



## Article 13 – Unclaimed Property Act

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## Article 13 – Unclaimed Property Act

**Cross references:** For provisions concerning unclaimed utility deposits, see article 8.5 of title 40.

**Law reviews:** For article, "Colorado's Unclaimed Property Act: An Overview", see 17 Colo. Law. 57 (1988).

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## Article 13 – Unclaimed Property Act

### 38-13-101. Short title.

This article shall be known and may be cited as the "Unclaimed Property Act".

Source: L. 87: Entire article added, p. 1317, § 1, effective July 1.

### 38-13-102. Definitions and use of terms.

As used in this article, unless the context otherwise requires:

(1) "Administrator" means the state treasurer.

(2) "Apparent owner" means the person whose name appears on the records of the holder as the person entitled to property held, issued, or owing by the holder.

(2.5) "Attorney general" means the chief legal officer of this state.

(3) "Banking organization" means a bank, trust company, savings bank, industrial bank, safe deposit company, or private banker or any organization defined by other law as a bank or banking organization.

(3.5) "Business association" means a nonpublic corporation, notwithstanding the provisions of section 7-114-401, C.R.S., joint stock company, investment company, business trust, partnership, or association for business purposes of two or more individuals, whether or not for profit, including a banking organization, financial organization, insurance company, or utility.

(4) "Domicile" means the state of incorporation of a corporation and the state of the principal place of business of an unincorporated person.

(5) "Financial organization" means a savings and loan association, cooperative bank, building and loan association, or credit union.

(5.3) "Gaming award points" means any marketing or promotional coupons, certificates, player award or other cards, points, or other representatives of value that:

(a) A licensed gaming establishment, in connection with its promotional activities, issues to a person for visiting the establishment, for using the services of the establishment, or for gambling at the establishment; and

(b) May be redeemed at a licensed gaming establishment for cash or any other representative of value, food, products, goods, or services.

(5.5) "Gaming chip or token" means a gaming chip, token, encoded credit certificate, or other representative of value that is issued and sold by a licensed gaming establishment for use in gaming, other than a card or similar device issued and sold by a licensed gaming establishment that is clearly identifiable on its face or encoding as being owned by a specific and designated person.

(6) "Holder" means:

(a) A person, wherever organized or domiciled, which is:

(I) In possession of property belonging to another;

(II) A trustee; or

(III) Indebted to a person on an obligation;

(b) The public employees' retirement association.

(6.5) "Insurance company" means an association, corporation, or fraternal or mutual benefit organization, whether or not for profit, which is engaged in providing insurance coverage, including accident, burial, casualty, credit life, contract performance, dental, fidelity, fire, health, hospitalization, illness, life including endowments and annuities, malpractice, marine, mortgage, surety, or wage protection insurance.

(7) (a) "Intangible property" includes:

(I) Moneys, checks, drafts, deposits, interest, dividends, and income;

(II) Credit balances, customer overpayments, gift certificates, refunds, credit memos, and unidentified remittances;

(III) Stocks and other intangible ownership interests in business associations;

(IV) Moneys deposited to redeem stocks, bonds, coupons, and other securities or to make distributions;

(IV.5) Security deposits, unpaid wages, and unused airline tickets;

(V) Amounts distributable from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefits;

(VI) Amounts due and payable under the terms of insurance policies;

(VII) On and after October 1, 2002, any amount due and payable as a refund of Colorado income tax;

(VIII) On and after August 4, 2004, any amount due and payable as a refund of state taxes refunded pursuant to section 39-22-124, C.R.S.

(b) "Intangible property" does not include unclaimed capital credit payments held by cooperative electric associations and telephone cooperatives, gaming chips or tokens, or gaming award points.

(7.5) "Item" means:

(a) In regard to intangible property, the total of all accounts, credit balances, deposits, or other forms of intangible property held under the name of any one apparent owner; except that, if the same apparent owner owns intangible property of different types or classes that cannot practicably be handled or accounted for at the same time or in the same way, each such type or class may be considered a separate item;

(b) In regard to tangible personal property, the total of all such property held under the name of any one apparent owner.

(8) "Last-known address" means a description of the location of the apparent owner sufficient for the purpose of the delivery of mail.

(8.3) "Licensed gaming establishment" shall have the same meaning as set forth in section 12-47.1-103 (15), C.R.S.

(8.5) "Life insurance company" means any insurance company which is engaged in providing life or endowment insurance policies or annuity contracts.

(9) "Owner" means a depositor in the case of a deposit, a beneficiary in case of a trust other than a deposit in trust, a creditor, claimant, or payee in the case of other intangible property, or a person having a legal or equitable interest in property subject to this article or his legal representative.

(10) "Person" means an individual, business association, state or other government, governmental subdivision or agency, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity.

(10.3) "State" means any state, district, commonwealth, territory, insular possession, or other area subject to the legislative authority of the United States.

(10.7) "Utility" means a person who owns or operates 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.

(11) "Verify" means the signing of an instrument, which signing constitutes the affirmation or acknowledgment of the person signing the instrument, under penalties of perjury, that the facts stated in the instrument are true and which signing is made before a person who is a notary public or who is authorized by the law of the place of execution to take acknowledgments or to administer oaths.

**Source:** L. 87: Entire article added and (7)(a)(I) and (7)(b) amended, pp. 1317, 1335, §§ 1, 6, effective July 1. L. 90: IP(6) amended and (6.5), (7)(a)(VI), and (8.5) added, p. 1632, §§ 1, 2, effective April 27. L. 92: (6) amended, p. 2108, § 3, effective March 4; (2.5), (3.5), (7)(a)(IV.5), (10.3), and (10.7) added and IP(6) and (7)(b) amended, p. 2115, § 2, effective July 1. L. 95: (7.5) added, p. 522, § 2, effective May 16. L. 2001: (7)(a)(VII) added, p. 618, § 1, effective August 8. L. 2004: (5.3), (5.5), and (8.3) added and (7)(b) amended, p.1876, § 1, effective August 4; (7)(a)(VIII) added, p. 314, § 1, effective August 4.

**38-13-103. Property presumed abandoned - general rule.**

(1) Except as otherwise provided by this article, all intangible property, including any income or increment derived therefrom, less any lawful charges, that is held, issued, or owing in the ordinary

course of a holder's business and has remained unclaimed by the owner for more than five years after it became payable or distributable is presumed abandoned.

(2) Property is payable or distributable for the purpose of this article notwithstanding the owner's failure to make demand or to present any instrument or document required to receive payment.

Source: L. 87: Entire article added, p. 1318, § 1, effective July 1.

**38-13-104. General rules for taking custody of intangible unclaimed property.**

(1) Unless otherwise provided in this article or by other statute or local law, intangible property is subject to the custody of this state as unclaimed property if the conditions raising a presumption of abandonment under section 38-13-103 or sections 38-13-105 to 38-13-109.7 are satisfied and:

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

(b) The records of the holder do not reflect the identity of the person entitled to the property and it is established that the last-known address of the person entitled to the property is in this state;

(c) The records of the holder do not reflect the last-known address of the apparent owner and it is established that:

(I) The last-known address of the person entitled to the property is in this state; or

(II) The holder is a domiciliary of this state and has not previously paid or delivered the property to the state of the last-known address of the apparent owner or other person entitled to the property;

(d) The last-known address, as shown on the records of the holder, of the apparent owner is in a state that does not provide by law for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property and the holder is a domiciliary of this state;

(e) The last-known address, as shown on the records of the holder, of the apparent owner is in a foreign nation and the holder is a domiciliary of this state; or

(f) The transaction out of which the property arose occurred in this state and:

(I) (A) The last-known address of the apparent owner or other person entitled to the property is unknown; or

(B) The last-known address of the apparent owner or other person entitled to the property is in a state that does not provide by law for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property; and

(II) The holder is a domiciliary of a state that does not provide by law for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property.

Source: L. 87: Entire article added, p. 1319, § 1, effective July 1. L. 90: IP(1) amended, p. 1633, § 3, effective April 27. L. 92: IP(1) amended, p. 2116, § 3, effective July 1. L. 2001: IP(1) amended, p.

618, § 2, effective August 8.

**38-13-105. Travelers' checks and money orders.**

(1) (a) Subject to subsection (3) of this section, any sum payable on a money order or similar written instrument, other than a third-party bank check or traveler's check, that has been outstanding for more than seven years after its issuance is presumed abandoned unless the owner, within seven years, has communicated in writing with the issuer concerning it or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the issuer.

(b) Subject to subsection (3) of this section, any sum payable on a traveler's check that has been outstanding for more than fifteen years after its issuance is presumed abandoned unless the owner, within fifteen years, has communicated in writing with the issuer concerning it or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the issuer.

(2) On or after July 1, 1987, a holder may not deduct from the amount of a traveler's check or money order any service fee or other charge imposed solely by reason of the failure to present the instrument for payment unless there is a valid and enforceable written contract between the issuer and the owner of the instrument pursuant to which the issuer may impose a charge and the issuer regularly imposes such charges and does not regularly reverse or otherwise cancel them.

(3) No sum payable on a traveler's check or money order or similar written instrument, other than a third-party bank check, described in subsection (1) of this section may be subjected to the custody of this state as unclaimed property unless:

(a) The records of the issuer show that the traveler's check, money order, or similar written instrument was purchased in this state;

(b) The issuer has its principal place of business in this state and the records of the issuer do not show the state in which the traveler's check, money order, or similar written instrument was purchased; or

(c) The issuer has its principal place of business in this state, the records of the issuer show the state in which the traveler's check, money order, or similar written instrument was purchased, and the laws of the state of purchase do not provide for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property.

(4) Notwithstanding any other provision of this article, subsection (3) of this section applies to sums payable on travelers' checks, money orders, and similar written instruments presumed abandoned on or after February 1, 1965, except to the extent that those sums have been paid over to a state prior to January 1, 1974.

**Source:** L. 87: Entire article added, p. 1319, § 1, effective July 1; entire section R&RE, p. 1333, § 1, effective July 1.

**Editor's note:** Section 7 of chapter 275, Session Laws of Colorado 1987, provided that the act set out in that chapter amending this section was effective July 1, 1987, but the governor did not approve the act until July 10, 1987.

**38-13-106. Checks, drafts, and similar instruments issued or certified by banking and financial**

**organizations.**

(1) Any sum payable on a check, draft, or similar instrument, except those subject to section 38-13-105, on which a banking or financial organization is directly liable, including a cashier's check and a certified check, which has been outstanding for more than five years after it was payable or after its issuance if payable on demand is presumed abandoned unless the owner, within five years, has communicated 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 prepared by an employee thereof.

(2) On or after July 1, 1987, a holder may not deduct from the amount of any instrument subject to this section any service fee or other charge imposed solely by reason of the failure to present the instrument for payment unless there is a valid and enforceable written contract between the holder and the owner of the instrument pursuant to which the holder may impose a charge and the holder regularly imposes such charges and does not regularly reverse or otherwise cancel them.

**Source:** L. 87: Entire article added, p. 1320, § 1, effective July 1; (2) amended, p. 1334, § 2, effective July 1.

**Editor's note:** Section 7 of chapter 275, Session Laws of Colorado 1987, provided that the act set out in that chapter amending subsection (2) was effective July 1, 1987, but the governor did not approve the act until July 10, 1987.

**38-13-107. Bank deposits and funds in financial organizations.**

(1) Any demand, savings, or matured time deposit with a banking or financial organization, including a deposit that is automatically renewable, and any funds paid toward the purchase of a share, a mutual investment certificate, or any other interest in a banking or financial organization is presumed abandoned unless the owner, within five years, has:

(a) In the case of a deposit, increased or decreased its amount or presented the passbook or other similar evidence of the deposit for the crediting of interest;

(b) Communicated in writing with the banking or financial organization concerning the property;

(c) Otherwise indicated an interest in the property as evidenced by a memorandum or other record on file prepared by an employee of the banking or financial organization;

(d) Owned other property to which paragraph (a), (b), or (c) of this subsection (1) applies and unless the banking or financial organization communicates in writing with the owner with regard to the property that would otherwise be presumed abandoned under this subsection (1) at the address to which communications regarding the other property regularly are sent; or

(e) Had another relationship with the banking or financial organization concerning which the owner has:

(I) Communicated in writing with the banking or financial organization; or

(II) Otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the banking or financial organization and unless the banking or financial organization communicates in writing with the owner with regard to the property that would otherwise

be abandoned under this subsection (1) at the address to which communications regarding the other relationship regularly are sent.

(2) For purposes of subsection (1) of this section, "property" includes interest and dividends.

(3) On or after July 1, 1987, a holder may not impose, with respect to property described in subsection (1) of this section, any service fee or other charge due solely to dormancy or inactivity or cease payment of interest unless:

(a) There is an enforceable written contract between the holder and the owner of the property pursuant to which the holder may impose such fee or charge or cease payment of interest;

(b) For property in excess of two dollars, the holder, no more than three months before the initial imposition of those charges or cessation of interest, has given written notice to the owner of the amount of those fees or charges at the last-known address of the owner stating that those fees or charges will be imposed or that interest will cease, but the notice provided in this section need not be given with respect to fees or charges imposed or interest ceased before July 1, 1987; and

(c) The holder regularly imposes such fees or charges or ceases payment of interest and does not regularly reverse or otherwise cancel them or retroactively credit interest with respect to the property.

(4) Any property described in subsection (1) of this section that is automatically renewable is matured for purposes of subsection (1) of this section upon the expiration of its initial time period, but, in the case of any renewal to which the owner consents at or about the time of renewal by communicating in writing with the banking or financial organization or otherwise indicating consent as evidenced by a memorandum or other record on file prepared by an employee of the organization, the property is matured upon the expiration of the last time period for which consent was given. If, at the time provided for delivery in section 38-13-112, a penalty or forfeiture in the payment of interest would result from the delivery of the property, the time for delivery is extended until the time when no penalty or forfeiture would result.

**Source:** L. 87: Entire article added, p. 1320, § 1, effective July 1; (3) amended, p. 1334, § 3, effective July 1. L. 93: (2) amended, p. 1074, § 2, effective July 1.

**Editor's note:** Section 7 of chapter 275, Session Laws of Colorado 1987, provided that the act set out in that chapter amending subsection (3) was effective July 1, 1987, but the governor did not approve the act until July 10, 1987.

#### **38-13-107.1. Deposits held by utilities.**

Except as otherwise provided for unclaimed utility deposits under section 40-8.5-106, C.R.S., a deposit, including any interest thereon, made after January 1, 1992, by a subscriber with a utility to secure payment or any sum paid in advance after January 1, 1992, for utility services to be furnished, less any lawful deductions, that remains unclaimed by the owner for more than one year after termination of the services for which the deposit or advance payment was made is presumed abandoned.

**Source:** L. 92: Entire section added, p. 2116, § 4, effective July 1.

#### **38-13-107.3. Refunds held by business associations.**

Except to the extent otherwise ordered by the court or administrative agency, any sum that a business association has been ordered to refund by a court or administrative agency which has remained unclaimed by the owner for more than one year after it became payable in accordance with the final determination or order providing for the refund, whether or not the final determination or order requires any person entitled to a refund to make a claim for it, is presumed abandoned.

Source: L. 92: Entire section added, p. 2116, § 4, effective July 1.

**38-13-107.5. Stock and other intangible interests in business associations.**

(1) Except as provided in subsections (2) and (5) of this section, stock or other intangible ownership interest in a business association, the existence of which is evidenced by records available to the association, is presumed abandoned, and, with respect to the interest, the association is the holder if a dividend, distribution, or other sum payable as a result of the interest has remained unclaimed by the owner for five years and the owner within five years has not:

(a) Communicated in writing with the association regarding the interest or a dividend, distribution, or other sum payable as a result of the interest; or

(b) Otherwise communicated with the association regarding the interest or a dividend, distribution, or other sum payable as a result of the interest, as evidenced by a memorandum or other record on file with the association prepared by an employee of the association.

(2) At the expiration of a five-year period following the failure of the owner to claim a dividend, distribution, or other sum payable to the owner as a result of the interest, the interest is not presumed abandoned unless there have been at least five dividends, distributions, or other sums paid during the period, none of which has been claimed by such owner. If five dividends, distributions, or other sums are paid during the five-year period, the period leading to a presumption of abandonment commences on the date payment of the first such unclaimed dividend, distribution, or other sum became due and payable. If five dividends, distributions, or other sums are not paid during the presumptive period, the period continues to run until there have been five dividends, distributions, or other sums that have not been claimed by the owner.

(3) The running of the five-year period of abandonment ceases immediately upon the occurrence of a communication pursuant to subsection (1) of this section. If any future dividend, distribution, or other sum payable to the owner as a result of the interest is subsequently not claimed by such owner, a new period of abandonment commences and relates back to the time a subsequent dividend, distribution, or other sum became due and payable.

(4) At the time an interest is presumed abandoned under this section, any dividend, distribution, or other sum then held for or owing to the owner as a result of the interest, and not previously presumed abandoned, is presumed abandoned.

(5) This article does not apply to:

(a) Any stock or other intangible ownership interest enrolled in a plan that provides for the automatic reinvestment of dividends, distributions, or other sums payable as a result of the interest unless the records available to the administrator of the plan show, with respect to any intangible ownership interest not enrolled in the reinvestment plan, that the owner has not within five years communicated in the manner described in subsection (1) of this section; or

(b) The unclaimed patronage credits of agricultural marketing and supply cooperatives as defined in subchapter T of the federal "Internal Revenue Code of 1986".

Source: L. 92: Entire section added, p. 2116, § 4, effective July 1.

Editor's note: Subchapter T referenced in paragraph (b) of subsection (5) is contained in 26 U.S.C.S. 1381.

**38-13-107.9. Property of business associations held in the course of dissolution.**

Intangible property distributable in the course of a dissolution of a business association which remains unclaimed by the owner for more than one year after the date specified for final distribution is presumed abandoned.

Source: L. 92: Entire section added, p. 2118, § 4, effective July 1.

**38-13-108. Property held by agents and fiduciaries.**

(1) Intangible property and any income or increment derived therefrom held in a fiduciary capacity for the benefit of another person is presumed abandoned unless the owner, within three years after it has become payable or distributable, has increased or decreased the principal, accepted payment of principal or income, communicated concerning the property, or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by the fiduciary.

(2) Funds in an individual retirement account or a retirement plan for self-employed individuals or similar account or plan established pursuant to the internal revenue laws of the United States are not payable or distributable within the meaning of subsection (1) of this section unless, under the terms of the account or plan, distribution of all or part of the funds would then be mandatory.

(3) For the purpose of this section, a person who holds property as an agent for a business association is deemed to hold the property in a fiduciary capacity for that business association alone, unless the agreement between him and the business association provides otherwise.

(4) For the purposes of this article, a person who is deemed to hold property in a fiduciary capacity for a business association alone is the holder of the property only insofar as the interest of the business association in the property is concerned, and the business association is the holder of the property insofar as the interest of any other person in the property is concerned.

Source: L. 87: Entire article added, p. 1322, § 1, effective July 1.

**38-13-108.2. Property held by courts and public agencies.**

Intangible property held for the owner by a court, state or other government, governmental subdivision or agency, public corporation, or public authority which remains unclaimed by the owner for more than one year after becoming payable or distributable is presumed abandoned.

Source: L. 92: Entire section added, p. 2118, § 4, effective July 1.

**38-13-108.4. Gift certificates and credit memos.**

(1) Except as provided in subsection (3) of this section, a gift certificate or a credit memo issued in the ordinary course of an issuer's business which remains unclaimed by the owner for more than five years after becoming payable or distributable is presumed abandoned.

(2) In the case of a gift certificate, the amount presumed abandoned is the price paid by the purchaser for the gift certificate. In the case of a credit memo, the amount presumed abandoned is the amount credited to the recipient of the memo.

(3) The provisions of this section shall apply to any gift certificate issued by a business that is redeemable in cash and not to any gift certificate issued for food, products, goods, or services.

**Source:** L. 92: Entire section added, p. 2118, § 4, effective July 1. L. 93: (1) amended and (3) added, p. 1075, § 4, effective July 1.

**38-13-108.5. Moneys held by the public employees' retirement association.**

(1) For the purposes of this section, unless the context otherwise requires:

(a) "Account left inactive" means the contributions of any nonvested member who has terminated employment with an employer if such member's member contribution account with the association has been left inactive.

(b) "Association" means the public employees' retirement association created pursuant to section 24-51-201, C.R.S.

(c) "Benefit" shall have the same meaning as that provided for such term in section 24-51-101 (7), C.R.S.

(d) "Benefit recipient" shall have the same meaning as that provided for such term in section 24-51-101 (8), C.R.S.

(e) "Employer" shall have the same meaning as that provided for such term in section 24-51-101 (20), C.R.S.

(f) "Member" shall have the same meaning as that provided for such term in section 24-51-101 (29), C.R.S.

(g) "Unclaimed benefit" means a benefit owed to any benefit recipient if such benefit remains unpaid.

(h) "Unclaimed member refund" means the contributions of a member who has terminated employment with an employer and who has requested a refund of such contributions if such refund remains unpaid.

(2) Any moneys and any accrued interest which are held by the association for accounts left inactive, unclaimed benefits, or unclaimed member refunds shall be presumed to be abandoned if such moneys remain unclaimed for more than five years after such moneys become payable or distributable pursuant to the provisions of article 51 of title 24, C.R.S., unless the owner of such moneys, within five years, has:

(a) Communicated in writing with the association concerning such moneys; or

(b) Otherwise indicated an interest in such moneys as evidenced by a memorandum or other record on file prepared by an employee of the association.

(3) Property which is presumed to be abandoned pursuant to the provisions of this section shall be the only property held by the association which is subject to the provisions of this article.

Source: L. 92: Entire section added, p. 2109, § 4, effective March 4.

#### **38-13-108.6. Wages.**

Unpaid wages, including wages represented by un-presented payroll checks, owing in the ordinary course of the holder's business which remain unclaimed by the owner for more than one year after becoming payable are presumed abandoned.

Source: L. 92: Entire section added, p. 2118, § 4, effective July 1.

#### **ANNOTATION**

**Law reviews.** For article, "State Laws: A Growing Minefield for Employers", see 23 Colo. Law. 1089 (1994).

#### **38-13-108.7. Gaming chips or tokens - gaming award points - inapplicability.**

This article shall not apply to gaming award points and gaming chips or tokens issued or sold by a licensed gaming establishment before, on, or after August 4, 2004, except to the extent the state has taken custody of any gaming award points or gaming chips or tokens on or before January 1, 2004.

Source: L. 2004: Entire section added, p. 1877, § 2, effective August 4.

#### **38-13-108.8. Property held by racetracks - inapplicability.**

This article shall not apply to any intangible unclaimed property held by a racetrack, as that term is defined in section 12-60-102 (26), C.R.S.

Source: L. 92: Entire section added, p. 2118, § 4, effective July 1. L. 93: Entire section amended, p. 1239, § 12, effective July 1.

#### **38-13-109. Contents of safe deposit box or other safekeeping repository.**

All tangible and intangible property held in a safe deposit box or any other safekeeping repository in this state in the ordinary course of the holder's business and proceeds resulting from the sale of the property permitted by any other law, which remain unclaimed by the owner for more than five years after the lease or rental period on the box or other repository has expired, are presumed abandoned.

Source: L. 87: Entire article added, p. 1322, § 1, effective July 1.

#### **38-13-109.5. Funds owing under life insurance policies.**

(1) Funds held or owing under any life or endowment insurance policy or annuity contract that has matured or terminated are presumed abandoned if unclaimed for more than five years after the funds became due and payable as established from the records of the insurance company holding or owing the funds; except that property described in paragraph (b) of subsection (3) of this section is presumed abandoned if unclaimed for more than two years.

(2) If a person other than the insured or annuitant is entitled to the funds and an address of the person is not known to the company or it is not definite and certain from the records of the company who 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 company.

(3) For purposes of this article, a life or endowment insurance policy or annuity contract not matured by actual proof of the death of the insured or annuitant according to the records of the company is matured and the proceeds due and payable if:

(a) The company knows that the insured or annuitant has died; or

(b) (I) 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;

(II) The policy was in force at the time the insured attained, or would have attained, the limiting age specified in subparagraph (I) of this paragraph (b); and

(III) Neither the insured nor any other person appearing to have an interest in the policy within the preceding two years, according to the records of the company, has assigned, readjusted, or paid premiums on the policy, subjected the policy to a loan, corresponded in writing with the company concerning the policy, or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the company.

(4) For purposes of this article, the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent a policy from being matured or terminated under subsection (1) of this section if the insured has died or the insured or the beneficiary of the policy otherwise has become entitled to the proceeds thereof before the depletion of the cash surrender value of a policy by the application of such provisions.

(5) If the laws of this state or the terms of the life insurance policy require the company to give notice to the insured or owner that an automatic premium loan provision or other nonforfeiture provision has been exercised, and the notice given to an insured or owner whose last-known address according to the records of the company is in this state is undeliverable, the company shall make a reasonable search to ascertain the policyholder's correct address to which the notice must be mailed.

(6) Notwithstanding any other provision of law to the contrary, if the company learns of the death of the insured or annuitant and the beneficiary has not communicated with the insurer within four months after such death, the company shall take reasonable steps to pay the proceeds to the beneficiary.

(7) Commencing July 1, 1992, every change of beneficiary form issued by an insurance company under any life or endowment insurance policy or annuity contract to an insured or owner who is a resident of this state shall request the following information:

(a) The name of each beneficiary, or if a class of beneficiaries is named, the name of each current beneficiary in the class;

(b) The address of each beneficiary; and

(c) The relationship of each beneficiary to the insured.

Source: L. 90: Entire section added, p. 1633, § 4, effective April 27.

**38-13-109.7. Tax refunds.**

(1) On and after October 1, 2002, any amount due and payable as a refund of Colorado income tax or grant for property taxes, rent, or heat or fuel expenses assistance represented by a warrant that has not been presented for payment within six months from the date of issuance of the warrant and that has been forwarded by the department of revenue to the administrator pursuant to section 39-21-108 (5), C.R.S., is presumed abandoned.

(2) On and after August 4, 2004, any amount due and payable as a refund of state taxes refunded pursuant to section 39-22-124, C.R.S., represented by a warrant that has not been presented for payment within six months from the date of issuance of the warrant and that has been forwarded by the department of revenue to the administrator pursuant to section 39-21-108 (6), C.R.S., is presumed abandoned.

Source: L. 2001: Entire section added, p. 618, § 3, effective August 8. L. 2004: Entire section amended, p. 314, § 2, effective August 4.

**38-13-110. Report and payment or delivery of abandoned property.**

(1) (a) A person holding property, tangible or intangible, presumed abandoned and subject to custody as unclaimed property under this article shall report to the administrator concerning the property as provided in this section.

(b) If a person is not subject to the requirements of this subsection (1) because the person does not hold any property, tangible or intangible, presumed abandoned under this article or the person meets the criteria established in paragraph (e) of subsection (4) of this section, the person shall not be required to notify the administrator of the person's exemption from this subsection (1).

(2) The report must include:

(a) Except with respect to 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 property presumed abandoned under this article;

(a.5) In the case of unclaimed funds of twenty-five dollars or more held or owing under any life or endowment insurance policy or annuity contract, the name, if known, and the last-known address, if any, of the insured or annuitant and of the beneficiary according to the records of the insurance company holding or owing the funds;

(b) In the case of the contents of a safe deposit box or other safekeeping repository or of other tangible property, a description of the property and the place where it is held and may be inspected by

the administrator and any amounts owing to the holder;

(c) The nature and identifying number, if any, or a description of the property and the amount appearing from the records to be due, but items of value under twenty-five dollars each may be reported in the aggregate;

(d) The date the property became payable, demandable, or returnable and the date of the last transaction with the apparent owner with respect to the property; and

(e) Other information the administrator prescribes by rule as necessary for the administration of this article.

(3) If the person holding property presumed abandoned and subject to custody as unclaimed property is a successor to other persons who previously held the property for the apparent owner or the holder has changed his name while holding the property, he shall file with his report any such prior name and all known names and addresses of each previous holder of the property.

(4) (a) The report required by subsection (1) of this section shall be filed and, pursuant to section 38-13-112, payment or delivery of abandoned property shall be made before November 1 of each year as of June 30 next preceding, with the initial report to be filed before November 1, 1987, except as provided in paragraphs (b), (c), (d), and (e) of this subsection (4).

(b) Notwithstanding the provisions of paragraph (a) of this subsection (4), the report of any life insurance company must be filed and, pursuant to section 38-13-109.5, payment or delivery of funds held or owing and presumed abandoned shall be made before May 1 of each year as of December 31 next preceding, with the initial report to be filed before May 1, 1991.

(c) On written request by any person required to file a report and, pursuant to section 38-13-112, pay or deliver abandoned property, the administrator may postpone the reporting date. However, the reporting date for the initial report filed by insurance companies, other than life insurance companies pursuant to paragraph (a) of this subsection (4), under this article as required by section 38-13-130 (2) shall in no case be postponed beyond December 30, 1990.

(d) Notwithstanding the provisions of paragraph (a) of this subsection (4), the public employees' retirement association shall file an initial report on or before June 1, 1992. The public employees' retirement association shall file subsequent reports in conformance with the requirements of paragraph (a) of this subsection (4) on or before November 1, 1993, and on or before November 1 of each year thereafter.

(e) (I) Any business association with annual gross receipts of less than five hundred thousand dollars that holds property, tangible or intangible, acquired during the immediately preceding five-year period of an aggregate value under three thousand five hundred dollars shall not be subject to the requirements of paragraph (a) of this subsection (4) and section 38-13-112 until such time as the aggregate value of such property acquired during the immediately preceding five-year period exceeds three thousand five hundred dollars; except that, if any such business association holds an item of property of any one apparent owner acquired during such period of an aggregate value over two hundred fifty dollars, such business association shall report and pay or deliver such property to the administrator in accordance with paragraph (a) of this subsection (4) and section 38-13-112.

(II) Any organization exempt from taxation under section 501 (c) (3) of the federal "Internal Revenue Code of 1986", 26 U.S.C. 501 (c) (3), or its successor statute, that receives contributions

totaling one million dollars or more annually and that holds property, tangible or intangible, acquired during the immediately preceding five-year period of an aggregate value under three thousand five hundred dollars shall not be subject to the requirements of paragraph (a) of this subsection (4) and section 38-13-112 until such time as the aggregate value of such property acquired during the immediately preceding five-year period exceeds three thousand five hundred dollars; except that, if any such organization holds an item of property of any one apparent owner acquired during such period of an aggregate value over two hundred fifty dollars, such organization shall report and pay or deliver such property to the administrator in accordance with paragraph (a) of this subsection (4) and section 38-13-112.

(III) Any organization exempt from taxation under section 501 (c) (3) of the federal "Internal Revenue Code of 1986", 26 U.S.C. 501 (c) (3), or its successor statute, that receives contributions totaling less than one million dollars annually shall not be subject to the requirements of paragraph (a) of this subsection (4) and section 38-13-112.

(5) Except as provided in subsection (6) of this section, not more than one hundred twenty days before filing the report and, pursuant to section 38-13-112, paying or delivering the abandoned property required by this section, the holder in possession of property presumed abandoned and subject to custody as unclaimed property under this article shall send written notice to the apparent owner's last-known address, informing such owner that the holder is in possession of property subject to this article if:

(a) The holder has in its records an address for the apparent owner which the holder's records do not disclose to be inaccurate;

(b) The claim of the apparent owner is not barred by the statute of limitations; and

(c) The property has a value of fifty dollars or more.

(6) (a) (Deleted by amendment, L. 95, p. 523, § 3, effective May 16, 1995.)

(b) The public employees' retirement association shall comply with the requirements of subsection (5) of this section with regard to reports filed by the public employees' retirement association on or before November 1, 1993, and on or before November 1 of each year thereafter.

**Source:** L. 87: Entire article added, p. 1322, § 1, effective July 1; (4) amended, p. 1335, § 1, effective July 1. L. 90: (2)(a.5) added and (4) amended, p. 1634, §§ 5, 6, effective April 27. L. 92: (4)(a) and IP(5) amended and (4)(d) and (6) added, pp. 2110, 2111, §§ 5, 6, effective March 4; (4) and IP(5) amended, p. 2118, § 5, effective July 1. L. 93: (4)(a) amended and (4)(e) added, p. 1075, § 5, effective July 1. L. 95: (1), IP(2), (4)(d), (4)(e), and (6)(a) amended, p. 523, § 3, effective May 16.

**Editor's note:** Amendments to subsections (4) and (5) by House Bill 92-1092 and House Bill 92-1152 were harmonized.

### **38-13-111. Electronic notice of abandoned property.**

(1) The administrator shall maintain an electronic, alphabetical list of the owners of unclaimed property and shall make such list available to the public on the world wide web. The administrator shall provide to each county treasurer and public library in the state a written copy of the list of owners of unclaimed property in that county. The office of the treasurer shall also maintain a written copy of the list of unclaimed property owners.

(2) The electronic, alphabetical list of the names of owners of unclaimed property maintained pursuant to subsection (1) of this section shall include the following information:

(a) (Deleted by amendment, L. 2004, p. 1148, § 1, effective August 4, 2004.)

(b) A statement that information concerning the property may be obtained by any person possessing an interest in the property by addressing an inquiry to the administrator; and

(c) (I) A statement that any person claiming an interest in the property must file a proof of claim with the administrator pursuant to section 38-13-117.

(II) (Deleted by amendment, L. 95, p. 524, § 4, effective May 16, 1995.)

(3) (Deleted by amendment, L. 2004, p. 1148, § 1, effective August 4, 2004.)

(4) Not later than March 1 of the year immediately following the report required by section 38-13-110 or, in the case of property reported by life insurance companies, not later than September 1 of the year of the report required by section 38-13-110, the administrator shall mail a notice to each person whose last-known address is listed in the report and who appears to be entitled to property of the value of fifty dollars or more presumed abandoned under this article and any beneficiary of a life or endowment insurance policy or annuity contract for whom the administrator has a last-known address.

(5) The mailed notice must contain:

(a) A statement that property is being held to which the addressee appears entitled; and

(b) A statement that any person claiming an interest in property being held must file a proof of claim with the administrator pursuant to section 38-13-117.

(6) This section is not applicable to sums payable on money orders and other written instruments presumed abandoned under section 38-13-105.

(7) The administrator shall limit the amount of moneys expended for publication and necessary correspondence pursuant to this section to not more than two percent of the previous year's paid claims from the unclaimed property trust fund created in section 38-13-116.5.

**Source:** L. 87: Entire article added, p. 1323, § 1 effective July 1. L. 90: (1), (2)(c), and (4) amended, p. 1635, § 7, effective April 27. L. 92: (1), (2)(c), and (4) amended, p. 2111, § 7, effective March 4; (2)(b), (2)(c), and (5) amended, p. 2119, § 6, effective July 1. L. 95: (1), (2)(c)(II), and (4) amended, p. 524, § 4, effective May 16. L. 2004:(1), IP(2), (2)(a), and (3) amended and (7) added, p. 1148, § 1, effective August 4; (2)(c)(I) amended, p. 1205, § 82, effective August 4.

**Editor's note:** Amendments to subsection (2)(c) by House Bill 92-1092 and House Bill 92-1152 were harmonized.

#### **38-13-112. Payment or delivery of abandoned property to the administrator.**

(1) (a) Except as otherwise provided in subsection (2) of this section, a person who is required to file a report under section 38-13-110 shall pay or deliver to the administrator all abandoned property required to be reported at the time such report is filed.

(b) (I) A holder may voluntarily, prior to payment or delivery of said abandoned property, deduct and retain two percent of the value of the property or twenty-five dollars whichever is more per item.

(II) Holders that are banking or financial organizations and holders of dividends, royalties, or other items that are backed by an underlying share, interest, insurance policy, or annuity contract may voluntarily, prior to payment or delivery of said abandoned property, deduct and retain two percent of the value of the property or twenty-five dollars, whichever is more per item; except that, if the abandoned property is a demand, savings, or matured time deposit or funds held or owing under an insurance policy or annuity contract, the holder may deduct and retain two percent of the value of the property or twenty-five dollars, whichever is less.

(c) A holder may also deduct any sum due and owing from the value of the property prior to delivery.

(2) (a) If the owner establishes the right to receive the abandoned property to the satisfaction of the holder before the property has been delivered or if it appears that for some other reason the presumption of abandonment is erroneous, the holder need not pay or deliver the property to the administrator, and the property will no longer be presumed abandoned. In that case, the holder shall file with the administrator a written explanation of the proof of claim or of the error in the presumption of abandonment.

(b) The provisions of subsection (1) of this section shall apply to any payment or delivery of abandoned property by the public employees' retirement association if such property was included in a report required to be filed by the public employees' retirement association on or before November 1, 1993, or on or before November 1 of any succeeding year.

Source: L. 87: Entire article added, p. 1324, § 1, effective July 1. L. 89: (1) amended, p. 1646, § 26, effective June 5. L. 92: (2) amended, p. 2112, § 8, effective March 4; (1) amended, p. 2120, § 7, effective July 1. L. 95: Entire section amended, p. 525, § 5, effective May 16.

**38-13-112.5. Public employees' retirement association - initial report of abandoned property - payment of moneys. (Repealed)**

Source: L. 92: Entire section added, p. 2110, § 4, effective March 4. L. 95: Entire section repealed, p. 526, § 6, effective May 16.

**38-13-113. Custody by state - holder relieved from liability - waiver of rights by owner - reimbursement of holder paying claim - reclaiming for owner - defense of holder - payment of safe deposit box or repository charges.**

(1) (a) Upon the payment or delivery of property to the administrator, the state assumes custody and responsibility for the safekeeping of the property. A person who pays or delivers property to the administrator in good faith is relieved of all liability to the extent of the value of the property paid or delivered for any claim then existing or which thereafter may arise or be made in respect to the property.

(b) Any person appearing to be an owner of property paid or delivered to the administrator pursuant to this article may notify the administrator on a form prescribed by the administrator that the person waives the right to claim the property. Upon receipt of such notice, the administrator shall transfer the property to the CoverColorado cash fund created in section 10-8-530 (2), C.R.S. After the property is transferred to the fund, the state shall no longer be responsible for the safekeeping of the property and shall be relieved of all liability to the extent of the value of the property for any claim that

may arise or be made with respect to the property.

(2) A holder who has paid money to the administrator pursuant to this article may make payment to any person appearing to the holder to be entitled to payment, and, upon filing proof of payment and proof that the payee was entitled thereto, the administrator shall promptly reimburse the holder for the payment without imposing any fee or other charge. If reimbursement is sought for a payment made on a negotiable instrument, including a money order, the holder must be reimbursed under this subsection (2) upon filing proof that the instrument was duly presented and that payment was made to a person who appeared to the holder to be entitled to payment. The holder must be reimbursed for payment made under this subsection (2) even if the payment was made to a person whose claim was barred under section 38-13-122 (1).

(3) A holder who has delivered property other than money to the administrator pursuant to this article may reclaim the property if still in the possession of the administrator, without paying any fee or other charge, upon filing proof that the owner has claimed the property from the holder.

(4) The administrator may accept the holder's affidavit as sufficient proof of the facts that entitle the holder to recover money and property under this section.

(5) If the holder pays or delivers property to the administrator in good faith and thereafter another person claims the property from the holder or another state claims the money or property under its laws relating to escheat or abandoned or unclaimed property, the administrator, upon written notice of the claim, shall defend the holder against the claim and indemnify the holder against any liability on the claim.

(6) For the purposes of this section, "good faith" means that:

(a) Payment or delivery was made in a reasonable attempt to comply with this article;

(b) The person delivering the property was not a fiduciary then in breach of trust in respect to the property and had a reasonable basis for believing, based on the facts then known to him, that the property was abandoned for the purposes of this article; and

(c) There is no showing that the records pursuant to which the delivery was made did not meet reasonable commercial standards of practice in the industry.

(7) Property removed from a safe deposit box or other safekeeping repository is received by the administrator subject to the holder's right under this subsection (7) to be reimbursed for the actual cost of the opening of such repository and subject to any valid lien or contract providing for the holder to be reimbursed for unpaid rent or storage charges. The administrator shall reimburse or pay the holder for such costs out of the proceeds remaining after deducting the administrator's selling cost.

**Source:** L. 87: Entire article added, p. 1325, § 1, effective July 1. L. 2004: (1) amended, p. 1877, § 3, effective August 4.

**38-13-114. Crediting of dividends, interest, or increments to owner's account.**

Whenever property other than money is paid or delivered to the administrator under this article, the owner is entitled to receive from the administrator any dividends, interest, or other increments realized or accruing on the property at or before liquidation or conversion thereof into money.

Source: L. 87: Entire article added, p. 1326, § 1, effective July 1.

**38-13-115. Public sale of abandoned property.**

(1) Except as provided in subsections (2), (3), and (5) of this section, the administrator, within three years after the receipt of abandoned property, shall sell it to the highest bidder at public sale in whatever city in the state affords in the judgment of the administrator the most favorable market for the property involved. The administrator may decline the highest bid and reoffer the property for sale if in the judgment of the administrator the bid is insufficient. If in the judgment of the administrator the probable cost of sale exceeds the value of the property, it need not be offered for sale. Any sale held under this section must be preceded by a single publication of notice, at least three weeks in advance of sale, in a newspaper of general circulation in the county in which the property is to be sold.

(2) Securities listed on an established stock exchange must be sold at prices prevailing on the exchange at the time of sale. Other securities may be sold over the counter at prices prevailing at the time of sale or by any other method the administrator considers advisable.

(3) Unless the administrator considers it to be in the best interest of the state to do otherwise, all securities delivered to the administrator shall be held for at least one year before he or she may sell them. On and after July 1, 2004, the administrator shall take all reasonable action to sell the securities delivered to him or her as provided in this section. All proceeds collected from the sale of securities pursuant to this section shall be deposited in the unclaimed property tourism promotion trust fund created in section 38-13-116.7.

(4) The purchaser of property at any sale conducted by the administrator pursuant to this article takes the property free of all claims of the owner or previous holder thereof and of all persons claiming through or under them. The administrator shall execute all documents necessary to complete the transfer of ownership.

(5) The administrator shall retain or loan to the Colorado state veterans center in Homelake, Colorado, or to an alternate state facility selected by the administrator that has appropriate and secure space suitable for public display any military medal or decoration or other military award or citation that is delivered to the administrator pursuant to section 38-13-113 until the owner of the property claims the property in accordance with section 38-13-117 (1) and the administrator allows the claim pursuant to section 38-13-117 (3).

Source: L. 87: Entire article added, p. 1326, § 1, effective July 1. L. 2002: (1) amended and (5) added, p. 319, § 1, effective August 7. L. 2004: (3) amended, p. 1262, § 2, effective May 27.

**Cross references:** For the legislative declaration contained in the 2004 act amending subsection (3), see section 1 of chapter 322, Session Laws of Colorado 2004.

**38-13-116. Creation of funds - repeal. (Repealed)**

Source: L. 87: Entire article added, p. 1326, § 1, effective July 1. L. 89: (1) amended and (2) repealed, p. 1440, §§ 1, 2, effective April 6. L. 90: (1) amended and (3) added, p. 1635, § 8, effective April 27; (3)(b) amended, p. 641, § 3, effective July 1; (3)(b)(II) added by revision, p. 641, § 5. L. 93: (3)(b) amended, p. 1025, § 4, effective June 2; (1) amended and (4) added, p. 1075, § 6, effective July 1. L. 95: (3)(b)(III) added and (4)(a) amended, p. 526, §§ 7, 8, effective May 16. L. 97: (3)(b)(I), (4)(b), and (4)(c) amended, p. 622, § 22, effective July 1. L. 2000: Entire section amended, p. 400, § 3, effective August 2.

**Editor's note:** (1) Subsection (5) provided for the repeal of this section, effective July 1, 2001. (See L. 2000, p. 400.)

(2) Money in the abandoned property trust fund, unclaimed insurance moneys fund, and business associations unclaimed money fund created by this section were transferred to the unclaimed property trust fund created in section 38-13-116.5, effective July 1, 2001.

**38-13-116.5. Unclaimed property trust fund - creation - payments - interest - appropriations - records - rules.**

(1) (a) There is hereby created in the state treasury the unclaimed property trust fund. The principal in the trust fund shall consist of all moneys collected by the administrator under this article. On July 1, 2001, any moneys in the abandoned property fund, the unclaimed insurance moneys fund, or the business associations unclaimed moneys fund created in section 38-13-116 shall be transferred to and shall become a part of the trust fund.

(b) Except as provided in subsections (2), (2.5), and (2.7) of this section, the principal of the trust fund shall not be expended except to pay claims made pursuant to this article. Moneys comprising the principal of the trust fund shall not constitute fiscal year spending of the state for purposes of section 20 of article X of the state constitution and are not subject to appropriation by the general assembly.

(c) All interest derived from the deposit and investment of moneys in the trust fund shall be credited to the trust fund.

(d) The moneys in the unclaimed property trust fund shall not revert to the general fund at the end of any fiscal year.

(2) For the 2001-02 fiscal year and each fiscal year thereafter, the general assembly shall make annual appropriations out of the principal of the unclaimed property trust fund for the direct and indirect costs of administering this article. Any moneys appropriated to the department of the treasury pursuant to this subsection (2) shall constitute fiscal year spending for purposes of section 20 of article X of the state constitution.

(2.5) (a) As soon as practicable after March 27, 2002, the state treasurer shall deduct fourteen million three hundred thousand dollars from the unclaimed property trust fund and transfer such sum to the general fund for use in the 2001-02 fiscal year.

(b) As soon as practicable after March 27, 2002, the state treasurer shall deduct one million seven hundred thousand dollars from the unclaimed property trust fund and transfer such sum to the CoverColorado cash fund created in section 10-8-530 (2), C.R.S., for use in the 2001-02 fiscal year.

(2.7) (a) Subject to the provisions of paragraph (b) of this subsection (2.7), on and after August 4, 2004, the state treasurer shall transmit to CoverColorado the amount equal to the principal and interest in the trust fund minus:

- (I) The claims paid pursuant to this article for each fiscal year;
- (II) The reserve amount necessary to pay anticipated claims; and
- (III) Publication and correspondence expenses pursuant to section 38-13-111 (7).

(b) If, based on the determination of the amount necessary by the board of CoverColorado pursuant to section 10-8-530 (1.3), C.R.S., and substantiated by the actuarial evaluations required pursuant to section 10-8-530 (1.5) (c), C.R.S., the board of CoverColorado determines that CoverColorado requires only a portion of the moneys available pursuant to paragraph (a) of this subsection (2.7), the state treasurer shall only transmit the portion required pursuant to section 10-8-530 (1.3), C.R.S.

(c) The treasurer shall report to the general assembly annually any transmission of moneys to CoverColorado pursuant to this subsection (2.7).

(d) The treasurer may promulgate rules pursuant to article 4 of title 24, C.R.S., concerning the time frame for the transmittal of moneys to CoverColorado pursuant to this subsection (2.7).

(3) Before crediting any moneys to the trust fund pursuant to subsection (1) of this section, the administrator shall record the name and last-known address of each person appearing from the holders' reports to be entitled to the property. The record shall be available for public inspection during all reasonable business hours.

**Source:** L. 2000: Entire section added, p. 399, § 1, effective August 2. L. 2001: (1)(c) amended, p. 1052, § 40, effective July 1. L. 2002: (1)(b) and (2) amended and (2.5) added, p. 161, § 1, effective March 27; (1)(b) amended, p. 679, § 1, effective March 28. L. 2004: (1)(b) and (1)(c) amended and (2.7) added, p. 1149, § 2, effective August 4.

**Editor's note:** Section 38-13-116 referenced in subsection (1) was repealed, effective July 1, 2001.

**38-13-116.7. Unclaimed property tourism promotion trust fund - creation - payments - interest - transfers.**

(1) There is hereby created in the state treasury the unclaimed property tourism promotion trust fund. The principal in the trust fund shall consist of all proceeds collected by the administrator from the sale of securities pursuant to section 38-13-115.

(2) The principal of the unclaimed property tourism promotion trust fund shall not be expended except to pay claims made pursuant to this article. Moneys comprising the principal of the trust fund that are credited to or expended from the trust fund to pay claims shall not constitute fiscal year spending of the state for purposes of section 20 of article X of the state constitution, and such moneys shall be deemed custodial funds that are not subject to appropriation by the general assembly.

(3) All interest derived from the deposit and investment of moneys in the unclaimed property tourism promotion trust fund shall be credited to the Colorado travel and tourism promotion fund created in section 24-49.7-106 (1), C.R.S., and, beginning with the 2005-06 state fiscal year, shall be subject to appropriation by the general assembly as provided in section 24-49.7-106 (3) (a), C.R.S. Any moneys that are credited to and expended from the Colorado travel and tourism promotion fund pursuant to this subsection (3) shall constitute fiscal year spending of the state for purposes of section 20 of article X of the state constitution.

(4) The moneys in the unclaimed property tourism promotion trust fund shall not revert to the general fund at the end of any fiscal year.

**Source:** L. 2004: Entire section added, p. 1262, § 3, effective May 27.

**Cross references:** For the legislative declaration contained in the 2004 act enacting this section, see section 1 of chapter 322, Session Laws of Colorado 2004.

**38-13-117. Filing of claim with administrator.**

(1) A person, excluding another state, this state, or a governmental agency of this state, claiming an interest in any property paid or delivered to the administrator may file with him or her a claim on a form prescribed by the administrator and verified by the claimant. If the value of the property claimed is one hundred dollars or less, the administrator may waive the requirement that the claimant verify the claim. The administrator shall require the claimant to submit his or her social security number or federal employer identification number, whichever is applicable. The social security number or federal employer identification number shall not become part of the public records of the administrator.

(2) The administrator shall consider each claim and give written notice within ninety days after the filing of the claim to the claimant if the claim is denied in whole or in part. The notice may be given by mailing it to the last-known address, if any, stated in the claim as the address to which such notice is to be sent. If no address for notice is stated in the claim, the notice may be mailed to the last-known address, if any, of the claimant as stated in the claim. No notice of denial need be given if the claim fails to state either the last-known address to which such notice is to be sent or the current address of the claimant.

(3) (a) Subject to the provisions of sections 38-13-117.3, 38-13-117.5, and 38-13-117.7, if a claim is allowed, the administrator shall pay over or deliver to the claimant the property or the amount the administrator actually received or the net proceeds if it has been sold by the administrator, together with any additional amount required by section 38-13-114. If the property claimed was interest-bearing to the owner on the date of surrender by the holder, the administrator also shall pay simple interest at a rate of six percent a year or any lesser rate the property earned while in the possession of the holder. Such interest begins to accrue when the property is delivered to the administrator and ceases on the expiration of five years after delivery or the date on which payment is made to the owner. No interest on interest-bearing property is payable for any period before July 1, 1987.

(b) The administrator shall pay or deliver to the public employees' retirement association the amount necessary to purchase service credit pursuant to section 24-51-503, C.R.S., if the owner of an account left inactive or an unclaimed member refund described in section 38-13-108.5 (1) requests restoration of service credit which was forfeited when funds were transferred to the abandoned property fund.

(4) Any holder who pays the owner for property that has been delivered to the state and which, if claimed from the administrator, would be subject to subsection (3) of this section shall add interest as provided in subsection (3) of this section. The added interest must be repaid to the holder by the administrator in the same manner as the principal is repaid.

**Source:** L. 87: Entire article added, p. 1327, § 1, effective July 1. L. 92: (3)(b) added, p. 2112, § 9, effective March 4. L. 2004: (1) amended, p. 1877, § 4, effective August 4. L. 2005: (1) and (3)(a) amended, p. 699, § 4, effective August 8.

**Editor's note:** (1) Section 9 of House Bill 92-1092 does not conform to the C.R.S. numbering format; therefore, (3)(a) in House Bill 92-1092 has been subsequently relettered to (3)(b).

(2) Subsections (1) and (3)(a) were contained in a 2005 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

**38-13-117.3. Claims offset for child support.**

(1) Before paying a claim in an amount exceeding six hundred dollars pursuant to section 38-13-117 (3), the administrator shall offset against the amount of the claim the claimant's obligations to pay current child support, child support debt, retroactive child support, child support arrearages, child support costs, or child support when combined with maintenance. The administrator may enter into a memorandum of understanding with the department of human services to implement this section and section 26-13-118.5, C.R.S.

(2) (a) If a claimant owes current child support, child support debt, retroactive child support, child support arrearages, child support costs, or child support when combined with maintenance, and also owes restitution or fines, fees, costs, or surcharges as described in section 38-13-117.5 or delinquent state taxes, penalties, or interest as described in section 38-13-117.7, or both, the unclaimed property offset against the current child support, child support debt, retroactive child support, child support arrearages, child support costs, or child support when combined with maintenance shall take priority and be applied first.

(b) If a claimant owes both restitution or fines, fees, costs, or surcharges and delinquent state taxes, penalties, or interest, after payment in accordance with paragraph (a) of this subsection (2), if applicable, any remaining unclaimed property shall be applied first toward the payment of the outstanding restitution or fines, fees, costs, or surcharges and processed in accordance with section 38-13-117.5 and then applied to the payment of delinquent state taxes, penalties, or interest and processed in accordance with section 38-13-117.7.

(c) If a claimant owes restitution or fines, fees, costs, or surcharges or delinquent state taxes, penalties, or interest, after payment in accordance with paragraph (a) of this subsection (2), if applicable, any remaining unclaimed property shall be applied toward the payment of the outstanding restitution or fines, fees, costs, or surcharges and processed in accordance with section 38-13-117.5 or toward the delinquent state taxes, penalties, or interest and processed in accordance with section 38-13-117.7, whichever is applicable.

**Source:** L. 2005: Entire section added, p. 699, § 5, effective August 8.

**Editor's note:** This section was were contained in a 2005 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

**38-13-117.5. Claims offset for judicial restitution, fines, fees, costs, or surcharges.**

(1) Before paying a claim in an amount exceeding six hundred dollars pursuant to section 38-13-117 (3), the administrator shall offset against the amount of the claim the claimant's outstanding court fines, fees, costs, or surcharges or restitution. The administrator may enter into a memorandum of understanding with the judicial department to implement this section and sections 16-11-101.6 (6) and 16-18.5-106.7, C.R.S.

(2) If a claimant owes fines, fees, costs, or surcharges or restitution as described in this section and also owes current child support, child support debt, retroactive child support, child support arrearages, child support costs, or child support when combined with maintenance as described in section 38-13-117.3 or delinquent state taxes, penalties, or interest as described in section 38-13-117.7, or both, the unclaimed property offsets shall be applied in accordance with the priority set forth in section 38-13-117.3 (2).

**Source:** L. 2005: Entire section added, p. 700, § 5, effective August 8.

**Editor's note:** This section was contained in a 2005 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

**38-13-117.7. Claims offset for state tax delinquencies.**

(1) Before paying a claim in an amount exceeding six hundred dollars pursuant to section 38-13-117 (3), the administrator shall compare the social security number or federal employer identification number of the claimant with the numbers certified by the department of revenue for the purpose of the unclaimed property offset as provided in section 39-21-121, C.R.S.

(2) If the social security number or federal employer identification number of a claimant appears among the numbers certified by the department of revenue pursuant to section 39-21-121, C.R.S., the administrator shall suspend the payment of the claim until the requirements of section 39-21-121, C.R.S., are met. If, after consulting with the department, the administrator determines that the claimant is obligated to pay the amounts certified under section 39-21-121, C.R.S., the administrator shall withhold from the amount of the unclaimed property paid to the claimant an amount equal to the amount of delinquent state taxes, penalties, or interest. If the amount of the unclaimed property is less than or equal to the amount of delinquent state taxes, penalties, or interest, the administrator shall withhold the entire amount of the unclaimed property. The administrator shall transmit any unclaimed property so withheld to the department for disbursement as directed in section 39-21-121, C.R.S.

(3) If a claimant owes delinquent state taxes, penalties, or interest as described in this section and also owes current child support, child support debt, retroactive child support, child support arrearages, child support costs, or child support when combined with maintenance as described in section 38-13-117.3 or restitution or fines, fees, costs, or surcharges as described in section 38-13-117.5, or both, the unclaimed property offset shall be applied in accordance with the priority set forth in section 38-13-117.3 (2).

**Source:** L. 2005: Entire section added, p. 700, § 5, effective August 8.

**Editor's note:** This section was contained in a 2005 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

**38-13-118. Claim of another state to recover property - procedure.**

(1) At any time after property has been paid or delivered to the administrator under this article, another state may recover the property if:

(a) The property was subjected to custody by this state because the records of the holder did not reflect the last-known address of the apparent owner when the property was presumed abandoned under this article and the other state establishes that the last-known address of the apparent owner or other person entitled to the property was in that state and that, under the laws of that state, the property escheated to or was subject to a claim of abandonment by that state;

(b) The last-known address of the apparent owner or other person entitled to the property, as reflected by the records of the holder, is in the other state and, under the laws of that state, the property has escheated to or become subject to a claim of abandonment by that state;

(c) The records of the holder were erroneous in that they did not accurately reflect the actual owner of the property and the last-known address of the actual owner is in the other state and, under the laws of that state, the property escheated to or was subject to a claim of abandonment by that state;

(d) The property was subjected to custody by this state under section 38-13-104 (1) (f) and, under the laws of the state of domicile of the holder, the property has escheated to or become subject to a claim of abandonment by that state; or

(e) The property is the sum payable on a money order or other similar instrument that was subjected to custody by this state under section 38-13-105 and the instrument was purchased in the other state and, under the laws of that state, the property escheated to or became subject to a claim of abandonment by that state.

(2) The claim of another state to recover escheated or abandoned property must be presented in a form prescribed by the administrator, who shall decide the claim within ninety days after it is presented. The administrator shall allow the claim if he determines that the other state is entitled to the abandoned property under subsection (1) of this section.

(3) The administrator shall require a state, before recovering property under this section, to agree to indemnify this state and its officers and employees against any liability on a claim for the property.

Source: L. 87: Entire article added, p. 1327, § 1, effective July 1.

#### **38-13-118.5. Claim of the state or governmental agency.**

At any time after property has been paid or delivered to the administrator under this article, if the administrator determines that the state or a state governmental agency owns the property, the administrator may transfer the property to an operating account of the state or the agency.

Source: L. 2004: Entire section added, p. 1877, § 5, effective August 4.

#### **38-13-119. Action to establish claim.**

A person aggrieved by a decision of the administrator or whose claim has not been acted upon within ninety days after its filing may bring an action to establish the claim in a court of competent jurisdiction, naming the administrator as a defendant. The action must be brought within ninety days after the decision of the administrator or within one hundred eighty days after the filing of the claim if he has failed to act on it. If the aggrieved person establishes the claim in an action against the administrator, he shall be entitled to an award of costs and reasonable attorney fees.

Source: L. 87: Entire article added, p. 1328, § 1, effective July 1.

#### **38-13-120. Election to take payment or delivery.**

(1) The administrator may decline to receive any property reported under this article that the administrator considers to have a value less than the expense of giving notice and of sale. If the administrator elects not to receive custody of the property, the holder shall be notified within one hundred twenty days after filing the report required under section 38-13-110.

(2) A holder, with the written consent of the administrator and upon conditions and terms prescribed by him, may report and deliver property before the property is presumed abandoned. Property delivered under this subsection (2) must be held by the administrator and is not presumed abandoned until such time as it otherwise would be presumed abandoned under this article.

Source: L. 87: Entire article added, p. 1328, § 1, effective July 1. L. 92: (1) amended, p. 2113, § 10, effective March 4. L. 95: (1) amended, p. 527, § 9, effective May 16.

**38-13-121. Destruction or disposition of property having insubstantial commercial value - immunity from liability.**

If the administrator determines after investigation that any property delivered under this article has insubstantial commercial value, the administrator may destroy or otherwise dispose of the property at any time. No action or proceeding may be maintained against the state or any officer or against the holder for or on account of any action taken by the administrator pursuant to this section.

Source: L. 87: Entire article added, p. 1329, § 1, effective July 1.

**38-13-122. Periods of limitation.**

(1) The expiration, before or after July 1, 1987, of any period of time specified by contract, statute, or court order, during which a claim for money or property can be made or during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or to recover property, does not prevent the money or property from being presumed abandoned or affect any duty to file a report or to pay or deliver abandoned property to the administrator as required by this article.

(2) No action or proceeding may be commenced by the administrator with respect to any duty of a holder under this article more than five years after the duty arose.

Source: L. 87: Entire article added, p. 1329, § 1, effective July 1.

**38-13-123. Requests for reports and examination of records.**

(1) The administrator may require any person who has not filed a report to file one stating whether or not the person is holding any unclaimed property reportable or deliverable under this article.

(2) Except as otherwise provided in subsection (7) of this section, the administrator, at reasonable times and upon reasonable notice, may examine the records of any person to determine whether the person has complied with the provisions of this article. The administrator may conduct the examination even if the person believes he is not in possession of any property reportable or deliverable under this article.

(3) If a person is treated under section 38-13-107 as the holder of the property only insofar as the interest of the business association in the property is concerned, the administrator, pursuant to subsection (2) of this section, may examine the records of the person if the administrator has given the notice required by subsection (2) of this section to both the person and the business association at least ninety days before the examination.

(4) If an examination of the records of a person results in the disclosure of property reportable and deliverable under this article, the administrator may assess the cost of the examination against the holder at the rate of fifty dollars a day for each examiner, but in no case may the charges exceed the value of the property found to be reportable and deliverable. The cost of examination made pursuant to subsection (3) of this section may be imposed only against the banking or financial organization.

(5) On or after July 1, 1987, if a holder fails to maintain records in existence on or after July 1, 1987, that are required by section 38-13-124 and, in addition, if the records of the holder available for the periods subject to this article are insufficient to permit the preparation of a report pursuant to section 38-13-110, then the administrator may require the holder to report and pay such amounts as may reasonably be estimated from any available records.

(6) Repealed.

(7) Any examination under this section of the records of a business association with annual gross receipts of less than five hundred thousand dollars arising from a report filed under this article by such an association shall be conducted by the administrator within three years from the date of filing such report.

**Source:** L. 87: Entire article added, p. 1329, § 1, effective July 1; (5) amended and (6) added, p. 1335, § 5, effective July 1. L. 92: (5) amended, p. 2113, § 11, effective March 4; (6) repealed, p. 2120, § 8, effective July 1. L. 93: (2) amended and (7) added, p. 1076, § 7, effective July 1. L. 95: (1) and (5) amended, p. 527, § 10, effective May 16.

**Editor's note:** Section 7 of chapter 275, Session Laws of Colorado 1987, provided that the act set out in that chapter amending subsection (5) and enacting subsection (6) was effective July 1, 1987, but the governor did not approve the act until July 10, 1987.

#### **38-13-124. Retention of records.**

(1) Every holder required to file a report under section 38-13-110, as to any property for which it has obtained the last-known address of the owner, shall maintain a record of the name and last-known address of the owner for five years after the property becomes reportable, except to the extent that a shorter time is provided in subsection (2) of this section or by rule of the administrator.

(2) Any banking or financial organization that sells in this state its money orders or other similar written instruments, other than third-party bank checks on which the banking or financial organization is directly liable, or that provides such instruments to others for sale in this state, shall maintain a record of those instruments while they remain outstanding, indicating the state and date of issue for three years after the date the property is reportable.

**Source:** L. 87: Entire article added, p. 1330, § 1, effective July 1. L. 92: (1) amended, p. 2113, § 12, effective March 4. L. 95: (1) amended, p. 527, § 11, effective May 16.

#### **38-13-125. Enforcement.**

The administrator may bring an action in a court of competent jurisdiction to enforce this article.

**Source:** L. 87: Entire article added, p. 1330, § 1, effective July 1.

#### **38-13-126. Interstate agreements and cooperation - joint and reciprocal actions with other states.**

(1) The administrator may enter into agreements with other states to exchange information needed to enable this or another state to audit or otherwise determine unclaimed property that it or another state may be entitled to subject to a claim of custody. The administrator by rule may require the reporting of information needed to enable compliance with agreements made pursuant to this section

and prescribe the form of such reporting.

(2) To avoid conflicts between the administrator's procedures and the procedures of administrators in other jurisdictions that enact unclaimed property legislation, the administrator, so far as is consistent with the purposes, policies, and provisions of this article, before adopting, amending, or repealing rules, shall advise and consult with administrators in other jurisdictions that enact such legislation and take into consideration the rules of administrators in those jurisdictions.

(3) The administrator may join with other states to seek enforcement of this article against any person who is or may be holding property reportable under this article.

(4) At the request of another state, the attorney general of this state may bring an action in the name of the administrator of the other state in any court of competent jurisdiction to enforce the unclaimed property laws of the other state against a holder in this state of property subject to escheat or a claim of abandonment by the other state if the other state has agreed to pay expenses incurred by the attorney general in bringing the action.

(5) The administrator may request that the attorney general of another state or any other person bring an action in the name of the administrator in the other state. This state shall pay all expenses including attorney fees in any action under this subsection (5). Any expenses paid pursuant to this subsection (5) may not be deducted from the amount that is subject to the claim by the owner under this article.

**Source:** L. 87: Entire article added, p. 1330, § 1, effective July 1.

**38-13-127. Interest and penalties.**

(1) A person who fails to pay or deliver property within the time prescribed by this article shall pay to the administrator interest at the annual rate of eighteen percent on the property or value thereof from the date the property should have been paid or delivered.

(2) A person who willfully fails to render any report or perform other duties required under this article shall pay a civil penalty of one hundred dollars for each day the report is withheld or the duty is not performed, but not more than five thousand dollars.

(3) A person who willfully fails to pay or deliver property to the administrator as required under this article shall pay a civil penalty equal to twenty-five percent of the value of the property that should have been paid or delivered.

(4) A person who willfully refuses after written demand by the administrator to pay or deliver property to the administrator as required under this article shall pay a civil penalty, in addition to any other civil penalty provided by this section, of three times the value of any property held by said person.

(5) (a) Any business association with annual gross receipts of less than five hundred thousand dollars that, in good faith compliance, acts within the scope of the duties and responsibilities of this article shall be immune from the penalties and interest of this section for failure to pay or deliver property or to render any report required by this article. For purposes of this article, there shall be a presumption of good faith compliance when such a business association has filed the initial or annual report required by this article and a principal of such business association has attested, as evidenced by such principal's signature on such report, that such business association has made reasonable efforts to

determine if such business holds any property presumed abandoned under this article. The presumption of good faith compliance may be rebutted by the administrator upon a showing by a preponderance of evidence that such a business association's actions were knowingly false, deliberately misleading, or made for a malicious purpose.

(b) The administrator shall explain what constitutes good faith compliance with regard to the reporting and payment or delivery requirements of this article in any document, manual, or request distributed by the administrator to such a business association in connection with this article.

Source: L. 87: Entire article added, p. 1331, § 1, effective July 1. L. 93: (5) added, p. 1077, § 8, effective July 1.

**38-13-128. Agreements to locate reported property.**

(1) All agreements to pay compensation to recover or assist in the recovery of property reported under section 38-13-110 entered into within twenty-four months after the date payment or delivery is made under section 38-13-112 are unenforceable.

(2) Any agreement to pay compensation to recover or assist in the recovery of property reported under section 38-13-110 entered into more than twenty-four months, but less than thirty-six months, after the date payment or delivery is made under section 38-13-112 is enforceable if:

- (a) The agreement is in writing and signed by the owner of the property;
- (b) The agreement describes the property to be recovered;
- (c) The agreement sets forth the nature of the services to be provided; and

(d) The compensation to be paid under the terms of the agreement is not in excess of twenty percent of the market value of the recoverable property.

(3) Any agreement to pay compensation to recover or assist in the recovery of property reported under section 38-13-110 entered into thirty-six months or more after the date payment or delivery is made under section 38-13-112 is enforceable if:

- (a) The agreement is in writing and signed by the owner of the property;
- (b) The agreement describes the property to be recovered;
- (c) The agreement sets forth the nature of the services to be provided; and

(d) The compensation to be paid under the terms of the agreement is not in excess of thirty percent of the market value of the recoverable property.

(4) Nothing in subsections (2) and (3) of this section shall be construed to prohibit an owner from asserting, at any time, that a written, signed agreement to recover or assist in the recovery of property is based on excessive or unjust consideration.

(5) The restrictions on agreements to pay compensation to recover or assist in the recovery of

property set forth in this section shall not apply to any agreement to pay compensation to recover or assist in the recovery of property reported under section 38-13-110 if such property has a total value of less than one thousand dollars.

Source: L. 87: Entire article added, p. 1331, § 1, effective July 1. L. 92: Entire section amended, p. 2113, § 13, effective March 4. L. 95: Entire section amended, p. 528, § 12, effective May 16. L. 98: Entire section amended, p. 106, § 1, effective August 5.

**38-13-129. Foreign transactions.**

This article does not apply to any property held, due, and owing in a foreign country and arising out of a foreign transaction.

Source: L. 87: Entire article added, p. 1331, § 1, effective July 1.

**38-13-130. Effect of new provisions - clarification of application.**

(1) This article does not relieve a holder of a duty that arose before July 1, 1987, to report, pay, or deliver property. A holder who did not comply with the law in effect before July 1, 1987, is subject to the applicable enforcement and penalty provisions that then existed, and they are continued in effect for the purpose of this subsection (1), subject to section 38-13-122 (2).

(2) (a) The initial report filed under this article for property that was not required to be reported before July 1, 1987, but that is subject to this article must include all items of property for which the presumption of abandonment first arose during the five-year period preceding July 1, 1987, as if this article had been in effect during that period.

(b) The initial report filed under this article for property that was not required to be reported before July 1, 1992, but that is subject to this article must include all items of property for which the presumption of abandonment first arose during the five-year period preceding July 1, 1992, as if this article had been in effect during that period. Any person who has not reported as of July 1, 1992, shall not be penalized for not reporting prior to November 1, 1993.

Source: L. 87: Entire article added, p. 1331, § 1, effective July 1. L. 92: (2) amended, p. 2120, § 9, effective July 1; (2)(b) amended, p. 1077, § 9, effective July 1. L. 95: (2) amended, p. 528, § 13, effective July 1.

**38-13-131. Rules.**

The administrator shall adopt rules and regulations pursuant to section 24-4-103, C.R.S., to effectuate the purposes of this article.

Source: L. 87: Entire article added, p. 1331, § 1, effective July 1.

**38-13-132. Uniformity of application and construction.**

This article shall be applied and construed so as to effectuate its general purpose to make uniform the law with respect to the subject of this article among states enacting similar legislation.

Source: L. 87: Entire article added, p. 1331, § 1, effective July 1.

**38-13-133. Applicability - exclusions. (Repealed)**

**Source:** L. 87: Entire article added, p. 1331, § 1, effective July 1. L. 88: Entire section amended, p. 1433, § 21, effective June 11. L. 90: Entire section amended, p. 1636, § 9, effective April 27. L. 92: Entire section amended, p. 2114, § 14, effective March 4. L. 93: Entire section repealed, p. 1075, § 3, effective July 1.

**38-13-134. Application of article to other sections.**

This article applies to any unclaimed or intangible property as provided in this article; but, where there is a conflict between this article and a specific statutory provision or local law relating to the disposition of tangible or intangible unclaimed property, such specific statutory provision or local law shall control the disposition of said property.

**Source:** L. 87: Entire article added, p. 1332, § 1, effective July 1. L. 92: Entire section amended, p. 2120, § 10, effective July 1.