made a recommendation to convert the Act from a custodial act to an escheat law.

We are certainly in accord, as indicated in our earlier letter, that the law should not be changed to an escheat law. On other points, however, we remain convinced that California does not have a just claim to monies due unless the claimant's address is in California, for the reasons stated in Southern Pacific's letter of November 3, 1966; and that the limiting of the public utility exemption to utilities that furnish electricity, water, steam, or gas is unconstitutional.

We would appreciate your further consideration of these points. Thank you.

Yours very truly,



Edward C. Renwick

WIK:PS

cc Messrs. Pierce, Balluff,  
VanDellen, Lyon

*Southern California Edison Company*

P. O. BOX 351

LOS ANGELES, CALIFORNIA 90089



ROLLIN E. WOODBURY  
GENERAL COUNSEL

HARRY W. STURGES, JR.  
ROBERT J. CAHALL  
ASSISTANT GENERAL COUNSEL

LAW DEPARTMENT

624-7111

March 3, 1967

DAVID N. BARRY, III  
NORMAN E. CARROLL  
JOHN R. BURY  
H. CLINTON TINKER  
KENNETH M. LEMON  
WILLIAM E. MARX  
H. ROBERT BARNES  
TOM P. GILFOY  
LOWELL T. ANDERSON  
DAVID C. HENSLEY  
ASSISTANT COUNSEL

Mr. John H. DeMouilly  
Executive Secretary  
California Law Revision Commission  
School of Law  
Stanford University  
Stanford, California 94305

Dear Mr. DeMouilly:

Recently you forwarded to me revisions being considered by the California Law Revision Commission with respect to the Utilities Exemption under the Uniform Disposition of Unclaimed Property Act. You advised that the Commission would wish to receive such suggestions as I might have. Thank you very much for giving me this opportunity to comment.

It would seem to me that the amendment proposed to the definition of the term "Utility" would accomplish the Commission's objective without further amendment of the Act, and that the utility exemption could be continued as it now exists by utilities being excluded from the definition of the term "Person".

I have some difficulty with the phrasing you propose of a new exemption for utilities. I believe that many, if not all, of the items to be exempted might well not be considered to be revenue, but would, however, be taken into consideration by the Public Utilities Commission in determining rates to be charged by a utility. If you feel, however, that an approach such as you proposed is necessary or is preferable, perhaps this exemption might be worded somewhat as follows:

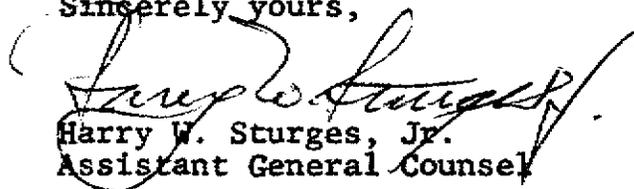
"This chapter does not apply to any property held by a utility which the Public Utilities Commission of this state or a

Mr. John H. DeMouilly  
March 3, 1967  
Page No. Two

similar agency of another state or of the United States follows the policy of taking into consideration in determining the rates to be charged by a utility. The Public Utilities Commission of this state, in its annual report filed with the governor, shall keep him advised as to its policy in this regard."

I appreciate this opportunity to submit these suggestions to you and I hope after further consideration of the matter, you will feel that the approach of revising only the definition of "Utility" is the preferable.

Sincerely yours,



Harry W. Sturges, Jr.  
Assistant General Counsel

HWS:dsd

EXHIBIT V

# *Southern Pacific Company*

*65 Market St., San Francisco, California 94105*

THORMUND A. MILLER  
HERBERT A. WATERMAN  
SENIOR GENERAL ATTORNEYS  
LAWRENCE L. HOWE  
WALDRON A. GREGORY  
JOHN MACDONALD SMITH  
ALBERT T. SUTER  
RICHARD J. LATHROP  
WILLIAM R. DENTON  
W. HARNEY WILSON  
ARNOLD I. WEBER  
GENERAL ATTORNEYS

ALAN C. FURTH  
VICE PRESIDENT AND GENERAL COUNSEL

CHARLES W. BURKETT  
ROBERT L. PIERCE  
GENERAL SOLICITORS

ROY JEROME  
FREDERICK E. FUHRMAN  
HAROLD S. LENTZ  
JOHN J. CORRIGAN  
JAMES J. TRABUCCO  
ASSISTANT GENERAL ATTORNEYS  
DONALD O. ROY  
EDWARD J. SHARON  
GERRIT VAN BENSCHOTEN  
THOMAS P. KELLY, JR.  
GARY S. ANDERSON  
THOMAS H. GONSER  
ROBERT W. TAGGART  
ATTORNEYS

March 3, 1967

File: G 4561-374

Mr. John H. DeMouilly  
Executive Secretary  
California Law Revision Commission  
School of Law  
Stanford, California

Dear Mr. DeMouilly:

Your February 8, 1967 letter asked my comments on the problem of a revision of the Uniform Disposition of Unclaimed Property Act proposed by the California Law Revision Commission.

My letter of November 3, 1966 set out at length my objections to the changes proposed by your Commission in your Tentative Recommendations. I stated at that time and I reiterate my objections to the proposal to extend California jurisdiction over unclaimed wages where the address of the claimant was unknown or in a state not claiming escheat. Such an attempt to extend the state's claim is in my opinion unwarranted and unfair and illustrates clearly the difficulties, hazards and inequities a multi-state utility must face. Our experience is that it is often difficult and costly to administer this law in view of the multi-state claims and assertions of jurisdiction.

I reassert the premise that common carriers should be exempt from the law as are other public utilities under 1501(g)(h) C.C.P. The legislature has already quite recently in 1959 determined these exemptions proper and I am not aware of any persuasive reason for a change. Instead, as I have proposed, I believe all public utilities should be treated alike and, in fact, the legislature in 1965 concurred when it passed a law to that effect which was pocket vetoed by Governor Brown.

The California Law in 1959 was presented to the legislature and the people as a custodial and not an escheat statute. The right of

Mr. John H. DeMouilly . . . #2

the citizen to reclaim his property was retained in the law. Now the state would destroy this right and I submit there has been stated no justification whatever for this erosion of a property right.

Very truly yours,

*Robert L. Pierce*

STATE OF CALIFORNIA  
CALIFORNIA LAW  
REVISION COMMISSION

TENTATIVE RECOMMENDATION

relating to

ESCHEAT

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

WARNING: This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be considered when the Commission determines what recommendation it will make to the California Legislature.

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

This tentative recommendation includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were enacted. They are cast in this form because their primary purpose is to undertake to explain the law as it would exist (if enacted) to those who will have occasion to use it after it is in effect.

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RECOMMENDATION  
of the  
CALIFORNIA LAW REVISION COMMISSION  
relating to  
ESCHEAT  
INTRODUCTION

Although the ancient concept of escheat that existed at common law was somewhat different, escheat is now considered generally to be the right of the government to claim property that has no owner. Note, 61 COLUM. L. REV. 1319 (1961). Under this modern concept of escheat, there are two classes of property that are usually subjected to a state's escheat claims. First, many states claim by escheat property that has been abandoned by its owner. Second, virtually all states claim by escheat the property that belonged to a person who died without heirs. California's escheat statutes have provided for the escheat of all property in the second category and for the escheat of certain classes of property in the first category. Recent decisions by the courts, however, have rendered the existing California statutes inadequate to deal with the problems that exist in this field. The California statutes claim escheat rights that this state cannot constitutionally assert, and they do not provide for the assertion of escheat rights that the state is entitled to assert.

ESCHEAT OF UNCLAIMED PROPERTY

Background

In 1959 the Uniform Disposition of Unclaimed Property Act was enacted in California in a revised form. See Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure. The California statute provides a comprehensive scheme for the reporting to the State Controller and the subsequent delivery of various kinds of unclaimed personal property.

It replaced a less comprehensive scheme for the escheat of various kinds of personal property.

For the most part, the California statute applies to intangible property such as wages, bank deposits, dividends, and corporate shares. The statute also applies, however, to some forms of tangible personal property, such as that found in safe deposit boxes. It provides generally that if the owner of such property has failed to claim it for a specified period of time,<sup>1</sup> the holder is required to report this fact to the State Controller. Subsequently, after due notice, the property is transferred to the custody of the State Controller who then holds the property subject to any claim the true owner might make. The property subject to the statute is limited to that held or owed by persons doing business in this state or otherwise subject to the jurisdiction of this state.

After the enactment of the ~~California statute~~, the United States Supreme Court decided Texas v. New Jersey, 379 U.S. 674 (1965) in which it held that only one state has power to escheat intangible personal property even though the holder of the property may be subject to the jurisdiction of more than one state.

In determining which state can escheat such property, the court rejected a contention that the right to escheat should be based upon the state's jurisdiction over the holder of the property. Instead, the court held that insofar as the kind of obligations there in issue were concerned: (1) the state of the last known address of the owner as shown on the books and records of the holder may escheat such intangible property and (2) if the books and records do not reflect an address of the owner, such property may be escheated by the state where the holder is domiciled. In cases falling in the second category, if another state proves that the last known address

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<sup>1</sup>"Holder" will be used throughout this recommendation to refer to the debtor or obligor of intangible property because that is the defined term used in the Uniform Act. Technically, the term is somewhat inaccurate because intangible property consists of debts and obligations and, thus, cannot be "held" as can tangible property.

of the owner was actually within its borders, that state may escheat the property and recover it from the holder or from the state that first escheated it. If the state of the last known address of the owner as shown by the records of the holder does not provide for the escheat of abandoned property, the state where the holder is domiciled may escheat the property subject to the claim of the state of last known address if and when its law later makes provision for the escheat of such property. These rules have made the California statute obsolete, for the California statute bases all escheat claims upon California's jurisdiction over the holder.

#### Recommendations

The Commission makes the following recommendations concerning the escheat of unclaimed property:

1. The California unclaimed property statute should be revised to eliminate its inconsistencies with Texas v. New Jersey. The property subject to escheat under the present California statute is that held by or owned by persons doing business in this state or otherwise subject to the jurisdiction of this state. Under Texas v. New Jersey, however, California has no right to escheat some of the abandoned property that is held by holders who are subject to its jurisdiction. On the other hand, under Texas v. New Jersey California has the right to escheat abandoned property in the hands of holders who are not subject to its jurisdiction, but the existing statute does not provide for the escheat of such property.

The amount that California will forfeit if it fails to revise its law may well be significant. California's revenue under its existing law has averaged about \$700,000 per year. New York, the only state of comparable size, has received an average income from its escheat law of over \$11,500,000

per year. See West Virginia Joint Committee on Government and Finance, Memorandum from Legislative Services Re: HCR 30 (1965) Escheat Property (September 27, 1965). The potential income from the escheat of unclaimed property is great; but the potential cannot be realized for so long as California's escheat laws do not provide for the escheat of significant amounts of property that California has the power to escheat under the Supreme Court's decision.

2. Sums payable on travelers checks and money orders purchased in California should escheat to this state if the identity of the owner or his last known address is not shown by the books and records of the issuing corporation. Funds owed on a life insurance policy or annuity contract to a person other than the insured or annuitant should escheat to this state if the identity of the person entitled to such funds or his last known address is not shown by the books and records of the insurance company and such books and records show that the last known address of the insured or annuitant was in California.

In Texas v. New Jersey, the Supreme Court was concerned with the disposition to be made of numerous small obligations of the Sun Oil Company such as obligations for wages, for goods and services, for royalties, and for dividends. In most cases, a check had been issued to the creditor but had not been cashed. The opinion indicates that the creditor was identified in each instance, but the records of the Sun Oil Company did not reveal his address in many instances.

Thus, the Supreme Court did not have before it the problems arising out of a variety of other kinds of obligations which a state might wish to escheat, including uncashed travelers checks and unclaimed insurance proceeds, where

neither the identity of the obligee nor his last known address is shown by the records of the obligor. It is possible that if and when such cases arise, the Supreme Court will determine that its holding in Texas v. New Jersey permits escheat of unclaimed obligations only by the state of the domicile of the obligor unless the books of the obligor show them to be owned by an obligee whose address is known to be in another state. On the other hand, the Supreme Court may determine that the rules developed to dispose of the unclaimed obligations of the Sun Oil Company to various identified creditors do not necessarily dispose of other kinds of unclaimed obligations of unidentified creditors, including obligations on unclaimed travelers checks and insurance proceeds. It is quite possible, therefore, that the Supreme Court will develop different rules to govern the escheat of such obligations. This recommendation is based on the belief that the Supreme Court will do so.

In the case of travelers checks and money orders, the issuing company pays on presentation of the original instrument. It is anticipated that the instruments will be negotiated--perhaps several times--before they are presented for payment. Hence, many companies do not retain for long periods of time records showing the identity and address of the original purchaser, for his identity will not be of any value in determining to whom ultimate payment should be made. Thus, it is usually impossible to apply literally the basic escheat rule stated in Texas v. New Jersey (escheat to the state of the obligee's last known address) to such instruments, for that rule depends on the retention by the debtor of a record identifying the obligee and his last known address. While the alternative rule stated in Texas v. New Jersey (permitting escheat by the state of the obligor's domicile where

the books do not show the obligee's last known address) could be applied to such obligations, such application would tend to frustrate one of the apparent purposes of the Supreme Court in formulating the rules for escheat, which was to distribute escheated obligations wherever possible among the several states in proportion to the commercial activity of their citizens. The Commission has, therefore, decided that obligations owed on travelers checks are sufficiently distinguishable from the obligations considered by the Supreme Court in Texas v. New Jersey that it is not necessary to regard the decision in that case as a constitutional limitation on the right of this state to escheat the obligations owed to unidentified creditors on unclaimed travelers checks and money orders purchased in this state.

Accordingly, the Commission recommends that sums payable on travelers checks and money orders escheat to California if the instrument was purchased here and the owner or his last known address is not shown by the books and records of the issuing company. Conversely, where a travelers check or money order is issued by a California corporation and purchased in another state, California should not undertake to escheat the unclaimed sum owing on the instrument unless the issuing company has a record showing the purchaser's identity and that his last known address is in this state.

The recommended rule will fulfill all of the reasons given by the Supreme Court for formulating the escheat rules stated in Texas v. New Jersey. The recommended rule will be administratively convenient for companies issuing travelers checks and money orders because the record of the state of purchase is a simple one to make and retain. Compliance with the last address rule of Texas v. New Jersey would require such companies to make and retain records which they do not now keep and which would serve

no purpose of the issuing companies. The recommended rule would distribute the escheat of funds due on travelers checks and money orders ratably among the states in accordance with the volume of business done by their citizens in travelers checks and money orders. As most travelers checks and money orders are purchased at or near the buyer's home, the result reached under the recommended rule would also approximate that reached under the basic rule promulgated in Texas v. New Jersey that unclaimed property should escheat to the state of the owner's last known address.

Similar considerations underlie the Commission's recommendation relating to the disposition of unclaimed funds due on insurance policies where the person entitled to the funds or his last known address is not shown on the books of the insurer. The Commission proposes that in such cases the proceeds escheat to California when the last known address of the insured or annuitant is in this state. This rule, it is believed, will usually achieve the same result as Texas v. New Jersey would achieve if the beneficiary's identity and last known address were actually shown on the books of the insurer, for insurance policies frequently name as beneficiaries persons living with or near the insured.

The Law Revision Commission recognizes that the decision in Texas v. New Jersey can be given an interpretation requiring the application of rules inconsistent with those suggested here. The Supreme Court may have intended that only the state of the debtor's domicile should have the right of escheat whenever the last known address of the creditor is not shown to be in a state providing for escheat. Thus, the court might hold that whenever the creditor is unidentified, his address cannot be shown to be in a state providing for escheat, and, hence, the state of the debtor's domicile should

have the right of escheat. Under such a construction of the court's decision, the rules recommended by the Law Revision Commission would be unconstitutional for they provide a different escheat rule in the situations to which they apply. The court might conclude that to approve the suggested distinctions from the rules stated in Texas v. New Jersey would invite a plethora of other proposed distinctions and variations by other states astute to find a basis for distinguishing particular kinds of unclaimed obligations and for claiming escheat rights not recognized in that decision; and for that reason, too, the court might decline to interpret its decision to permit California to make the escheat claims recommended here. The Commission also recognizes that the states where the obligors involved are domiciled will probably assert escheat claims to these obligations and that litigation before the United States Supreme Court will probably be necessary to determine the validity of California's claims to such obligations.

In advance of actual decisions by the Supreme Court, however, it is impossible to determine whether the Supreme Court will or will not sanction the rules recommended here to provide for the escheat of funds due on travelers checks, money orders, and insurance policies. The rules recommended by the Commission are well designed to achieve the objective set forth in Texas v. New Jersey of distributing escheats ratably among the states in proportion to the commercial activity of their residents. To hold the rules invalid as suggested would tend to concentrate the escheat of funds due on travelers checks and insurance policies into those states where the issuing companies are incorporated. Accordingly, the Commission believes that there

C

is a reasonable possibility that the validity of the proposed rules will be upheld by the Supreme Court because these rules carry out the policies underlying its decision; and, since these rules provide for a fair distribution of the property involved, the Commission believes that the hazard of an adverse decision on their validity is not a substantial objection to their enactment.

3. Other revisions of the California unclaimed property statute should be made. Although most of the recommended revisions of the California unclaimed property statute are needed to conform it to Texas v. New Jersey, a number of clarifying changes and a few changes to improve the administration of the statute are recommended. The Comments to the recommended legislation indicate the changes and the reasons for the changes.

C

4. California should join in the Unclaimed Property Compact. Since the decision in Texas v. New Jersey, the National Association of Attorneys General has proposed an unclaimed property compact that is designed to provide rules to govern those situations involving more than one state where application of the principles announced in Texas v. New Jersey does not necessarily result in a single escheat claimant. The compact is also designed to settle the status of property that was unclaimed prior to February 1, 1965, the date on which Texas v. New Jersey was decided, and to solve certain procedural problems created by that decision.

The Unclaimed Property Compact establishes a reasonably complete set of rules for determining entitlement to unclaimed property in cases of multiple state claims. It will bring order into the field and assist this state as well as other states that become signatories to the compact to secure unclaimed property to which they are entitled.

#### ESCHEAT OF PROPERTY UPON OWNER'S DEATH WITHOUT HEIRS

##### Background

Probate Code Section 231 provides that if a decedent leaves no one to take his estate or any portion thereof under the laws of this state, the same escheats to this state at the death of the decedent. In Estate of Nolan, 135 Cal. App.2d 16, 286 P.2d 899 (1955), the court held that the provisions of Section 231 are subject to the provision of Section 946 of the Civil Code, which provides:

If there is no law to the contrary, in the place where personal property is situated, it is deemed to follow the person of its owner, and is governed by the law of his domicile.

Applying Section 946, the court held that a California bank account owned by a Montana domiciliary who died without heirs escheated to the state of Montana and not to the state of California. The holding of the court was broad enough to apply to all personal property, including tangible personal property located in California.

Other states have not been as solicitous of California's escheat claims as the California court was of Montana's escheat claim in the Nolan case. In In re Rapoport's Estate, 317 Mich. 291, 26 N.W.2d 777 (1947), and in In re Menshefrend's Estate, 283 App. Div. 463, 128 N.Y.S.2d 738 (1954), the courts held that bank accounts located in Michigan and New York belonging to California domiciliaries who died without heirs escheated to Michigan and New York respectively, and not to California. Thus, under these decisions, California surrenders whatever right it has to escheat personal property located within California or in the hands of a holder located in California when the owner dies domiciled elsewhere, and California is powerless to claim the escheat of property located elsewhere that belongs to California domiciliaries who die without heirs.

The effect of the holding in Texas v. New Jersey, 379 U.S. 674 (1965), on the results reached by the California, Michigan, and New York courts is uncertain. Texas v. New Jersey involved intangible personal property which was unclaimed. The owner of the property could not be located but he might still have been alive. The California, Michigan, and New York courts, on the other hand, were concerned with property belonging to a known decedent. In each case, the administrator of that decedent was asserting a claim to

the property. There was no dispute as to the domicile of the decedent, although the last known address of the decedent shown on the records of the holder may well have differed from the address of his last domicile and from his actual last address. Accordingly, where property owned by a known decedent is involved, it is possible that the United States Supreme Court may not require distribution of the property to the state of the last known address of the decedent according to the books and records of the holder where that last known address is clearly neither the domicile nor the last address of the decedent. It is possible, too, that there may be other departures from the Texas v. New Jersey rules occasioned by the circumstance that, where a decedent's property is involved, the facts concerning the last owner are reasonably ascertainable.

#### Recommendations

Since the United States Supreme Court has not as yet formulated rules for the escheat of property of persons dying without heirs that are binding on all of the states, the Commission recommends that the California law be revised so that this state no longer loses the property of both domiciliary and nondomiciliary decedents in every case where conflicting escheat claims are asserted. Specifically, legislation should be enacted to effectuate the following principles:

1. Real property located in this state should escheat to this state when the owner dies without heirs. This is the existing law in California and in most other jurisdictions.

2. Tangible personal property that was customarily kept in this state at the time of the owner's death should escheat to this state whether or not the decedent was a domiciliary of California. Although Estate of Nolan, 135 Cal. App.2d 16, 286 P.2d 899 (1955), involved only intangible property--

a bank account--the basis of the decision was that all personal property escheats to the jurisdiction where the decedent owner was domiciled at his death. However, if a nonresident decedent customarily kept property in this state--as for example personal property kept at a vacation cabin--this state should have the right to escheat the property, not the state of domicile, because this state provided the protection for the decedent's interest in the property during his lifetime.

3. Any tangible personal property being administered and distributed by a California probate court should escheat to this state unless the jurisdiction where the decedent customarily kept the property during his lifetime claims the property and establishes that it would recognize the escheat claim of California to similar property being administered in that jurisdiction which the decedent had customarily kept in California. This type of reciprocal provision will prevent this state from surrendering any tangible personal property to the escheat claim of another state if that state will not recognize California's claims under similar circumstances.

4. Intangible property--obligations owed to a decedent--should escheat to this state if the decedent was domiciled in this state at the time of his death. Intangible property has no location, and both the obligor and obligee may be subject to the jurisdiction of several states. As indicated in Texas v. New Jersey, 379 U.S. 674 (1965), several states may have a legitimate basis for claiming intangible property. Under existing California law, the state of the decedent's domicile has the right to escheat the decedent's property. The rule is sound and should be continued. That state has usually provided the decedent with protection for his intangible rights and, therefore, should have the primary claim on those assets.

5. If the decedent was not domiciled in California at his death, but left intangible assets subject to administration and distribution by a California probate court, such property should escheat to this state unless the jurisdiction where the decedent was domiciled claims the property and establishes that it would recognize the escheat claim of California to the intangible assets of a California domiciliary when those assets are administered and distributed in that jurisdiction. Under this type of reciprocal provision, California may still recognize escheat claims--such as that of Montana in Estate of Nolan, 135 Cal. App.2d 16, 286 P.2d 899 (1955)--made by the jurisdiction of a decedent's domicile, but California will no longer recognize any such claim if the jurisdiction of domicile would not recognize a California claim in a similar situation.

#### PROPOSED LEGISLATION

The Commission's recommendations would be effectuated by enactment of the following measures:

I. UNCLAIMED PROPERTY STATUTE

An act to amend Sections 1300, 1500, 1501, 1504, and 1614 of, to amend and renumber Sections 1502, 1504, 1506, 1507, 1508, 1510, 1511, 1512, 1513, 1514, 1515, 1516, 1517, 1520, 1521, 1522, 1524, 1525, 1526, and 1527 of, to amend the heading of Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of, to add a new article heading immediately preceding Section 1500 of, to add Article 2 (commencing with Section 1510) to Chapter 7 of Title 10 of Part 3 of, to add Sections 1514, 1515, and 1517 to, to add a new article heading immediately preceding Section 1510 (renumbered Section 1530 by this act) of, to add Section 1533 to, to add Article 4 (commencing with Section 1540) to Chapter 7 of Title 10 of Part 3 of, to add Section 1541 to, to add a new article heading immediately preceding Section 1513 (renumbered Section 1560 by this act) of, to add Sections 1561 and 1566 to, to add a new article heading immediately preceding Section 1515 (renumbered Section 1570 by this act) of, to add Sections 1572, 1573, 1574, and 1575 to, to add a new article heading immediately preceding Section 1525 (renumbered Section 1580 by this act) of, and to repeal Sections 1503, 1505, 1509, 1518, 1519, and 1523 of, the Code of Civil Procedure and to amend Section 3081 of the Civil Code, relating to unclaimed property.

The people of the State of California do enact as follows:

§ 1300 (amended)

SECTION 1. Section 1300 of the Code of Civil Procedure is amended to read:

1300. For the purposes of this title, the following definitions shall apply:

(a) "Property," unless specifically qualified, includes all classes of property, real, personal, and mixed.

(b) "Unclaimed property," unless specifically qualified, means all property (1) which is unclaimed, abandoned, ~~presumptively-abandoned,~~ escheated, permanently escheated, or distributed to the state, or (2) which, under any provision of law, will become unclaimed, abandoned, ~~presumptively-abandoned,~~ escheated, permanently escheated, or distributed to the state, or (3) to the possession of which the state is or will become entitled, if not claimed by the person or persons entitled thereto within the time allowed by law, whether or not there has been a judicial determination that such property is unclaimed, abandoned, ~~presumptively-abandoned,~~ escheated, permanently escheated, or distributed to the state; ~~but such term does not include property which is subject to escheat under the provisions of an act entitled "An act relating to the rights, powers and disabilities of aliens and of certain companies, associations and corporations with respect to property in this state, providing for escheats in certain cases, prescribing procedure therein, requiring reports of certain property holdings to facilitate the enforcement of this act, prescribing penalties for violation of the provisions hereof, and repealing all acts or parts of acts inconsistent or in conflict herewith," approved by electors November 2, 1920, as amended.~~

(c) "~~Escheated,~~" "Escheat," unless specifically qualified, means "~~title-to-which-has-vested-in-the-State,~~" the vesting in the state of title to property the whereabouts of whose owner is unknown or whose owner is unknown, whether by judicial determination or by operation of law, subject ~~,-however,-~~ to the right of claimants to appear and claim the escheated property or any portion thereof ~~,-as provided-in-this-title .~~ When used in reference to the law of another state, "escheat" includes the transfer to the state of the right to the custody of such property.

(d) "~~Permanently-escheated"~~ "Permanent escheat" means "~~title-to-which-has-vested-absolutely-in-the-State"~~ the absolute vesting in the state of title to property the whereabouts of whose owner is unknown or whose owner is unknown, pursuant to judicial determination, pursuant to a proceeding of escheat as provided by Chapter 5, or pursuant to operation of law, ~~after-the-period-has-elapsed-during-which-claimants may-appear-and-claim-the-property,-or-any-portion-thereof,-as-provided in-this-title~~ and the barring of all claims to the property by the former owner thereof or his successors .

(e) "Controller" means the State Controller ~~,-and .~~

(f) "Treasurer" means the State Treasurer.

(g) "Domicile," in the case of a corporation, refers to the place where the corporation is incorporated.

Comment. Section 1300 is amended to permit more convenient use of the defined terms in Chapter 7 (commencing with Section 1500) of this title.

The term "presumptively abandoned" has been deleted from subdivision (b) because it is no longer used, as it formerly was, in the substantive provisions relating to the escheat of abandoned property. The reference to the initiative act approved in 1920 has been deleted from subdivision (b) because it is obsolete. The act referred to was declared unconstitutional (Sei Fujii v.

State, 38 Cal.2d 718, 242 P.2d 617 (1952)) and has been repealed (Cal. Stats. 1955, Ch. 316, §§ 1-2, p. 767; Cal. Stats. 1957, p. cxxxvii).

The definitions in subdivisions (c) and (d) have been broadened to include escheats under the law of other states as well as escheats under the law of this state; for under Sections 1510, 1511, and 1512, the right of California to escheat certain intangible property depends on whether such property is subject to escheat under the law of another state. Under the laws of some states, the right to the custody of abandoned property vests in the state after the property has remained unclaimed for a requisite period of time, but the state never acquires the technical title to the property. The revised definition in subdivision (c) makes it clear that the acquiring of the right to custody is included in the term "escheat."

In Texas v. New Jersey, 379 U.S. 674 (1965), the Supreme Court referred to the state of incorporation as the corporation's domicile. Subdivision (g) codifies this rule to facilitate reference to it in Chapter 7 (commencing with Section 1500).

§ 1500

CHAPTER 7. UNCLAIMED PROPERTY LAW

SEC. 2. The heading of Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure is amended to read:

CHAPTER 7. ~~UNIFORM-DISPOSITION-OF~~ UNCLAIMED PROPERTY ACT LAW

ARTICLE 1. SHORT TITLE; DEFINITIONS; APPLICATION

SEC. 3. A new article heading is added immediately preceding Section 1500 of the Code of Civil Procedure, to read:

ARTICLE 1. SHORT TITLE; DEFINITIONS; APPLICATION

§ 1500. Short title

SEC. 4. Section 1500 of the Code of Civil Procedure is amended to read:

1500. This chapter may be cited as the Uniform Disposition of Unclaimed Property Act Law . ~~None of the provisions of this chapter shall apply to any type of property received by the state under the provisions of Chapters 1 to 6, inclusive, of this title.~~

Comment. The short title of the chapter has been revised to reflect the fact that the chapter is no longer substantially the same as the Uniform Disposition of Unclaimed Property Act promulgated by the National Conference of Commissioners on Uniform State Laws.

The second sentence of this section has been recodified as subdivision (c) of Section 1502.

SEC. 5. Section 1501 of the Code of Civil Procedure is amended to read:

1501. As used in this chapter, unless the context otherwise requires:

(a) "Apparent owner" means the person who appears from the books and records of the holder to be entitled to property held by the holder.

~~(a)~~(b) "Banking organization" means any national or state bank, trust company, banking company, savings bank, safe deposit company, or a private banker engaged in business in this State, or any similar organization.

~~(b)~~(c) "Business association" means any private corporation (other than a public corporation or utility), joint stock company, business trust, partnership, or any association for business purposes of two or more individuals, whether or not for profit, including, but not by way of limitation, a banking organization, financial organization, and insurance corporation.

~~(e)~~(d) "Financial organization" means any federal or state savings and loan association, building and loan association, credit union, or investment company engaged in business in this State, or any similar organization.

(e) "Government or governmental subdivision or agency" does not include the United States government or any officer, department, or agency thereof.

~~(a)~~ (f) "Holder" means any person in possession of property subject to this chapter belonging to another, or who is trustee in case of a trust, or is indebted to another on an obligation subject to this chapter.

~~(e)~~(g) "Life insurance corporation" means any association or corporation transacting within this State the business of insurance on the lives of persons or insurance appertaining thereto, including, but not by way of limitation, endowments and annuities.

(f) "Owner" means a depositor in case of a deposit, a beneficiary in case of a trust, or creditor, claimant, or payee in case of other choses in action, or any person having a legal or equitable interest in property subject to this chapter, or his legal representative.

(g) (h) "Person" means any individual, business association, government or ~~political~~ governmental subdivision or agency, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity ~~other than any public corporation or utility~~, whether such person is acting in his own right or in a representative or fiduciary capacity.

(h)(i) "Utility" means any person who owns or operates ~~within this State~~, for public use, any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas, whose rates are regulated by the Public Utilities Commission of this state or by a similar public agency of another state or of the United States.

Comment. The definitions in Section 1501 have been revised to reflect the fact that the revised chapter applies to persons in other states who are holding property belonging to another. All of the definitions have been revised, therefore, to eliminate any requirement that such persons be engaged in business in California.

Subdivision (a) has been added to facilitate reference to the person who appears from the holder's records to be the person entitled to the property held by the holder. The right of this state to escheat unclaimed property depends on the information the holder has concerning the apparent owner identified on its records. That he may have transferred his interest to another without notice to the holder is of no consequence for escheat purposes. Of course, nothing in this statute prevents the true owner from asserting his claim to the property and recovering it from the holder or the Controller. See Sections 1540, 1560.

The listing of certain additional organizations in subdivision (b) is intended to be clarifying and to eliminate whatever doubts there may be that the mentioned organizations are covered by the subdivision.

The reference to "utility" has been deleted from subdivision (c) as unnecessary in light of subdivision (b) of Section 1502. The other revisions of subdivision (c) are nonsubstantive, clarifying changes.

The words "federal or state" have been added to subdivision (d) to eliminate any uncertainty concerning whether all such organizations are covered by the chapter.

Subdivision (e) excludes the federal government and its agencies from the operation of this statute because the escheat of property in federal custody is governed by Sections 1600 et seq.

The definition of "owner" has been deleted from the section as unnecessary. As used in context, the meaning of the word is clear.

The reference to "any public corporation or utility" has been deleted from subdivision (h) as unnecessary in the light of Section 1502. The other revisions of subdivision (h) are nonsubstantive, clarifying changes.

Subdivision (i) has been revised to limit the definition to utilities whose rates are regulated by public rate-fixing agencies.

§ 1502. Application of chapter

SEC. 6. Section 1526 of the Code of Civil Procedure is renumbered and amended to read:

~~1526.~~ 1502. (a) This chapter shall does not apply to :

(1) Any property that ~~has-been-presumed-abandoned-or~~ was escheated under the laws of another state prior to ~~the-effective-date-of-this chapter;~~ ~~nor-shall-this-chapter-apply-to~~ September 18, 1959.

(2) Any property in the official custody of a municipal utility district ; ~~nor-to~~ .

(3) Any property in the official custody of a local agency if such property may be transferred to the General Fund of such agency under the provisions of Sections 50050-50053 of the Government Code.

(b) This chapter does not apply to any property held by a utility which the Public Utilities Commission of this state or a similar public agency of another state or of the United States permits or requires to be, and which is, used or applied directly or indirectly for the benefit of the ratepayers in determining the rates to be charged by the utility.

(c) None of the provisions of this chapter apply to any type of property received by the state under the provisions of Chapters 1 to 6, inclusive, of this title.

Comment. Subdivision (a) of Section 1502 is substantially the same as former Section 1526.

Subdivision (b) has been added to meet a problem that was met under the previous law by excluding utilities from the operation of this chapter

entirely. This subdivision contains a limitation not found in the prior law: The "utility exemption" is limited to property that is used or applied for the benefit of the ratepayers in determining the rates to be charged by the utility. This limitation has been added to assure that the unclaimed property which is covered by the exception will actually be used for the benefit of the rate payers and not as a windfall to the utility stockholders.

Subdivision (c) is the same in substance as the second sentence of former Code of Civil Procedure Section 1500. Although the provisions of this chapter do not apply to any type of property received by the state under Chapters 1-6 of this title, certain provisions in those chapters apply to this chapter. For example, Section 1300 provides that its definitions apply throughout this title. Therefore, the definition of "escheat" that appears in that section governs the construction of this chapter as well as the construction of the other chapters in this title.

§ 1510

ARTICLE 2. ESCHEAT OF UNCLAIMED PERSONAL PROPERTY

SEC. 7. Article 2 (commencing with Section 1510) is added to Chapter 7 of Title 10 of Part 3 of the Code of Civil Procedure, to read:

ARTICLE 2. ESCHEAT OF UNCLAIMED PERSONAL PROPERTY

§ 1510. General conditions for escheat of intangible personal property

1510. Unless otherwise provided by statute of this state, intangible personal property escheats to this state under this chapter if the conditions for escheat described in Sections 1513 to 1520, inclusive, are satisfied, and if:

(a) The last known address of the apparent owner as shown on the records of the holder is in this state.

(b) No address of the apparent owner appears on the records of the holder and:

(1) The last known address of the apparent owner is in this state; or

(2) The holder is domiciled in this state; or

(3) The holder is a government or governmental subdivision or agency of this state.

(c) The last known address of the apparent owner as shown on the records of the holder is in a state designated by regulation adopted by the State Controller as a state that does not provide by law for the escheat of such property, and the holder is (1) domiciled in this state, or (2) a government or governmental subdivision or agency of this state.

(d) The last known address of the apparent owner as shown on the records of the holder is in a state designated by regulation adopted by the State Controller as a state that is a party to the Unclaimed Property Compact (Section 1620), the holder is not subject to the jurisdiction of that state, and the holder is (1) domiciled in this state or (2) a government or governmental subdivision or agency of this state.

(e) The last known address of the apparent owner as shown on the records of the holder is in a foreign nation, and the holder is (1) domiciled in this state, or (2) a government or governmental subdivision or agency of this state.

Comment. Subdivisions (a), (b), and (c) of Section 1510 describe types of abandoned intangible property that this state may claim by escheat under the rules laid down in Texas v. New Jersey, 379 U.S. 674 (1965). The United States Supreme Court held in that case that intangible personal property that has not been claimed by its owner is subject to escheat by the state of the last known address of the owner as indicated by the books and records of the debtor. Where the books and records of the debtor do not provide a record of the owner's last address, the Supreme Court held that the property is subject to escheat by the state where the debtor is domiciled; but in such a case the state of actual last known address may escheat the property and recover it from the state of the debtor's domicile by showing the location of the actual last known address. Where the laws of the state of last known address as shown on the debtor's records do not provide for escheat of intangible property, the Supreme Court held that such property is subject to escheat by the state where the debtor is domiciled; but in such a case the state of such last known address may thereafter claim the property if it later enacts an escheat law.

Section 1580 requires the Controller to designate by regulation those states whose laws do not provide for the escheat of any kind of intangible property described in Sections 1513 to 1520. Under subdivision (c), such property does not escheat to this state unless such regulations have been adopted. Thus, holders in this state will be able to determine whether

§ 1510

property being held by them escheats to this state by reference to the Controller's regulations. It will be unnecessary for holders in this state to keep abreast of all of the escheat laws of the other states in the union.

Subdivision (d) is the substantive escheat provision that provides for the escheat to this state of property described in the Unclaimed Property Compact. See Section 1620. The Controller's regulations will also enable holders in this state to determine whether property being held by them escheats to this state under the compact.

Subdivision (e) relates to a problem that was not decided in Texas v. New Jersey. Subdivision (e) provides for the escheat to this state of intangible property held by a domiciliary of this state and owned by a person whose last known address was in a foreign nation.

§ 1511

§ 1511. General conditions for escheat of travelers checks and money orders

1511. (a) Except where the records of the holder show a last known address of the apparent owner of a travelers check or money order that is outside this state, any sum payable on a travelers check or money order escheats to this state under this chapter if:

(1) The conditions for escheat described in Section 1513 are satisfied; and

(2) The travelers check or money order was purchased in this state.

(b) Notwithstanding Section 1510, when a travelers check or money order is issued by a person domiciled in this state and is purchased in another state, any sum payable on the travelers check or money order does not escheat to this state if the state where it was purchased has a valid statute which provides for the escheat to that state of such sum. This subdivision does not apply where the records of the person issuing the travelers check or money order show a last known address of the apparent owner that is in this state; and, in such case, any sum payable on the travelers check or money order escheats to this state in accordance with Section 1510.

Comment. Section 1511 deals with the situation where the person entitled to the proceeds of a travelers check or money order, or his last known address, is not shown on the records of the holder. In this situation, Section 1511 provides for escheat by the state where the travelers check or money order was purchased. If the records of the holder show an address for the apparent owner, Section 1511 is inapplicable and the property will escheat in a accordance with Section 1510.

§ 1512

§ 1512. General conditions for escheat of funds held by life insurance corporations

1512. (a) Notwithstanding Section 1510, funds held and owing by a life insurance corporation to a person other than the insured or annuitant escheat to this state under Section 1515 if:

(1) No address of the apparent owner of the funds is shown on the records of the corporation or it is not definite and certain from the records of the corporation what person is entitled to the funds; and

(2) The last known address of the insured or annuitant according to the records of the corporation is in this state.

(b) Notwithstanding Section 1510, funds held and owing by a life insurance corporation to a person other than the insured or annuitant do not escheat to this state under Section 1515 if:

(1) No address of the apparent owner of the funds is shown on the records of the corporation or it is not definite and certain from the records of the corporation what person is entitled to the funds; and

(2) The last known address of the insured or annuitant according to the records of the corporation is in another state and that state has a valid statute which provides for the escheat to that state of the funds.

Comment. Section 1512 restates the substance of the second sentence of subdivision (a) of former Section 1503. Section 1512 deals with two situations: the first is where no one can be identified from the records of the life insurance corporation as the person entitled to funds that are subject to escheat under Section 1515; the second is where some person,

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other than the insured or annuitant, is identified on the records of the corporation as the person apparently entitled to the funds, but the corporation's records do not show that person's address. In both of these situations, Section 1512 provides that the funds escheat to the state where the last address shown on the records of the corporation for the insured or annuitant is located.

In other situations--where the insured or annuitant is the person entitled to the funds, where the corporation's records show an address for the person apparently entitled to the funds, where the corporation's records do not show an address for the insured or annuitant, etc.--Section 1512 is inapplicable and the property will escheat in accordance with Section 1510.

§ 1513. Property held by banking or financial organizations; travelers checks

SEC. 8. Section 1502 of the Code of Civil Procedure is renumbered and amended to read:

~~1502.~~ 1513. ~~The~~ Subject to Sections 1510 and 1511, the following property held or owing by a ~~banking-or-financial-organization-or~~ business association ~~is presumed abandoned~~ escheats to this state :

(a) Any demand, savings, or matured time deposit made ~~in this~~ State with a banking organization, together with any interest or dividends thereon, excluding any reasonable service charges which may lawfully be withheld and which do not (where made in this state) exceed those set forth in schedules filed by the banking organization from time to time with the State Controller, ~~unless when~~ the owner ~~has,~~ within , for more than 15 years , has not :

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

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

(3) Otherwise indicated an interest in the deposit as evidenced by a memorandum or other record on file with the banking organization.

(b) Any funds paid ~~in this State~~ toward the purchase of shares or other interest in a financial organization or any deposit made therewith ~~in this State~~ , and any interest or dividends thereon, excluding any reasonable service charges which may lawfully be withheld and which do not (where paid or made in this state) exceed those set forth in schedules filed by the financial organization from time to time with the State Controller, ~~unless (when~~ the owner ~~has within , for more than 15~~ years , has not :

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

(2) Corresponded in writing with the financial organization concerning the funds or deposit; or

(3) Otherwise indicated an interest in the funds or deposit as evidenced by a memorandum or other record on file with the financial organization.

(c) Any sum payable on any travelers check ~~s~~ issued in this State by a business association maintaining its principal place of business in this State, ~~or issued in this State by a banking or financial organization,~~ that has been outstanding for more than 15 years from the date of its issuance, ~~unless when the owner has within~~ for more than 15 years , ~~has not~~ corresponded in writing with the business association ~~or banking or financial organization~~ concerning it, or otherwise indicated an interest as evidenced by a memorandum or other record on file with such ~~organization or~~ association.

(d) Any sum payable on any other written instruments issued in this State on which a banking or financial organization is directly liable, including, by way of illustration but not of limitation, drafts, certified checks, and money orders, that has been outstanding for more ~~than~~ seven years from the date it was payable, or from the date of its issuance if payable on demand, excluding any charges that may lawfully be withheld, ~~unless when the owner has within~~ for more than seven years , ~~has not~~ corresponded in writing with the banking or financial organization concerning it, or otherwise indicated an interest as evidenced by a memorandum or other record on file with the banking or financial organization.

§ 1513

~~(e)--Any funds or other personal property, tangible or intangible, after discharge of any lien or liens for storage charges, removed from a safe deposit box or any other safekeeping repository or agency or collateral deposit box in this State on which the lease or rental period has expired due to nonpayment of rental charges or other reason, that have been unclaimed by the owner for more than seven years from the date on which the lease or rental period expired.~~

~~Nothing in this section shall be construed to relate to any instrument held or payable only outside the limits of the United States or payable only in currency other than United States currency, nor to any funds held only in or payable only in a foreign country.~~

Comment. Section 1513 is substantially the same as former Section 1502. The revisions made to the section are either clarifying changes or revisions needed to make the section applicable to property held by out-of-state businesses as well as property held by businesses within this state. Former subdivision (e) is superseded by Section 1514. The last sentence (relating to instruments held or payable only outside the limits of the United States or payable only in currency other than United States currency and to funds held only in or payable only in a foreign country) has been deleted because this provision is not contained in the Uniform Act and abandons California's claim to property that it is constitutionally entitled to take.

§ 1514. Contents of safe deposit boxes

SEC. 9. Section 1514 is added to the Code of Civil Procedure, to read:

1514. The contents of any safe deposit box or any other safe-keeping repository, held in this state by a business association, escheat to this state if unclaimed by the owner for more than seven years from the date on which the lease or rental period on the box or other repository expired.

Comment. Section 1514 is substantially the same as subdivision (e) of former Section 1502 except that "contents" has been substituted for "any funds or other personal property, tangible or intangible."

Section 1533 grants the State Controller the right to reject tangible personal property that escheats under Section 1514 when he determines that the state's interest would not be served by accepting it.

§ 1503 (repealed)

SEC. 10. Section 1503 of the Code of Civil Procedure is repealed.

1503. (a) Unclaimed funds, as defined in this section, held and owing by a life insurance corporation shall be presumed abandoned if the last known address, according to the records of the corporation, of the person entitled to the funds is within this State. If a person other than the insured or annuitant is entitled to the funds and no address of such person is known to the corporation or if it is not definite and certain from the records of the corporation what person is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the corporation.

(b) "Unclaimed funds," as used in this section, means all moneys held and owing by any life insurance corporation unclaimed and unpaid for more than seven years after the moneys became due and payable as established from the records of the corporation under any life or endowment insurance policy or annuity contract which has matured or terminated. A life insurance policy not matured by actual proof of the death of the insured is deemed to be matured and the proceeds thereof are deemed to be due and payable if such policy was in force when the insured attained the limiting age under the mortality table on which the reserve is based, unless the person appearing entitled thereto has within the preceding seven years, (1) assigned, readjusted, or paid premiums on the policy, or subjected the policy to loan, or (2) corresponded in writing with the life insurance corporation concerning the policy. Moneys otherwise payable according to the records of the corporation are deemed due and payable although the policy or contract has not been surrendered as required.

Comment. Section 1503 is superseded by Sections 1512 and 1515.

§ 1515. Unclaimed funds held by life insurance corporations

SEC. 11. Section 1515 is added to the Code of Civil Procedure, to read:

1515. (a) Subject to Sections 1510 and 1512, any funds held and owing by any life insurance corporation under any life or endowment insurance policy or annuity contract which has matured or terminated escheat to this state if unclaimed and unpaid for more than seven years after the funds became due and payable as established from the records of the corporation.

(b) A life insurance policy not matured by actual proof of the death of the insured or annuitant according to the records of the corporation is deemed to be matured and the proceeds thereof are deemed to be due and payable if:

(1) The insured has attained, or would have attained if he were living, the limiting age under the mortality table on which the reserve is based;

(2) The policy was in force at the time the insured attained, or would have attained, the limiting age specified in paragraph (1); and

(3) Neither the insured nor any other person appearing to have an interest in the policy has, within the preceding seven years, (i) assigned, readjusted, or paid premiums on the policy, (ii) subjected the policy to loan, or (iii) corresponded in writing with the life insurance corporation concerning the policy.

(c) Any funds otherwise payable according to the records of the corporation are deemed due and payable although the policy or contract has not been surrendered as required.

Comment. Section 1515, together with Section 1512, restates the substance of former Section 1503 with such modifications as are necessary to provide for the escheat of property held by out-of-state life insurance corporations.

§ 1516. Undistributed dividends and distributions of business associations

SEC. 12. Section 1504 of the Code of Civil Procedure is renumbered and amended to read:

~~1504.~~ 1516. (a) Any Subject to Section 1510, any dividend, profit, distribution, interest, payment on principal, or other sum held or owing by a business association for or to its shareholder, certificate holder, member, bondholder, or other security holder, or a participating patron of a co-operative, who has not claimed it, or corresponded in writing with the business association concerning it, within seven years after the date prescribed for payment or delivery, escheats to this state. ~~is presumed abandoned if:~~

~~(1)--It is held or owing by a business association organized under the laws of or created in this State; or~~

~~(2)--It is held or owing by a business association doing business in this State, including a national banking association, but not organized under the laws of or created in this State, and the records of the business association indicate that the last known address of the person entitled thereto is in this State.~~

(b) Any Subject to Section 1510, any intangible interest in a business association, as evidenced by the stock records or membership records of the association, owned by a person who has not claimed a dividend or other sum escheated ~~presumed abandoned~~ under subdivision paragraph (a) of this section, and who has not corresponded in writing with the business association concerning such interest for 15 years following the time such dividend or other sum escheated, ~~escheats to this state.~~ With respect to such interest, the business association shall be deemed the holder. ~~was presumed abandoned, is presumed abandoned if:~~

~~(1)--The business association was organized under the laws of or created in this State; or~~

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(2) ~~The business association is doing business in this State, including a national banking association, but was not organized under the laws of or created in this State, and the records of the business association indicate that the last known address of the person entitled to such interest is in this State.~~

~~For the purposes of this chapter the business association with respect to such interest shall be deemed a holder.~~

(c) Any Subject to Section 1510, any dividends or other distributions held for or owing to a person at the time the stock or other security to which they attach ~~became presumptively abandoned are also presumed abandoned~~ escheats to this state also escheat to this state as of the same time.

Comment. Section 1516 is substantially the same as former Section 1504. The revisions made to the section are those necessary to provide for the escheat of property held by out-of-state business associations as well as business associations within this state.

§ 1505 (repealed)

SEC. 13. Section 1505 of the Code of Civil Procedure is repealed.

~~1505.---All-intangible-personal-property-distributable-in the  
course-of-a-voluntary-dissolution-of-a-business-association,-banking  
organization,-or-financial-organization-organized-under--the-laws  
of-or-created-in-this-State, that-is-unclaimed-by-the-owner  
within-two-years-after-the-date-for-final-distribution,-is-presumed  
abandoned.~~

Comment. Section 1505 is superseded by Section 1517.

§ 1517

§ 1517. Property of business associations held in course of dissolution

SEC. 14. Section 1517 is added to the Code of Civil Procedure, to read:

1517. All tangible personal property located in this state, and, subject to Section 1510, all intangible property, distributable in the course of a voluntary or involuntary dissolution or liquidation of a business association that is unclaimed by the owner within six months after the date of final distribution or liquidation escheats to this state.

Comment. Section 1517 is similar to former Section 1505. Unlike the former section, however, Section 1517 applies to tangible personal property located in this state as well as to intangible personal property. Section 1517 also extends the state's escheat claim to property distributable by any business association whether or not organized under the laws of this state. Section 1517 provides that the property escheats six months after final distribution or liquidation of the business association's assets. Under the former section, the state's claim to the property did not arise until two years after the date for final distribution. Inasmuch as property escheated to this state under Section 1517 remains subject to the owner's claim, there appears to be no reason to further postpone the transfer of the custody of the property to the state.

Section 1533 grants the State Controller the right to reject tangible personal property that escheats under Section 1517 when he determines that the state's interest would not be served by accepting it.

§ 1518. Property held by fiduciaries

SEC. 15. Section 1506 of the Code of Civil Procedure is renumbered and amended to read:

~~1506.~~ 1518. (a) Subject to Section 1510, All any intangible personal property, and or any income or increment ~~thereof~~ of any property , held in a fiduciary capacity for the benefit of another person ~~is presumed abandoned unless~~ escheats to this state if the owner has not , within seven years after it becomes payable or distributable, ~~increased or decreased the principal,~~ accepted payment ~~of principal or income,~~ or distribution of some portion thereof, corresponded in writing concerning the property, or otherwise indicated an interest as evidenced by a memorandum or other record on file with the fiduciary ; .

~~(a)--If the property is held by a business association, banking organization, or financial organization organized under the laws of or created in this State; or~~

~~(b)--If it is held by a business association, banking organization, or financial organization (including a national banking association) doing business in this State, but not organized under the laws of or created in this State, and the records of the business association, banking organization, or financial organization indicate that the last known address of the person entitled thereto is in this State; or~~

~~(c)--If it is held in this State by another person.~~

(b) For the purpose of this section, when a banking organization (including a national banking association), a business association, or a person holds the above-described intangible property as an agent for a business association, such holder shall be he is deemed to

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hold such property in a fiduciary capacity for the business association alone, unless the agreement between ~~such-a-holder~~ him and ~~such-a~~ the business association clearly provides the contrary. ~~In-the-event-such~~  
For the purposes of this chapter, if a person holds property is-deemed held in a fiduciary capacity for the a business association alone, he is the holder of the property only insofar as the interest of the business association in such property is concerned and the such association shall-be is deemed to be the holder of such the property for-all-purposes-contemplated-by-this-chapter insofar as the interest of any other person in the property is concerned .

Comment. Section 1518 is substantially the same as former Section 1506. The revisions made to the section are those necessary to clarify its meaning and to make the section applicable to fiduciaries and business associations wherever located.

§ 1519. Property held by any government or governmental subdivision or agency

SEC. 16. Section 1507 of the Code of Civil Procedure is renumbered and amended to read:

~~1507.~~ 1519. ~~Subject to the provisions of Section 1526, all~~  
All tangible personal property located in this state, and, subject to Section 1510, all intangible personal property, held for the owner by any court, public corporation, public authority, or public officer of this state, or a political subdivision thereof government or governmental subdivision or agency, that has remained unclaimed by the owner for more than seven years is presumed abandoned escheats to this state.

Comment. Section 1519 is substantially the same as former Section 1507. The section is modified to make it applicable to tangible as well as intangible property and to make it applicable to intangible property no matter where the holder of such property may be located.

Section 1533 grants the State Controller the right to reject tangible personal property that escheats under Section 1519 when he determines that the state's interest would not be served by accepting it.

It should be noted that this chapter does not apply to certain property in the custody of certain governmental entities. See Section 1502.

§ 1520. Other property held for another person

SEC. 17. Section 1508 of the Code of Civil Procedure is renumbered and amended to read:

~~1508.~~ 1520. All tangible personal property located in this state and, subject to Section 1510, all intangible personal property, except property of the classes mentioned in Sections ~~1502,-1503,-1504, 1505,-1506,-and-1507-of-this-code~~ 1513, 1514, 1515, 1516, 1517, 1518, and 1519 , including any income or increment thereon and deducting any lawful charges, that is held or owing ~~in this State~~ in the ordinary course of the holder's business and has remained unclaimed by the owner for more than seven years after it became payable or distributable ~~is presumed abandoned~~ escheats to this state .

Comment. Section 1520 is substantially the same as former Section 1508. The section is modified to make it applicable to tangible as well as intangible property and to make it applicable to intangible property no matter where the holder of such property may be located.

Section 1533 grants the State Controller the right to reject tangible personal property that escheats under Section 1520 when he determines that the state's interest would not be served by accepting it.

§ 1509 (repealed)

SEC. 18. Section 1509 of the Code of Civil Procedure is repealed.

~~1509.--If specific property which is subject to the provisions of Sections 1502, 1504, 1505, 1506, and 1508 of this code is held for or owed or distributable to an owner whose last known address is in another state by a holder who is subject to the jurisdiction of that state, the specific property is not presumed abandoned in this State and subject to this chapter if:~~

~~(a)--It may be claimed as abandoned or escheated under the laws of such other state; and~~

~~(b)--The laws of such other state make reciprocal provision that similar specific property is not presumed abandoned or escheatable by such other state when held for or owed or distributable to an owner whose last known address is within this State by a holder who is subject to the jurisdiction of this State.~~

Comment. Section 1509 is inconsistent with the Supreme Court's decision in Texas v. New Jersey, 379 U.S. 674 (1965), and the revisions made in this chapter to conform to that decision. Hence, Section 1509 is repealed.

§ 1530

ARTICLE 3. IDENTIFICATION OF ESCHEATED PROPERTY

SEC. 19. A new article heading is added immediately preceding Section 1510 of the Code of Civil Procedure, which section is renumbered as Section 1530 by this act, to read:

ARTICLE 3. IDENTIFICATION OF ESCHEATED PROPERTY

§ 1530. Report of escheated property

SEC. 20. Section 1510 of the Code of Civil Procedure is renumbered and amended to read:

~~1510.~~ 1530. (a) Every person holding funds or other property ~~, -tangible-or-intangible,-presumed-abandoned~~ escheated to this state under this chapter shall report to the State Controller with respect to the property as hereinafter provided.

(b) The report shall be on a form prescribed by or approved by the Controller verified and shall include:

(1) Except with respect to travelers checks and money orders, the name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of value of more than ten dollars (\$10) ~~or-merely-presumed abandoned~~ escheated under this chapter; .

(2) In case of ~~unclaimed~~ escheated funds of life insurance corporations, the full name of the insured or annuitant , and his last known address , according to the life insurance corporation's records;

(3) In case of ~~money-or-other-personal-property-removed-from~~ the contents of a safe deposit box or other safekeeping repository or agency in the case of other tangible property , ~~reference-to a description of such property and the place where it is held and may be inspected by the State Controller~~ . The report shall set forth any amounts owing to the holder for unpaid rent or storage charges and for the cost of opening the safe deposit box or other safekeeping repository, if any, in which the property was contained .

(4) The nature and identifying number, if any, or description of the any intangible property and the amount appearing from the records to be due, except that items of value under of ten dollars (\$10) or less each may be reported in aggregate ; .

(5) Except for any property reported in the aggregate, the date when the property became payable, demandable, or returnable, and the date of the last transaction with the owner with respect to the property ; .  
and

(6) Other information which the State Controller prescribes by rule as necessary for the administration of this chapter.

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

(d) The report shall be filed before November 1st of each year as of June 30th or fiscal year-end next preceding, but the report of life insurance corporations shall be filed before May 1st of each year as of December 31st next preceding. The State Controller may postpone the reporting date upon his own motion or upon written request by any person required to file a report.

~~(e) -- If the holder of property presumed abandoned under this chapter knows the whereabouts of the owner and if the owner's claim has not been barred by the statute of limitations, the holder shall, before filing the annual report, communicate with the owner and take necessary steps to prevent abandonment from being presumed. -- The holder shall exercise reasonable diligence to ascertain the -- whereabouts of the owner.~~

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

~~(g)--The initial report filed under this chapter shall include all items of property held for another person which are ascertainable from the available records of the holder, which items of property would have been presumed abandoned if this chapter had been in effect at and after the time such property first became payable, demandable or returnable; provided, that only such moneys which first became unclaimed funds, as that term is defined in this chapter, within three years preceding the effective date of this chapter must be included within the initial report and any other moneys constituting unclaimed funds as thus defined may be included within the initial or any subsequent report and if so included the holder shall be entitled to the protection afforded by Section 1513.--All items of property, less proper charges and offsets, other than unclaimed funds, which on January 1, 1949 appeared from the available records to be held for another person and were thereafter without notice to the owner or without prior approval of any regulatory or licensing authority of this State transferred or credited by the holder directly to capital or surplus or undivided profits shall be deemed to be subject to the provisions of this chapter and shall be included within the initial report.~~

Comment. Section 1530 is substantially the same as former Section 1510.

The changes made in the section are, for the most part, technical and are necessary to conform the section to the remainder of the chapter.

The items that a holder may report in the aggregate have been changed from those of less than \$10 to those of \$10 or less, so that the items that do not have to be separately stated will be those that correspond with the amount the Controller may charge for servicing the property under Section 1540(c).

Subdivision (b)(1) has been revised to incorporate the substance of an amendment (relating to travelers checks and money orders) made by the National Conference of Commissioners on Uniform State Laws to the Uniform Disposition of Unclaimed Property Act. See 26 Suggested State Legislation D-31 (1967).

Former subdivision (e) has been omitted because subdivision (e) of Section 1531 requires the Controller to notify owners of any substantial sums subject to escheat.

Former subdivision (g) has been omitted because it was a temporary provision governing the property subject to the reporting requirement as of September 18, 1959. Section 52 of this act preserves the force of subdivision (g) to the extent that it is needed.

§ 1531. Notice and publication of lists of unclaimed property

SEC. 21. Section 1511 of the Code of Civil Procedure is renumbered and amended to read:

~~1511.~~ 1531. (a) Subject to Section 1533, within 120 days from the final date for filing the reports required by Section 1510 1530 , the State Controller shall cause a notice to be published at least once each week for two successive weeks in an English language newspaper of general circulation in ~~the~~ each county in this state in which is located :

(1) The last known address , as listed in the reports, of any person to-be named in the notice: reports as the apparent owner of property escheated to this state under this chapter; or

(2) If no address of any apparent owner named in the reports is listed , or if the address listed in the reports for any apparent owner named therein is outside this state, the-notice-shall-be-published in-the-county-in-which-the-holder-of-the-abandoned-property-has-his the principal place of business within this state of the holder of the owner's property .

(b) The Each published notice shall be entitled "notice of names of persons appearing to be owners of abandoned unclaimed property," and shall contain :- (1) the names in alphabetical order and last known addresses , if any, of :

(1) Those apparent owners persons listed in the reports and entitled-to-notice-as having a last known address within the county as hereinbefore-specified ;

(2) Those apparent owners listed as having a last known address outside this state or as having no last known address in a report filed by a holder with his principal place of business within the county; and

(3) The insured or annuitant in the case of funds described in

Section 1515 if:

(a) The report does not list the name of ~~the~~ apparent owner of the funds and his last known address; and

(b) The last known address of the insured or annuitant is within t  
county.

(c) Each published notice shall also contain:

~~(2)~~ (1) A statement that information concerning the amount or description of the property and the name and address of the holder may be obtained by any persons possessing an interest in the property by addressing an inquiry to the State Controller.

~~(3)~~ (2) A statement that if proof of claim is not presented by the owner to the holder and if the owner's right to receive the property is not established to the holder's satisfaction ~~within 65 days from the date of the second published notice,~~ before a date specified in the notice (which shall be the date five months from the final date for filing the report), the abandoned property will be placed not later than 85-days one month after such publication date in the custody of the State Controller and all further claims must thereafter be directed to the State Controller.

~~(e)~~ (d) The State Controller is not required to publish in such notice any item of less than twenty-five dollars (\$25) unless he deems such publication to be in the public interest.

~~(d)~~ (e) Subject to Section 1533, within 120 days from the receipt of the report required by Section ~~1519~~ 1530 , the State Controller shall mail a notice to each person having an address listed therein who appears to be entitled to property of the value of twenty-five dollars (\$25) or more ~~presumed-abandoned~~ escheated under this chapter.

~~(e)~~ (f) The mailed notice shall contain:

(1) A statement that, according to a report filed with the State Controller, property is being held to which the addressee appears entitled.

(2) The name and address of the person holding the property and any necessary information regarding changes of name and address of the holder.

(3) A statement that, if satisfactory proof of claim is not presented by the owner to the holder by the date specified in the published notice the property will be placed in the custody of the State Controller and all further claims must be directed to the State Controller.

(g) This section is not applicable to sums payable on travelers checks or money orders that escheat under Section 1513.

Comment. Section 1531 is substantially the same as former Section 1511.

Subdivision (b) has been revised to indicate more clearly the names to be contained in the notice.

Subdivision (g) incorporates the substance of a revision made by the National Conference of Commissioners on Uniform State Laws to the Uniform Disposition of Unclaimed Property Act. See 26 Suggested State Legislation D-31 (1967).

§ 1532. Payment and delivery of property to State Controller

SEC. 22. Section 1512 of the Code of Civil Procedure is renumbered and amended to read:

1512. 1532. (a) Subject to subdivisions (b) and (c) of this section and to Section 1533, every Every person who has filed a report as provided by Section ~~1510~~ 1530 shall, within ~~seven~~ six months from the final date for filing reports as required by Section ~~1510~~ 1530 , pay or deliver to the State Controller all ~~abandoned~~ escheated property specified in the report ~~;-provided,-that~~ .

(b) If the owner any person establishes his right to receive any ~~abandoned~~ property specified in the report to the satisfaction of the holder before such property has been delivered to the State Controller, or if it appears that for some other reason the ~~presumption-of-abandonment~~ is erroneous property is not subject to escheat under this chapter , the holder need not pay or deliver the property ~~;-which-will-no-longer-be-presumed-abandoned;~~ to the State Controller, but in lieu thereof shall file with the State Controller a written explanation of the proof of claim or of the ~~error-in-the-presumption-of-abandonment~~ reason the property is not subject to escheat .

(c) In the case of sums payable on travelers checks or money orders escheated under Section 1513, such sums shall be paid to the State Controller not later than 20 days after the final date for filing the report.

(d) The holder of any interest under subdivision (b) of Section 1504(b) 15.6 shall deliver a duplicate certificate to the State Controller. Upon delivery of a duplicate certificate to the State Controller, the holder and any transfer agent, registrar or other person acting for or on behalf of the holder in executing or delivering

such duplicate certificate shall be relieved from all liability of every kind to ~~any~~ person including, but not limited to, any person acquiring the original certificate ~~presumed-abandoned~~ or the duplicate of such certificate issued to the State Controller for any losses or damages resulting to such person by the issuance and delivery to the State Controller of such duplicate certificate.

(e) Payment of any intangible property to the State Controller shall be made at the office of the State Controller in Sacramento or at such other location as the State Controller by regulation may designate. Except as otherwise agreed by the State Controller and the holder, tangible personal property shall be delivered to the State Controller at the place where it is held.

Comment. Subdivisions (a), (b), and (d) of Section 1532 are substantially the same as former Section 1512. The time period for remitting escheated property to the Controller has been shortened from seven to six months from the final date for filing reports so that the property may be received by the State Controller in some month other than the last month of the fiscal year.

Subdivision (c) incorporates the substance of an amendment made by the National Conference of Commissioners on Uniform State Laws to the Uniform Disposition of Unclaimed Property Act. See 26 Suggested State Legislation D-31 (1967).

Subdivision (e) has been added to the section so that holders will not have to bear the expense of shipping tangible property to the Controller in Sacramento. By agreement, the Controller and the holder may provide that the holder shall bear the expense of such shipment. This might be done, for example, in return for the Controller's agreement to relieve the holder of the further responsibility for various kinds of worthless unclaimed property.

§ 1533. Controller may reject tangible personal property

SEC. 23. Section 1533 is added to the Code of Civil Procedure, to read:

1533. Tangible personal property may be excluded from the notices required by Section 1531, shall not be delivered to the State Controller pursuant to Section 1532, and shall not escheat to the state, if the State Controller, in his discretion, determines that it is not in the interest of the state to take custody of such property and notifies the holder in writing of such determination not less than 120 days after the final date for filing the report listing such property.

Comment. Some of the tangible personal property that is subject to escheat under Sections 1514, 1517, 1519, and 1520 is of little or no value, and the cost of transporting it, storing it, and disposing of it would far exceed its worth. Section 1533 grants the State Controller the right to reject such property when he determines that the state's interest would not be served by accepting it.

§ 1540

ARTICLE 4. PAYMENT OF CLAIMS

SEC. 24. Article 4 (commencing with Section 1540) is added to Chapter 7 of Title 10 of Part 3 of the Code of Civil Procedure, to read:

ARTICLE 4. PAYMENT OF CLAIMS

§ 1540. Claim for escheated property by owner

1540. (a) Any person, not including another state, claiming an interest in property paid or delivered to the State Controller under this chapter may file a claim thereto or to the net proceeds of the sale thereof. The claim shall be on a form prescribed by the State Controller and shall be verified by the claimant.

(b) The State Controller shall consider each claim within 90 days after it is filed. He may hold a hearing and receive evidence concerning the claim. He shall give written notice to the claimant if he denies the claim in whole or in part. Such notice may be given by mailing it to the address, if any, stated in the claim as the address to which notices are to be sent. If no such address is stated in the claim, the notice may be mailed to the address, if any, of the claimant as stated in the claim. No notice of denial need be given when the claim fails to state either an address to which notices are to be sent or an address of the claimant.

(c) There shall be deducted by the State Controller from the amount of any allowed and approved claim under this section, one percent of the total amount of such claim, but in no event less than ten dollars (\$10), for each individual share claimed, as a service charge for the receipt, accounting for, and management of the money or other property claimed and for the processing of the claim filed to recover the same.

Comment. Section 1540 repeats in substance the provisions of former Sections 1518 and 1519. Although the time limit specified in subdivision (b) did not appear in either of the superseded sections, it did appear from the provisions of former Section 1520 (superseded by Section 1541).

§ 1518 (repealed)

SEC. 25. Section 1518 of the Code of Civil Procedure is repealed.

~~1518.--Any person claiming an interest in any property delivered to the State under this chapter may file a personally verified claim thereto or to the proceeds from the sale thereof on the form prescribed by the State Controller.~~

Comment. Section 1518 is superseded by Section 1540.

§ 1519 (repealed)

SEC. 26. Section 1519 of the Code of Civil Procedure is repealed.

~~1519.--(a)--The State Controller shall consider any claim filed under this chapter and may hold a hearing and receive evidence concerning it.--If a hearing is held he shall prepare a finding and a decision in writing on each claim filed, stating the substance of any evidence heard by him and the reasons for his decision.--The decision shall be a public record.~~

~~(b)--There shall be deducted by the State Controller from the amount of any allowed and approved claim under this section, 1 percent of the total amount of such claim, but in no event less than ten dollars (\$10), for each individual share claimed, as a service charge for the receipt, accounting for, and management of the money or other property claimed and for the processing of the claim filed to recover the same.~~

Comment. Section 1519 is superseded by Section 1540.

§ 1541. Judicial action upon determination

SEC. 27. Section 1520 of the Code of Civil Procedure is renumbered and amended to read:

~~1520.~~ 1541. Any person aggrieved by a decision of the State Controller or as to whose claim the Controller has failed to act within 90 days after the filing of the claim, may ~~file a petition~~ commence an action to establish his claim in the superior court in any county or city and county in which the Attorney General has an office. The ~~proceeding~~ action shall be brought within 90 days after the decision of the State Controller or within 180 days from the filing of the claim if the State Controller fails to act. ~~A copy of the petition and of a notice of hearing~~ The summons shall be served upon the State Controller and the Attorney General and the Attorney General shall have ~~not less than 30~~ 60 days within which to respond by answer. ~~In lieu of answer, the Attorney General may file a statement of noninterest whereupon the petitioner shall present to the court his prima facie proof of entitlement.~~ The ~~proceeding~~ action shall be tried without a jury. If judgment is awarded in favor of ~~petitioner~~ the plaintiff, the State Controller shall make payment subject to any charges provided by subdivision (c) of Section 1519(b) 1540. ~~No costs of trial shall be allowed for or against the petitioner.~~

Comment. Section 1541 is substantially the same as former Section 1520. The former section did not provide a time limit within which the Attorney General was required to respond by answer. The revised section does contain such a limit. The sentence relating to a statement of noninterest has been deleted as unnecessary. The last sentence has been deleted so that the normal rule governing costs will be applicable.

§ 1542. Right of another state to recover escheated property

SEC. 28. Section 1542 is added to the Code of Civil Procedure, to read:

1542. (a) At any time after property has been paid or delivered to the State Controller under this chapter, any other state is entitled to recover such property if:

(1) The property escheated to this state under subdivision (b) of Section 1510 because no address of the apparent owner of the property appeared on the records of the holder when the property was escheated under this chapter and the last known address of the apparent owner was in fact in such other state;

(2) The last known address of the apparent owner of the property appearing on the records of the holder is in such other state and, under the laws of such other state, the property has escheated to that state; or

(3) The other state is entitled to the property under subdivision (b) of Section 1511 or under subdivision (b) of Section 1512.

(b) The claim of another state to recover escheated property under this section shall be presented in writing to the State Controller, who shall consider each such claim within 90 days after it is presented. He may hold a hearing and receive evidence concerning such claim. He shall allow a claim if he determines that the other state is entitled to the escheated property. Any claim allowed under this section is subject to any charges provided in subdivision (c) of Section 1540.

Comment. Section 1542 has no counterpart in the previous statutory law of California. It is necessary, however, to provide a procedural means for this state to comply with the decision in Texas v. New Jersey, 379 U.S. 674 (1965). The United States Supreme Court in that case held that property escheated by one state under the conditions that are now specified in subdivisions (b) and (c) of Section 1510 could subsequently be claimed by another state under the circumstances described in subdivision (a) of Section 1542. Section 1542 provides the administrative procedure for handling such claims.

§ 1560

ARTICLE 5. ADMINISTRATION OF UNCLAIMED PROPERTY

SEC. 29. A new article heading is added immediately preceding Section 1513 of the Code of Civil Procedure, which section is re-numbered as Section 1560 by this act, such new article heading to read:

ARTICLE 5. ADMINISTRATION OF UNCLAIMED PROPERTY

§ 1560. Relief from liability by payment or delivery

SEC. 30. Section 1513 of the Code of Civil Procedure is re-numbered and amended to read:

~~1513.~~ 1560. (a) Upon the payment or delivery of abandoned escheated property to the State Controller, the state shall assume custody and shall be responsible for the safekeeping ~~thereof~~ of the property . Any person who pays or delivers abandoned escheated property to the State Controller under this chapter is relieved of all liability to the extent of the value of the property so paid or delivered for any claim which then exists or which thereafter may arise or be made in respect to the property. Property removed from a safe deposit box or other safekeeping repository shall be received by the State Controller subject to any valid lien of the holder for rent and other charges, such rent and other charges to paid out of the proceeds remaining after the State Controller has deducted therefrom his selling cost.

(b) Any holder who has paid moneys to the State Controller pursuant to this chapter may make payment to any person appearing to such holder to be entitled thereto, and upon filing proof of such payment and proof that the payee was entitled thereto, the State Controller shall forthwith reimburse the holder for the payment.

(c) Any holder who has delivered personal property, including a certificate of any interest in a business association, to the State Controller pursuant to this chapter may reclaim such personal property if still in the possession of the State Controller without payment of any fee or other charges upon filing proof that the ~~owner thereof~~ person entitled thereto has claimed such personal property from such holder.

Comment. Section 1560 is substantially the same as former Section 1513.

§ 1561. Indemnification of holder after payment or delivery

SEC. 31. Section 1561 is added to the Code of Civil Procedure, to read:

1561. (a) If any holder pays or delivers any escheated property to the State Controller in accordance with this chapter and at any time thereafter any person claims the property from the holder or another state claims such property from the holder under its laws relating to escheat, the State Controller shall, upon written notice of such claim, undertake to defend the holder against such claim and shall indemnify and save harmless the holder against any liability upon such claim.

(b) If any holder, because of mistake of law or fact, pays or delivers any property to the State Controller that has not escheated under this chapter and at any time thereafter claims the property from the State Controller, the State Controller shall, if he has not disposed of such property in accordance with this chapter, refund or redeliver such property to the holder without deduction for any service charge.

Comment. Under Section 1510, some property escheats to this state that may later escheat to another state. In some cases, the owner of the property may claim it from the holder after the property has escheated and been delivered to the state. To protect a holder who has delivered escheated property to this state from the necessity for defending either the owner's claim or another state's escheat claim, subdivision (a) requires the State Controller to defend the holder against the claim and to save him harmless from any liability thereon. If the owner or the claiming state is in fact

§ 1561

entitled to the property, the State Controller may deliver the property to the claimant as provided in Section 1540 or 1542.

Subdivision (a), like Section 1560, applies only where escheated property has been paid to the Controller in accordance with this chapter. If the holder erroneously delivers to the Controller property that has not escheated, this section does not require the Controller to protect the holder from the cost of defending against the claims of the true owner. Of course, the holder may recover any such property mistakenly delivered to the Controller under subdivision (b).

§ 1562. Income accruing after payment or delivery

SEC. 32. Section 1514 of the Code of Civil Procedure is renumbered and amended to read:

~~1514.~~ 1562. When property other than money is delivered to the State Controller under this chapter, any dividends, interest or other increments realized or accruing on such property at or prior to liquidation or conversion thereof into money, shall upon receipt be credited to the owner's account by the State Controller. Except for amounts so credited the owner is not entitled to receive income or other increments on money or other property paid or delivered to the State Controller under this chapter. All interest received and other income derived from the investment of moneys deposited in the Unclaimed Property Fund under the provisions of this chapter shall, on order of the State Controller, be transferred to the General Fund.

Comment. Section 1562 is the same as former Section 1514.

§ 1563. Sale of escheated property

SEC. 33. Section 1516 of the Code of Civil Procedure is renumbered and amended to read:

~~1516.~~ 1563. (a) Except as provided in subdivision (b), All abandoned all escheated property other-than-money-and-securities listed-on-any-established-steek-exchange delivered to the State Controller under this chapter shall be sold by the State Controller to the highest bidder at public sale in whatever city in the state affords in his judgment the most favorable market for the property involved. The State Controller may decline the highest bid and reoffer the property for sale if he considers the price bid insufficient. He need not offer any property for sale if, in his opinion, the probable cost of sale exceeds the value of the property. Securities-listed-on-an-established-steek-exchange-shall-be-sold-at-the prevailing-prices-on-said-exchange.--(b) Any sale of abandoned escheated property ;-other-than-money-and-securities-listed-on-any established-stock-exchange; held under this section shall be preceded by a single publication of notice thereof, at least one week in advance of sale in an English language newspaper of general circulation in the county where the property is to be sold.

(b) Securities listed on an established stock exchange shall be sold at the prevailing prices on such exchange. United States Government Savings Bonds and United States War Bonds shall be presented to the United States for payment. Subdivision (a) does not apply to the property described in this subdivision.

(c) The purchaser at any sale conducted by the State Controller pursuant to this chapter shall receive title to the property purchased, free from all claims of the owner or prior holder thereof and of all persons claiming through or under them. The State Controller shall execute all documents necessary to complete the transfer of title.

~~(d)--No-action-shall-be-brought-or-maintained-by-any-person-against the-state-or-any-officer-thereof-for-or-on-account-of-any-transaction entered-into-pursuant-to-and-in-accordance-with-the-provisions-of-this section.~~

Comment. Section 1563 is substantially the same as former Section 1516.

Because United States Savings Bonds and United States War Bonds are not subject to sale, provisions relating to these bonds have been added to subdivision (b) to authorize their presentation to the United States for payment.

Former subdivision (d) has been deleted as unnecessary in light of the broader provisions of Section 1566.

§ 1564. Disposition of funds

SEC. 34. Section 1517 of the Code of Civil Procedure is renumbered and amended to read:

~~1517.~~ 1564. (a) All money received under this chapter, including the proceeds from the sale of property under Section ~~1516~~ 1563, shall be deposited in the Unclaimed Property Fund in an account titled "Abandoned Property."

(b) All money in the abandoned property account in the Unclaimed Property Fund is hereby continuously appropriated to the State Controller, without regard to fiscal years, for expenditure ~~for~~ in accordance with law in carrying out and enforcing the provisions of this chapter, including, but not limited to, the following purposes:

(1) For payment of claims allowed by the State Controller under the provisions of ~~Section 1519;~~ this chapter.

(2) For refund, to the person making such deposit, of amounts, including overpayments, deposited in error in such fund ~~;~~ .

(3) For payment of the cost of appraisals incurred by the State Controller covering property held in the name of an account in such fund ~~;~~ .

(4) For payment of the cost incurred by the State Controller covering the purchase of lost instrument indemnity bonds, or for payment to the person entitled thereto, for any unpaid lawful charges or costs which arose from holding any specific property or any specific funds which were delivered or paid to the State Controller, or which arose from complying with this chapter with respect to such property or funds ~~;~~ .

(5) For payment of amounts required to be paid by the state as trustee, bailee, or successor in interest to the preceding owner ~~;~~ .

(6) For payment of costs incurred by the State Controller for the repair, maintenance, and upkeep of property held in the name of an account in such fund § .

(7) For payment of costs of official advertising in connection with the sale of property held in the name of an account in such fund § .

(8) For transfer to the General Fund as provided in paragraph subdivision (c) of this section .

(c) At the end of each month, or oftener if he deems it advisable, the State Controller shall transfer all money in the abandoned property account in excess of fifty thousand dollars (\$50,000), to the General Fund. Before making this transfer, he shall record the name and last known address of each person appearing from the holders' reports to be entitled to the abandoned escheated property and of the name and last known address of each insured person or annuitant, and with respect to each policy or contract listed in the report of a life insurance corporation, its number, and the name of the corporation. The record shall be available for public inspection at all reasonable business hours.

Comment. Section 1564 is substantially the same as former Section 1517. The preliminary language of subdivision (b) has been modified to broaden the purposes for which the money in the abandoned property account may be expended. Certain expenses that the Controller is authorized to incur in the administration of this fund are not clearly included among the specific purposes listed in subdivision (b). For example, litigation costs incurred under Sections 1571-1574 are not clearly covered by the itemized list. The revised language eliminates any uncertainty over the availability of the fund for such ordinary administrative expenses.

§ 1565. Disposition of property having no commercial value

SEC. 35. Section 1521 of the Code of Civil Procedure is renumbered and amended to read:

~~1521.~~ 1565. Any property delivered to the State Controller pursuant to this chapter which has no ~~evident~~ apparent commercial value shall be retained by the State Controller until such time as he determines to destroy or otherwise dispose of ~~the same~~ it . If the State Controller determines that any property delivered to him pursuant to this chapter has no ~~evident~~ apparent commercial value, he may at any time thereafter destroy or otherwise dispose of the ~~same~~ property , and in that event no action or proceeding shall be brought or maintained against the state or any officer thereof ~~or against the holder~~ for or on account of any action taken by the State Controller pursuant to this chapter with respect to ~~said~~ the property.

Comment. Section 1565 is substantially the same as former Section 1521. The provision for the exoneration of the holder has been deleted as unnecessary in light of Sections 1560 and 1561.

§ 1566. Certain actions against state and state officials barred

SEC. 36. Section 1566 is added to the Code of Civil Procedure, to read:

1566. No action may be brought or maintained by any person against the state or any officer thereof for or on account of any transaction entered into, or the payment of any claim, pursuant to and in accordance with the provisions of this chapter.

Comment. Section 1566 is similar to subdivision (d) of former Section 1516. The provision has been broadened, however, to exonerate the state from liability if, despite compliance with all of the requirements of this chapter, a state officer or employee erroneously pays property to one claimant and it is ultimately determined that another is entitled to the property. This section does not affect the right of the person entitled to the property to recover it from the person to whom it was erroneously paid.

§ 1570

ARTICLE 6. COMPLIANCE AND ENFORCEMENT

SEC. 37. A new article heading is added immediately prededing Section 1515 of the Code of Civil Procedure, which section is re-numbered as Section 1570 by this act, such new article heading to read:

ARTICLE 6. COMPLIANCE AND ENFORCEMENT

§ 1570. Limitations as not affecting escheat, duty to file report or pay or deliver escheated property

SEC. 38. Section 1515 of the Code of Civil Procedure is renumbered and amended to read:

~~1515.~~ 1570. (a) The expiration of any period of time specified by statute or court order, during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property, ~~shall~~ does not prevent the money or property from being ~~presumed-abandoned-property~~ escheated, nor affect any duty to file a report required by this chapter or to pay or deliver ~~abandoned~~ escheated property to the State Controller.

(b) The payment or delivery of escheated property to the Controller does not revive or reinstate any right to claim such property that is barred at the time of such payment or delivery either because of failure to present such claim to the holder or because of failure to commence an action thereon within the period prescribed by an applicable statute of limitations.

Comment. Subdivision (a) of Section 1570 is substantially the same as former Section 1515. Subdivision (b) has been added to make clear that if the owner's claim against the holder is barred, his claim against the Controller is also barred. However, subdivision (b) does not affect the holder's right to reimbursement under subdivision (b) of Section 1560.

§ 1571. Examination of records

SEC. 39. Section 1522 of the Code of Civil Procedure is re-numbered and amended to read:

~~1522.~~ 1571. (a) The State Controller may at reasonable times and upon reasonable notice examine the records of any person if he has reason to believe that such person has failed to report property that should have been reported pursuant to this chapter.

(b) When requested by the State Controller, such examination shall be conducted by any licensing or regulating agency otherwise empowered by the laws of this state to examine the records of the holder. For the purpose of determining compliance with this chapter, the Superintendent of Banks and the Savings and Loan Commissioner are hereby respectively vested with full authority to examine the records of any banking organization and any savings and loan association doing business within this state but not organized under the laws of or created in this state.

Comment. Section 1571 is substantially the same as former Section 1522.

§ 1523 (repealed)

§ 1523

SEC. 40. Section 1523 of the Code of Civil Procedure is repealed.

~~1523.--If-any-person-refuses-to-deliver-property-to-the-State  
Comptroller-as-required-under-this-chapter,-the-State-Comptroller-shall  
bring-an-action-in-a-court-of-appropriate-jurisdiction-to-enforce-such  
delivery.~~

Comment. Section 1523 has been superseded by the provisions of  
Section 1572.

§ 1572. Action to enforce compliance

SEC. 41. Section 1572 is added to the Code of Civil Procedure, to read:

1572. (a) The State Controller may bring an action in a court of appropriate jurisdiction, as specified in this section, for any of the following purposes:

(1) To enforce the duty of any person under this chapter to permit the examination of the records of such person.

(2) For a judicial determination that particular property is subject to escheat by this state pursuant to this chapter.

(3) To enforce the delivery of any property to the State Controller as required under this chapter.

(b) The State Controller may bring an action under this chapter in any court of this state of appropriate jurisdiction in any of the following cases:

(1) Where the holder is any person domiciled in this state, or is a government or governmental subdivision or agency of this state.

(2) Where the holder is any person engaged in or transacting business in this state, although not domiciled in this state.

(3) Where the property is tangible personal property and is held in this state.

(c) In any case where no court of this state can obtain jurisdiction over the holder, the State Controller may bring an action in any federal or state court with jurisdiction over the holder.

Comment. Section 1572 is designed to clarify the circumstances under which the State Controller may sue in the courts of this state or another state or in the federal courts to enforce compliance with the provisions of this chapter. The section generally requires the State Controller to proceed in the California courts unless the California courts cannot obtain jurisdiction over the holder.

§ 1573. Agreements with other states

SEC. 42. Section 1573 is added to the Code of Civil Procedure, to read:

1573. The State Controller may enter into an agreement with an official of another state to provide information needed to permit the other state to determine unclaimed property it may be entitled to escheat if the official of the other state agrees to provide this state with information needed to permit this state to determine unclaimed property it may be entitled to escheat. The State Controller may, by regulation, require the reporting of information needed to permit him to comply with agreements made pursuant to this section and may, by regulation, prescribe the form, including verification, of the information to be reported and the times for filing such reports.

Comment. Persons domiciled in this state may be in possession of property subject to escheat under the laws of another state; yet that state may be unable to secure jurisdiction over the holder to compel the reporting and delivery of the escheated property. Conversely, persons domiciled in other states may hold property subject to escheat under California law, yet California may have no means to compel the reporting and delivery of such property.

Section 1573 permits the State Controller to make agreements with officials of other states whereby he and the other officials agree to furnish information obtained from holders within their jurisdiction as to property that may be subject to escheat by the other state.

Section 1573 authorizes the State Controller, by regulation, to require reports from California holders so that he can furnish the infor-

§ 1573

mation required by the agreements with officials of the other states. By making the information received available to the officials of the other states, the State Controller can enable the other states to assert their escheat claims directly or to request this state to enforce their escheat claims pursuant to Section 1574. Through similar cooperation, this state may obtain escheated property from holders in other states either by proceeding directly or by requesting the assistance of other states pursuant to Section 1575.

§ 1574. Action on behalf of another state

SEC. 43. Section 1574 is added to the Code of Civil Procedure, to read:

1574. At the request of any other state, the Attorney General of this state may bring an action in the name of such other state, in any court of this state or federal court within this state, to enforce the unclaimed property laws of such other state against a holder in this state of property lawfully subject to escheat by such other state, if all of the following exist:

(a) The courts of such other state cannot obtain jurisdiction over the holder.

(b) Such other state has agreed to bring actions in the name of this state at the request of the Attorney General of this state, to enforce the provisions of this chapter against any person in such other state believed by the State Controller of this state to hold property subject to escheat under this chapter, where the courts of this state cannot obtain jurisdiction over such person.

(c) The other state has agreed to pay reasonable costs incurred by the Attorney General of this state in bringing an action under this section at the request of such other state.

Comment. Section 1574 authorizes the Attorney General to sue in this state to enforce compliance with the unclaimed property laws of another state. Under the provisions of Section 1574, however, the Attorney General may do so only if the other state will similarly act to enforce the unclaimed property laws of California against holders of unclaimed property to which California is entitled.

§ 1575. Action by officer of another state on behalf of this state

SEC. 44. Section 1575 is added to the Code of Civil Procedure, to read:

1575. (a) If a person in another state is believed by the State Controller of this state to hold property subject to escheat under this chapter and the courts of this state cannot obtain jurisdiction over such person, the Attorney General of this state may request an officer of such other state to bring an action in the name of this state to enforce the provisions of this chapter against such person.

(b) This state shall pay all reasonable costs incurred by any other state in any action brought by such other state at the request of the Attorney General of this state under this section. The Controller may agree to pay to any state bringing such an action a reward of not exceeding fifteen percent of the value, after deducting reasonable costs, of any property recovered for the state as a direct or indirect result of such action. Any costs or rewards paid pursuant to this section shall be paid from the abandoned property account in the Unclaimed Property Fund and shall not be deducted from the amount that is subject to be claimed by the owner in accordance with this chapter.

Comment. Section 1575 authorizes this state to request the officials of another state to bring action to recover property escheated to California under the provisions of this chapter. In order to provide an incentive for the recovery of such escheated property, the section authorizes the payment of a reward of not more than 15 percent for the recovery of escheated property. This reward, however, is not paid from the escheated property itself. It would be inappropriate to charge the owner of the property with this reward in the event he should later recover this property, for California's claim to the property is made for the benefit of the state rather than the owner.

§ 1576. Penalties

SEC. 45. Section 1524 of the Code of Civil Procedure is renumbered and amended to read:

~~1524.~~ 1576. (a) Any person who wilfully fails to render any report or perform other duties required under this chapter shall be punished by a fine of ten dollars (\$10) for each day such report is withheld, but not more than one thousand dollars (\$1,000).

(b) Any person who wilfully refuses to pay or deliver abandoned escheated property to the State Controller as required under this chapter shall be punished by a fine of not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000), or imprisonment for not more than six months, or both ~~, -in-the-discretion of-the-court .~~

Comment. Section 1576 is substantially the same as former Section 1524.

§ 1580

ARTICLE 7. MISCELLANEOUS

SEC. 46. A new article heading is added immediately preceding Section 1525 of the Code of Civil Procedure, which section is renumbered as Section 1580 by this act, such new article heading to read:

ARTICLE 7. MISCELLANEOUS

§ 1580. Rules and regulations

SEC. 47. Section 1525 of the Code of Civil Procedure is renumbered and amended to read:

~~1525.~~ 1580. (a) The State Controller is hereby authorized to make necessary rules and regulations to carry out the provisions of this chapter.

(b) The Controller shall designate by regulation:

(1) Each state that does not provide by law for the escheat of unclaimed or abandoned intangible property of any kind described in Sections ~~1513~~ to 1520 inclusive.

(2) Each state that is a party to the Unclaimed Property Compact (Section 1620).

Comment. Subdivision (a) of Section 1580 is the same as former Section 1525. Subdivision (b) has been added so that holders may have a source of information concerning what property is subject to escheat to this state under Section 1510 and the decision of the United States Supreme Court in Texas v. New Jersey, 379 U.S. 674 (1965).

§ 1581. Validity of contracts to locate property

SEC. 48. Section 1527 of the Code of Civil Procedure is renumbered and amended to read:

~~1527.~~ 1581. No agreement entered within nine months after the date ~~of filing a report is filed~~ under subdivision (d) of Section 1510(d) 1530 shall ~~be~~ is valid if any person thereby undertakes to locate property ~~reported under Section 1510~~ included in that report for a fee or other compensation exceeding 10 percent of the value of recoverable property unless the agreement is in writing and signed by the owner and discloses the nature and value of the property and the name and address of the holder thereof, as such facts are so reported . ; -provided, that Nothing herein in this section shall be construed to prevent an owner from asserting, at any time, that any agreement to locate property is based upon an excessive or unjust consideration.

Comment. Section 1581 is substantially the same as former Section 1527.

Civil Code § 3081 (amended)

SEC. 49. Section 3081 of the Civil Code is amended to read:

3081. Any corporation engaged in the business of renting to the public safe deposit boxes may dispose of the unclaimed contents of the safe deposit boxes in the manner set forth in Sections 30a ~~to 30r, inclusive, of the Bank Act~~ 1660 to 1679, inclusive, of the Financial Code .

Comment. Section 3081 is amended to insert the correct reference for the sections that superseded Sections 30a to 30r, inclusive, of the Bank Act.

§ 1604 (amended)

SEC. 50. Section 1604 of the Code of Civil Procedure is amended to read:

1604. (a) All unclaimed intangible property, together with all interest and other increments accruing thereto, is subject to delivery to this State if the last known address of the owner is in this State. If the last known address of an owner is in this State, any other owner's address which is unknown shall be presumed to be in this State. If the last known addresses of owners are in this State and in one or more other states, the addresses of other owners whose addresses are unknown shall be presumed to be within this State if the federal agency having custody of the unclaimed property initially acquired possession in this State. If the records of the United States do not disclose the address of any owner of unclaimed property, such address shall be presumed to be within this State if the federal agency having custody of such property initially acquired possession in this State. All addresses presumed to be within this State are presumed to be within the County of Sacramento. For the purposes of this chapter, it shall be presumed that the situs of unclaimed intangible property is in this State if the last known or presumed address of the owner is in this State.

(b) All unclaimed tangible property is subject to delivery to this State if the federal agency having custody of the unclaimed property initially acquired possession in this State.

Comment. Section 1604 has been modified to reflect the rules relating to the escheat of unclaimed property that were set forth by the United

§ 1604

States Supreme Court in Texas v. New Jersey, 379 U.S. 674 (1965). In accordance with the holding in that case, subdivision (a) provides that intangible property is subject to delivery to this state if the last known address of the owner is in this state. Subdivision (b) is based on the suggestion in that case that tangible property is subject to escheat to the state where the property is located.

§ 1614 (amended)

SEC. 51. Section 1614 of the Code of Civil Procedure is amended to read:

1614. Property received under this chapter shall be deposited or sold by the State Controller as though received under ~~the Uniform Disposition of Unclaimed Property Act~~ Chapter 7 (commencing with Section 1500) of this title . Property received under this chapter shall not be subject to claim within two years following the date upon which it is paid to or received by the state. Thereafter, claims shall be made in the manner provided in Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of this code this title .

Comment. This is a technical, nonsubstantive amendment.

Savings clause

SEC. 52. This act does not affect any duty to file a report with the State Controller or any duty to pay or deliver property to the State Controller that arose prior to the effective date of this act under the provisions of Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure. Any such report or any such payment or delivery shall be made in accordance with the law in effect prior to the effective date of this act as if this act had not been enacted.

Comment. This act modifies the requirements for filing unclaimed property reports and delivering such property to the State Controller. It omits the provisions of former Section 1510(g), which prescribed the contents of the initial report to be filed under the Uniform Disposition of Unclaimed Property Act after it became effective on September 18, 1959. Section 52 is intended to make clear that the enactment of this act does not affect whatever obligation the provisions of the previous statute imposed upon persons who were subject to its terms in regard to filing reports and paying or delivering property to the State Controller.

Severability clause

SEC. 53. If any provision of this act or application thereof to any person or circumstance is held invalid, such invalidity shall not affect any other provision or application of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Comment. Some of the provisions of this act provide for the escheat of intangible personal property to California in situations not dealt with in Texas v. New Jersey, 379 U.S. 674 (1965). E.g., Sections 1511, 1512. It is possible that the United States Supreme Court will establish rules inconsistent with these provisions. Section 53 is included in this act to preserve the remainder of the act in the event a particular provision is held invalid or its application to a particular situation is held invalid.

## II. UNCLAIMED PROPERTY COMPACT

An act to add Chapter 9 (commencing with Section 1620) to Title 10 of Part 3 of the Code of Civil Procedure, relating to the Unclaimed Property Compact.

The people of the State of California do enact as follows:

SECTION 1. Chapter 9 (commencing with Section 1620) is added to Title 10 of Part 3 of the Code of Civil Procedure, to read:

### CHAPTER 9. UNCLAIMED PROPERTY COMPACT

1620. The Unclaimed Property Compact is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

#### UNCLAIMED PROPERTY COMPACT

##### ARTICLE I

##### Purposes

It is the purpose of this compact and of the states party hereto:

- (a) To eliminate the risks and inconvenience to which holders of unclaimed property may be subject by reason of actual or possible claims thereto or to the custody thereof by more than one state.
- (b) To provide a uniform and equitable set of standards for the determination of entitlement to receive, hold and dispose of unclaimed property.
- (c) To provide methods whereby the party states may cooperate with each other in the discovery and taking possession of unclaimed property.

##### ARTICLE II

##### Definitions

As used in this compact, the term:

- (a) "Unclaimed property" means any property which under the laws of the appropriate state is subject to delivery to that state for its use or custody by reason of its having been unclaimed or abandoned for such period as the laws of that state may provide.

(b) "Holder" means any obligor or any individual, business association, government or subdivision thereof, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity having possession, custody or control of unclaimed property.

(c) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States.

### ARTICLE III

#### Determination of Entitlement to Unclaimed Property

(a) Only the state in which unclaimed real property or unclaimed tangible personal property is located shall be entitled to receive, hold and dispose of such property in accordance with its laws.

(b) In the case of unclaimed property the disposition of which is not determined by the application of paragraph (a) of this Article, and the holder of which property is subject to the jurisdiction of only one state, that state and no other shall be entitled to receive, hold and dispose of such unclaimed property in accordance with its laws.

(c) In respect of all unclaimed property the disposition of which is not determined by the applications of paragraphs (a) or (b) of this Article, entitlement shall be determined as follows:

1. The state in which is located the last known address of the person entitled to the property shall be entitled to receive, hold and dispose of the same in accordance with its laws. The last known address shall be presumed to be that shown by the records of the holder.

2. If the identity of the person entitled is unknown; if no address for the person sufficient to meet the requirements of subparagraph 1 of this paragraph is known; or if the laws of the state of last known address do not subject the property in question to taking, the state under whose laws the holder is incorporated (if the holder is a corporation) or organized (if the holder is an association or artificial entity other than a corporation), or the state where the holder is domiciled (if the holder is a natural person) shall be entitled to receive, hold and dispose of the same in accordance with its laws. If the holder is incorporated or organized under the laws of more than one party state, such party states shall be entitled to take equal shares of the property covered by this paragraph. In such event, each shall bear a proportionate share of the costs of the taking.

3. If the disposition of any unclaimed property is not determined by application of any preceding provision of this Article,

the state in which is located the office of the holder making the largest total disbursements within its immediately preceding fiscal year shall be entitled to receive, hold and dispose of the property in accordance with its laws.

4. Whenever unclaimed property has been taken by a party state in accordance with this paragraph, within one year from the taking of such property, or within one year from the earliest time at which another party state would have been entitled to take the property in question pursuant to its unclaimed property laws, whichever date is later, any party state shall be entitled to establish the identity and last known address of an entitled person previously thought to be unknown, or to establish a later known address for an entitled person. Upon such establishment, and on the basis thereof a party state shall upon demand be entitled to receive the property from the state initially taking the same and to hold and dispose of it in accordance with its laws. This subparagraph shall not apply to a claim made by a state under a statute enacted subsequent to the time when the initial state took the property.

#### ARTICLE IV

##### Cooperation

The party states pledge to each other faithful cooperation in the administration of their respective unclaimed property laws. To this end, a party state shall, upon the request of any other party state, make available to any such state any information which it may have in its possession by reason of its administration of its own unclaimed property laws, unless disclosure thereof is expressly prohibited by the laws of the party state of which the request is made. Unless the party states concerned otherwise agree, the party state making a request for information pursuant to this Article shall be entitled to receive it only by bearing such costs as may be involved in furnishing the information requested.

#### ARTICLE V

##### State Laws Unaffected in Certain Respects

Each party state may enact and continue in force any statute not in conflict with this compact and may employ the escheat, custodial, or any other principle in respect of unclaimed property.

## ARTICLE VI

### Finality

Except as provided in Article III (c) 4:

1. No unclaimed property escheated or received into the custody of a party state, prior to February 1, 1965, pursuant to its laws shall be subject to the subsequent claim of any other party state, and the enactment of this compact shall constitute a waiver by the enacting state of any such claim.
2. No unclaimed property escheated or received into the custody of a party state on or after February 1, 1965 shall be subject to the subsequent claim of any other party state, and the enactment of this compact shall constitute a waiver by the enacting state of any such claim: provided that such taking was consistent with the provisions of this compact.

## ARTICLE VII

### Extent of Rights Determined

The only rights determined by this compact shall be those of the party states. With respect to any non-party state, an assertion of jurisdiction to receive, hold or dispose of any unclaimed property made by a party state shall be determined in the same manner and on the same basis as in the absence of this compact. In any situation involving multiple claims by states, both party and non-party, the standards contained in this compact shall be used to determine entitlement only as among the party states. With respect to the claims of any non-party state any controversy shall be determined in accordance with the law as it may be in the absence of this compact. The enactment of this compact shall not constitute a waiver of any claim by a party state as against a non-party state.

## ARTICLE VIII

### Entry Into Force and Withdrawal

This compact shall enter into force and become binding as to any state when it has enacted the same into law. Any party state may withdraw from the compact by enacting a statute repealing the same, but no such withdrawal shall take effect until two years after the executive head of the withdrawing state has given notice in writing of the withdrawal to the executive head of each other party state. Any unclaimed property which a state shall have received, or which it shall have become entitled to receive by operation of this compact during the period when such state was party hereto shall not be affected by such withdrawal.

## ARTICLE IX

### Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the states affected as to all severable matters.

1621. The State Controller may enter into any agreements necessary or appropriate to cooperate with another state or states and sharing of costs pursuant to Article III(c)2 of the compact, or for the assumption or bearing of costs pursuant to Article IV thereof.

1622. With reference to this state and as used in Article VIII of the compact, the term "executive head" means the Governor.

III. ESCHEAT OF DECEDENT'S PROPERTY

An act to amend Section 231 of, to add Sections 232, 233, 234, 235, and 236 to, to amend and renumber the heading of Article 2 (commencing with Section 250) of Chapter 2 of Division 2 of, and to add a new article heading immediately preceding Section 231 of, the Probate Code, relating to escheat.

The people of the State of California do enact as follows:

SECTION 1. The heading of Article 2 (commencing with Section 250) of Chapter 2 of Division 2 of the Probate Code is renumbered and amended to read:

ARTICLE ~~II~~ 3 . GENERAL PROVISIONS

SEC. 2. A new article heading is added immediately preceding Section 231 of the Probate Code, to read:

ARTICLE 2. ESCHEAT OF DECEDENT'S PROPERTY

§ 231. Escheat of decedent's property

SEC. 3. Section 231 of the Probate Code is amended to read:

231. (a) If the a decedent , whether or not he was domiciled in this state, leaves no one to take his estate or any portion thereof by testate succession, and no one other than a government or governmental subdivision or agency to take his estate or a portion thereof by intestate succession, under the laws of this state or of any other jurisdiction , the same escheats to the state as of at the date time of the death of the decedent in accordance with this article .

(b) Property passing to the state under this section article , whether held by the state or its officers, is subject to the same charges and trusts to which it would have been subject if it had passed by succession, and is also subject to the provisions of Title 10 (commencing with Section 1300) of Part 3 of the Code of Civil Procedure relating to escheated estates.

(c) Notwithstanding any other section or provision of this code or any other statute, rule, regulation, law , or decision, moneys held by a trust funds for the purposes of providing health and welfare, pension, vacation, severance, supplemental unemployment insurance benefits , or similar benefits shall not pass to the state or escheat to the state , but such moneys go to the trust fund holding them .

Comment. Subdivision (a) has been revised to indicate that the rules for determining whether a decedent's property has escheated to this state are set forth in the remainder of the article. The words, "whether or not he was domiciled in this state," have been added to make it clear that this article prescribes the rules governing the escheat of property belonging to nondomiciliary decedents as well as to domiciliaries.

Under the law of some jurisdictions, property does not escheat in the sense that it does under the law of California and most Anglo-American jurisdictions. Instead, the government inherits the property when there is no collateral kindred of the decedent within a specified degree of kinship. See Estate of Maldonado, [1954] P. 223, [1953] 2 All. E.R. 300 (C.A.). The revised language of subdivision (a) makes it clear that the claim of such a jurisdiction will not prevent the property of a decedent from escheating under the law of California.

The words added at the end of subdivision (c) are intended to be clarifying. The section did not indicate previously what disposition should be made of the unescheated property.

§ 232. Real property

SEC. 4. Section 232 is added to the Probate Code, to read:

232. Real property located within this state escheats to this state in accordance with Section 231.

Comment. Section 232 continues the preexisting California law.

§ 233. Tangible personal property customarily kept in this state

SEC. 5. Section 233 is added to the Probate Code, to read:

233. All tangible personal property owned by the decedent, wherever located at the decedent's death, that was customarily kept in this state prior to his death, escheats to this state in accordance with Section 231.

Comment. Section 233 provides for the escheat of tangible personal property that the decedent customarily kept in California prior to his death. The property described in the section escheats to California even though it may have been temporarily removed from California at the time of the decedent's death.

Some examples of the kind of property referred to by the section are: property usually kept at his residence by a resident of California; property usually kept at a summer home in California by a nonresident of California; and property used in connection with a business located in California. The section does not cover tangible personal property brought to California temporarily. However, the length of time that the property was in California prior to the decedent's death is not necessarily determinative of its customary location. If a decedent had recently moved to California and established a permanent residence here, the personal property usually kept at the residence would be customarily kept within this state even though it had been customarily so kept for only a brief period of time.

§ 234. Tangible personal property subject to administration in this state

SEC. 6. Section 234 is added to the Probate Code, to read:

234. (a) Subject to subdivision (b), all tangible personal property owned by the decedent that is subject to the control of a superior court of this state for purposes of administration and disposition under Division 3 (commencing with Section 300) of this code escheats to this state in accordance with Section 231.

(b) The property described in subdivision (a) does not escheat to this state but goes to another jurisdiction if that jurisdiction claims the property and establishes that:

(1) That jurisdiction is entitled to the property under its laws;

(2) The decedent customarily kept the property in that jurisdiction prior to his death; and

(3) This state has the right to escheat and take tangible property being administered as part of a decedent's estate in that jurisdiction, if the decedent customarily kept the property in this state prior to his death.

Comment. Subdivision (a) of Section 234 provides that all tangible personal property that is administered in this state as part of a decedent's estate escheats to this state if the owner died without heirs. Subdivision (a) covers all tangible personal property, whether temporarily located in the state or not. It may also apply to tangible personal property that was brought into the state after the decedent's death.

Subdivision (a) is subject to subdivision (b) so that a state where the property was usually kept by the decedent may claim the property if it wishes to do so. However, the conditions of subdivision (b) are intended to make clear that California will not surrender any property to the state where it was usually located unless that state would recognize California's claim to escheat property found in that state under the provisions of Section 233.

Subdivision (b) provides that the state claiming the property must establish the matters listed. Thus, the other state must be able to demonstrate that, under the statutory or decisional law of that state, California has a reciprocal right to escheat property located in that state. If the other state cannot show that California has such a reciprocal right--if its law is inconclusive--it has not established the matters required by subdivision (b) and the property escheats to California under subdivision (a).

§ 235. Intangible personal property of decedent domiciled in this state

SEC. 7. Section 235 is added to the Probate Code, to read:

235. All intangible property owned by the decedent escheats to this state in accordance with Section 231 if the decedent was domiciled in this state at the time of his death.

Comment. Section 235 provides for the escheat of all intangible property owned by a decedent who died domiciled in this state. The property referred to by the section consists of all of decedent's intangible assets, including for example, debts owed to the decedent, bank accounts, promissory notes, shares of corporate stock, dividends, wage claims, and beneficial interests in trusts.

Section 235 contains no limitation on the intangible property owned by a California domiciliary that escheats under its provisions. Wherever the obligor may be located, wherever the obligation may have been incurred, such property escheats to this state because the decedent owner was a domiciliary of this state.

§ 236. Intangible personal property subject to administration in this state

SEC. 8. Section 236 is added to the Probate Code, to read:

236. (a) Subject to subdivision (b), all intangible property owned by the decedent that is subject to the control of a superior court of this state for purposes of administration and disposition under Division 3 (commencing with Section 300) of this code escheats to this state whether or not the decedent was domiciled in this state at his death.

(b) Such property does not escheat to this state but goes to another jurisdiction if that jurisdiction claims the property and establishes that:

- (1) That jurisdiction is entitled to the property under its laws;
- (2) The decedent was domiciled in that jurisdiction at his death; and
- (3) This state has the right to escheat and take intangible property being administered as part of a decedent's estate in that jurisdiction, if the decedent was domiciled in this state at his death.

Comment. Subdivision (a) of Section 236 provides that all intangible assets of a decedent who died without heirs that are subject to administration in this state escheat to this state. Under this provision, even if decedent was domiciled in another state, his California bank account escheats to California.

Subdivision (a) is subject to subdivision (b) so that the state of the decedent's domicile may claim the property if it wishes to do so. However, the conditions of subdivision (b) are intended to make clear that California

will not relinquish any of such property to the state of domicile unless that state would recognize California's claim to escheat under the provisions of Section 235 intangibles subject to that state's jurisdiction.

Subdivision (b) provides that the state claiming the property must establish the matters listed. Thus, the other state must be able to demonstrate that, under its statutory or decisional law, California has a reciprocal right to escheat intangibles subject to the jurisdiction of that state. If the other state cannot show that California has such a reciprocal right--if its law is inconclusive--it has not established the matters required by subdivision (b) and the property escheats to California under subdivision (a).