

PROPERTY

CHAPTER 507

HOUSE BILL NO. 1157
(Representatives Nalewaja, R. Berg)
(Senator Mushik)

LANDLORD-TENANT RIGHTS

AN ACT to amend and reenact subsection 1 of section 47-16-07.1 and sections 47-16-15 and 47-16-30.1 of the North Dakota Century Code, relating to security deposits, notice to terminate tenancy, and disposition of abandoned property by landlord.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 47-16-07.1 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The lessor of real property or a dwelling who requires money as a security deposit, however denominated, shall deposit the money in any a federally insured interest-bearing savings or passbook account established solely for security deposits. The security deposit and any interest accruing ~~thereon shall~~ on the deposit must be paid to the lessee upon termination of a lease, subject to the conditions of subsection 2. A ~~landlord~~ lessor may not demand or receive security, however denominated, in an amount or value in excess of one month's rent.

SECTION 2. AMENDMENT. Section 47-16-15 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-16-15. Notice of termination of lease. A hiring of real property for a term not specified by the parties is deemed to be renewed as stated in section 47-16-06 at the end of the term implied by law, unless one of the parties gives notice to the other of his an intention to terminate the same lease, at least as long before the expiration ~~thereof of the lease~~ as the term of the hiring itself, not exceeding thirty days; ~~provided, however, that as to.~~ In tenancies from month to month, and unless the parties have otherwise agreed in writing to a longer notice period or a different notice time, either of the parties party may terminate the same tenancy by giving at least thirty days' written notice thereof at any time, and

~~the. The rent shall be~~ is due and payable to and including the date of termination, ~~and provided further that if.~~ If a landlord changes the terms of the lease pursuant to section 47-16-07, the tenant may terminate the lease at the end of the month by giving at least twenty-five days' notice.

SECTION 3. AMENDMENT. Section 47-16-30.1 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-16-30.1. Abandoned property - Disposal by lessor. Notwithstanding the provisions of any other law, property ~~Property~~ with a total estimated value of less not more than one five hundred dollars which is left on the premises of a leased dwelling fifteen ~~thirty~~ days after the tenant has vacated the premises after the expiration of the lease term may be retained by the lessor ~~of that property~~ and disposed of without legal process. The lessor is also ~~entitled~~ to the proceeds from the sale of ~~this~~ the property. The lessor may recover, from the lessee's security deposit, any storage and moving expenses in excess of the proceeds from the sale incurred in disposing of the property.

Approved March 27, 1985

CHAPTER 508

HOUSE BILL NO. 1145
(Committee on Social Services and Veterans Affairs)
(At the request of the Commission on Uniform State Laws)

UNIFORM TRANSFERS TO MINORS ACT

AN ACT to adopt the Uniform Transfers to Minors Act, relating to transfer of property to custodians for the benefit of minors; to amend and reenact subsection 45 of section 30.1-01-06 of the North Dakota Century Code, relating to definition of trusts under the Uniform Probate Code; and to repeal chapter 47-24 of the North Dakota Century Code, relating to the Uniform Gifts to Minors Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Definitions. In sections 1 through 22:

1. "Adult" means an individual who has attained the age of twenty-one years.
2. "Benefit plan" means an employer's plan for the benefit of an employee or partner.
3. "Broker" means a person lawfully engaged in the business of effecting transactions in securities or commodities for the person's own account or for the account of others.
4. "Conservator" means a person appointed or qualified by a court to act as general, limited, or temporary guardian of a minor's property or a person legally authorized to perform substantially the same functions.
5. "Court" means the county court.
6. "Custodial property" means:
 - a. Any interest in property transferred to a custodian under sections 1 through 22; and
 - b. The income from and proceeds of that interest in property.

7. "Custodian" means a person so designated under section 9 or a successor or substitute custodian designated under section 18.
8. "Financial institution" means a bank, trust company, savings institution, or credit union, chartered and supervised under state or federal law.
9. "Legal representative" means an individual's personal representative or conservator.
10. "Member of the minor's family" means the minor's parent, stepparent, spouse, grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by adoption.
11. "Minor" means an individual who has not attained the age of twenty-one years.
12. "Personal representative" means an executor, administrator, successor personal representative, or special administrator of a decedent's estate or a person legally authorized to perform substantially the same functions.
13. "State" includes the Commonwealth of Puerto Rico.
14. "Transfer" means a transaction that creates custodial property under section 9.
15. "Transferor" means a person who makes a transfer under sections 1 through 22.
16. "Trust company" means a financial institution, corporation, or other legal entity, authorized to exercise general trust powers.

SECTION 2. Scope and jurisdiction.

1. Sections 1 through 22 apply to a transfer that refers to sections 1 through 22 in the designation under subsection 1 of section 9 by which the transfer is made if at the time of the transfer, the transferor, the minor, or the custodian is a resident of this state or the custodial property is located in this state. The custodianship so created remains subject to sections 1 through 22 despite a subsequent change in residence of a transferor, the minor, or the custodian, or the removal of custodial property from this state.
2. A person designated as custodian under sections 1 through 22 is subject to personal jurisdiction in this state with respect to any matter relating to the custodianship.

3. A transfer that purports to be made and which is valid under the Uniform Transfers to Minors Act, the Uniform Gifts to Minors Act, or a substantially similar Act, of another state is governed by the law of the designated state and may be executed and is enforceable in this state if at the time of the transfer, the transferor, the minor, or the custodian is a resident of the designated state or the custodial property is located in the designated state.

SECTION 3. Nomination of custodian.

1. A person having the right to designate the recipient of property transferable upon the occurrence of a future event may revocably nominate a custodian to receive the property for a minor beneficiary upon the occurrence of the event by naming the custodian followed in substance by the words: "as custodian for ----- (name of minor) under the North Dakota Uniform Transfers to Minors Act". The nomination may name one or more persons as substitute custodians to whom the property must be transferred, in the order named, if the first nominated custodian dies before the transfer or is unable, declines, or is ineligible to serve. The nomination may be made in a will, a trust, a deed, an instrument exercising a power of appointment, or in a writing designating a beneficiary of contractual rights which is registered with or delivered to the payor, issuer, or other obligor of the contractual rights.
2. A custodian nominated under this section must be a person to whom a transfer of property of that kind may be made under subsection 1 of section 9.
3. The nomination of a custodian under this section does not create custodial property until the nominating instrument becomes irrevocable or a transfer to the nominated custodian is completed under section 9. Unless the nomination of a custodian has been revoked, upon the occurrence of the future event the custodianship becomes effective and the custodian shall enforce a transfer of the custodial property pursuant to section 9.

SECTION 4. Transfer by gift or exercise of power of appointment. A person may make a transfer by irrevocable gift to, or the irrevocable exercise of a power of appointment in favor of, a custodian for the benefit of a minor pursuant to section 9.

SECTION 5. Transfer authorized by will or trust.

1. A personal representative or trustee may make an irrevocable transfer pursuant to section 9 to a custodian for the benefit of a minor as authorized in the governing will or trust.

2. If the testator or settlor has nominated a custodian under section 3 to receive the custodial property, the transfer must be made to that person.
3. If the testator or settlor has not nominated a custodian under section 3, or all persons so nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, the personal representative or the trustee, as the case may be, shall designate the custodian from among those eligible to serve as custodian for property of that kind under subsection 1 of section 9.

SECTION 6. Other transfer by fiduciary.

1. Subject to subsection 3, a personal representative or trustee may make an irrevocable transfer to another adult or trust company as custodian for the benefit of a minor pursuant to section 9, in the absence of a will or under a will or trust that does not contain an authorization to do so.
2. Subject to subsection 3, a conservator may make an irrevocable transfer to another adult or trust company as custodian for the benefit of the minor pursuant to section 9.
3. A transfer under subsection 1 or 2 may be made only if:
 - a. The personal representative, trustee, or conservator considers the transfer to be in the best interest of the minor;
 - b. The transfer is not prohibited by or inconsistent with provisions of the applicable will, trust agreement, or other governing instrument; and
 - c. The transfer is authorized by the court if it exceeds ten thousand dollars in value.

SECTION 7. Transfer by obligor.

1. Subject to subsections 2 and 3, a person not subject to section 5 or 6 who holds property of or owes a liquidated debt to a minor not having a conservator may make an irrevocable transfer to a custodian for the benefit of the minor pursuant to section 9.
2. If a person having the right to do so under section 3 has nominated a custodian under that section to receive the custodial property, the transfer must be made to that person.
3. If no custodian has been nominated under section 3, or all persons so nominated as custodian die before the transfer

or are unable, decline, or are ineligible to serve, a transfer under this section may be made to an adult member of the minor's family or to a trust company unless the property exceeds ten thousand dollars in value.

SECTION 8. Receipt for custodial property. A written acknowledgement of delivery by a custodian constitutes a sufficient receipt and discharge for custodial property transferred to the custodian pursuant to sections 1 through 22.

SECTION 9. Manner of creating custodial property and effecting transfer - Designation of initial custodian - Control.

1. Custodial property is created and a transfer is made whenever:

a. An uncertificated security or a certificated security in registered form is either:

(1) Registered in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for ----- (name of minor) under the North Dakota Uniform Transfers to Minors Act"; or

(2) Delivered if in certificated form, or any document necessary for the transfer of an uncertificated security is delivered, together with any necessary endorsement to an adult other than the transferor or to a trust company as custodian, accompanied by an instrument in substantially the form set forth in subsection 2;

b. Money is paid or delivered to a broker or financial institution for credit to an account in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for ----- (name of minor) under the North Dakota Uniform Transfers to Minors Act";

c. The ownership of a life or endowment insurance policy or annuity contract is either:

(1) Registered with the issuer in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for ----- (name of minor) under the North Dakota Uniform Transfers to Minors Act"; or

(2) Assigned in a writing delivered to an adult other than the transferor, or to a trust company, whose name in the assignment is followed in substance

- by the words: "as custodian for ----- (name of minor) under the North Dakota Uniform Transfers to Minors Act";
- d. An irrevocable exercise of a power of appointment or an irrevocable present right to future payment under a contract is the subject of a written notification delivered to the payor, issuer, or other obligor that the right is transferred to the transferor, an adult other than the transferor, or a trust company, whose name in the notification is followed in substance by the words: "as custodian for ----- (name of minor) under the North Dakota Uniform Transfers to Minors Act";
- e. An interest in real property is recorded in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for ----- (name of minor) under the North Dakota Uniform Transfers to Minors Act";
- f. A certificate of title issued by a department or agency of a state or of the United States which evidences title to tangible personal property is either:
- (1) Issued in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for ----- (name of minor) under the North Dakota Uniform Transfers to Minors Act"; or
- (2) Delivered to an adult other than the transferor, or to a trust company, endorsed to that person followed in substance by the words: "as custodian for ----- (name of minor) under the North Dakota Uniform Transfers to Minors Act"; or
- g. An interest in any property not described in subdivisions a through f is transferred to an adult other than the transferor, or to a trust company, by a written instrument in substantially the form set forth in subsection 2.
2. An instrument in the following form satisfies the requirements of paragraph 2 of subdivision a and subdivision g of subsection 1:

"TRANSFER UNDER THE NORTH DAKOTA
UNIFORM TRANSFERS TO MINORS ACT

I, ----- (name of transferor or name and representative capacity if a fiduciary) hereby transfer to ----- (name of custodian), as custodian for ----- (name of minor) under the North Dakota Uniform Transfers to Minors Act, the following: (insert a description of the custodial property sufficient to identify it).

Dated: -----

(Signature)
----- (name of custodian) acknowledges receipt of the property described above as custodian for the minor named above under the North Dakota Uniform Transfers to Minors Act.

Dated: -----
-----"

(Signature of Custodian)

3. A transferor shall place the custodian in control of the custodial property as soon as practicable.

SECTION 10. Single custodianship. A transfer may be made only for one minor and only one person may be the custodian. All custodial property held under sections 1 through 22 by the same custodian for the benefit of the same minor constitutes a single custodianship.

SECTION 11. Validity and effect of transfer.

1. The validity of a transfer made in a manner prescribed in sections 1 through 22 is not affected by:

- a. Failure of the transferor to comply with subsection 3 of section 9 concerning possession and control;
- b. Designation of an ineligible custodian, except designation of the transferor in the case of property for which the transferor is ineligible to serve as custodian under subsection 1 of section 9; or
- c. Death or incapacity of a person nominated under section 3 or designated under section 9 as custodian or the disclaimer of the office by that person.

2. A transfer made pursuant to section 9 is irrevocable, and the custodial property is indefeasibly vested in the minor, but the custodian has all the rights, powers, duties, and authority provided in sections 1 through 22, and neither the minor nor the minor's legal representative has any right, power, duty, or authority with respect to the custodial property except as provided in sections 1 through 22.

3. By making a transfer, the transferor incorporates in the disposition all the provisions of sections 1 through 22, and grants to the custodian, and to any third person dealing with a person designated as custodian, the respective powers, rights, and immunities provided in sections 1 through 22.

SECTION 12. Care of custodial property.

1. A custodian shall:

- a. Take control of custodial property;
- b. Register or record title to custodial property if appropriate; and
- c. Collect, hold, manage, invest, and reinvest custodial property.

2. In dealing with custodial property, a custodian shall observe the standard of care that would be observed by a prudent person dealing with property of another and is not limited by any other statute restricting investments by fiduciaries. If a custodian has a special skill or expertise or is named custodian on the basis of representations of a special skill or expertise, the custodian shall use that skill or expertise. However, a custodian, in the custodian's discretion and without liability to the minor or the minor's estate, may retain any custodial property received from a transferor.

3. A custodian may invest in or pay premiums on life insurance or endowment policies on:

- a. The life of the minor only if the minor or the minor's estate is the sole beneficiary; or
- b. The life of another person in whom the minor has an insurable interest only to the extent that the minor, the minor's estate, or the custodian in the capacity of custodian, is the irrevocable beneficiary.

4. A custodian at all times shall keep custodial property separate and distinct from all other property in a manner sufficient to identify it clearly as custodial property of the minor. Custodial property consisting of an undivided interest is so identified if the minor's interest is held as a tenant in common and is fixed. Custodial property subject to recordation is so identified if it is recorded, and custodial property subject to registration is so identified if it is either registered, or held in an account designated, in the name of the custodian, followed in substance by the words: "as custodian for -----"

(name of minor) under the North Dakota Uniform Transfers to Minors Act".

5. A custodian shall keep records of all transactions with respect to custodial property, including information necessary for the preparation of the minor's tax returns, and shall make them available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor if the minor has attained the age of fourteen years.

SECTION 13. Powers of custodian.

1. A custodian, acting in a custodial capacity, has all the rights, powers, and authority over custodial property that unmarried adult owners have over their own property, but a custodian may exercise those rights, powers, and authority in that capacity only.
2. This section does not relieve a custodian from liability for breach of section 12.

SECTION 14. Use of custodial property.

1. A custodian may deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the custodian considers advisable for the use and benefit of the minor, without court order and without regard to:
 - a. The duty or ability of the custodian personally or of any other person to support the minor; or
 - b. Any other income or property of the minor which may be applicable or available for that purpose.
2. On petition of an interested person or the minor if the minor has attained the age of fourteen years, the court may order the custodian to deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the court considers advisable for the use and benefit of the minor.
3. A delivery, payment, or expenditure under this section is in addition to, not in substitution for, and does not affect any obligation of a person to support the minor.

SECTION 15. Custodian's expense, compensation, and bond.

1. A custodian is entitled to reimbursement from custodial property for reasonable expenses incurred in the performance of the custodian's duties.
2. Except for one who is a transferor under section 4, a custodian has a noncumulative election during each

calendar year to charge reasonable compensation for services performed during that year.

3. Except as provided in subsection 6 of section 18, a custodian need not give a bond.

SECTION 16. Exemption of third person from liability. A third person in good faith and without court order may act on the instructions of or otherwise deal with any person purporting to make a transfer or purporting to act in the capacity of a custodian and, in the absence of knowledge, is not responsible for determining:

1. The validity of the purported custodian's designation;
2. The propriety of, or the authority under sections 1 through 22 for, any act of the purported custodian;
3. The validity or propriety under sections 1 through 22 of any instrument or instructions executed or given either by the person purporting to make a transfer or by the purported custodian; or
4. The propriety of the application of any property of the minor delivered to the purported custodian.

SECTION 17. Liability to third persons.

1. A claim based on (a) a contract entered into by a custodian acting in a custodial capacity, (b) an obligation arising from the ownership or control of custodial property, or (c) a tort committed during the custodianship, may be asserted against the custodial property by proceeding against the custodian in the custodial capacity, whether or not the custodian or the minor is personally liable therefor.
2. A custodian is not personally liable:
 - a. On a contract properly entered into in the custodial capacity unless the custodian fails to reveal that capacity and to identify the custodianship in the contract; or
 - b. For an obligation arising from control of custodial property or for a tort committed during the custodianship unless the custodian is personally at fault.
3. A minor is not personally liable for an obligation arising from ownership of custodial property or for a tort committed during the custodianship unless the minor is personally at fault.

SECTION 18. Renunciation, resignation, death, or removal of
custodian - Designation of successor custodian.

1. A person nominated under section 3 or designated under section 9 as custodian may decline to serve by delivering a valid disclaimer under chapter 47-11.1 to the person who made the nomination or to the transferor or the transferor's legal representative. If the event giving rise to a transfer has not occurred and no substitute custodian able, willing, and eligible to serve was nominated under section 3, the person who made the nomination may nominate a substitute custodian under section 3; otherwise the transferor or the transferor's legal representative shall designate a substitute custodian at the time of the transfer, in either case from among the persons eligible to serve as custodian for that kind of property under subsection 1 of section 9. The custodian so designated has the rights of a successor custodian.
2. A custodian at any time may designate a trust company or an adult other than a transferor under section 4 as successor custodian by executing and dating an instrument of designation before a subscribing witness other than the successor. If the instrument of designation does not contain or is not accompanied by the resignation of the custodian, the designation of the successor does not take effect until the custodian resigns, dies, becomes incapacitated, or is removed.
3. A custodian may resign at any time by delivering written notice to the minor if the minor has attained the age of fourteen years and to the successor custodian and by delivering the custodial property to the successor custodian.
4. If a custodian is ineligible, dies, or becomes incapacitated without having effectively designated a successor and the minor has attained the age of fourteen years, the minor may designate as successor custodian, in the manner prescribed in subsection 2, an adult member of the minor's family, a conservator of the minor, or a trust company. If the minor has not attained the age of fourteen years or fails to act within sixty days after the ineligibility, death, or incapacity, the conservator of the minor becomes successor custodian. If the minor has no conservator or the conservator declines to act, the transferor, the legal representative of the transferor or of the custodian, an adult member of the minor's family, or any other interested person may petition the court to designate a successor custodian.
5. A custodian who declines to serve under subsection 1 or resigns under subsection 3, or the legal representative of

a deceased or incapacitated custodian, as soon as practicable, shall put the custodial property and records in the possession and control of the successor custodian. The successor custodian by action may enforce the obligation to deliver custodial property and records and becomes responsible for each item as received.

6. A transferor, the legal representative of a transferor, an adult member of the minor's family, a guardian of the person of the minor, the conservator of the minor or the minor if the minor has attained the age of fourteen years may petition the court to remove the custodian for cause and to designate a successor custodian other than a transferor under section 4 or to require the custodian to give appropriate bond.

SECTION 19. Accounting by and determination of liability of custodian.

1. A minor who has attained the age of fourteen years, the minor's guardian of the person or legal representative, an adult member of the minor's family, a transferor, or a transferor's legal representative may petition the court (a) for an accounting by the custodian or the custodian's legal representative; or (b) for a determination of responsibility, as between the custodial property and the custodian personally, for claims against the custodial property unless the responsibility has been adjudicated in an action under section 17 to which the minor or the minor's legal representative was a party.
2. A successor custodian may petition the court for an accounting by the predecessor custodian.
3. The court, in a proceeding under sections 1 through 22 or in any other proceeding, may require or permit the custodian or the custodian's legal representative to account.
4. If a custodian is removed under subsection 6 of section 18, the court shall require an accounting and order delivery of the custodial property and records to the successor custodian and the execution of all instruments required for transfer of the custodial property.

SECTION 20. Termination of custodianship. The custodian shall transfer in an appropriate manner the custodial property to the minor or to the minor's estate upon the earlier of:

1. The minor's attainment of twenty-one years of age with respect to custodial property transferred under section 4 or 5;

2. The minor's attainment of age eighteen with respect to custodial property transferred under section 6 or 7; or
3. The minor's death.

SECTION 21. Applicability. Sections 1 through 22 apply to a transfer within the scope of section 2 made after June 30, 1985, if:

1. The transfer purports to have been made under the North Dakota Uniform Gifts to Minors Act; or
2. The instrument by which the transfer purports to have been made uses in substance the designation "as custodian under the Uniform Gifts to Minors Act" or "as custodian under the Uniform Transfers to Minors Act" of any other state, and the application of sections 1 through 22 is necessary to validate the transfer.

SECTION 22. Effect on existing custodianships.

1. Any transfer of custodial property as now defined in sections 1 through 22 made before July 1, 1985, is validated notwithstanding that there was no specific authority in the North Dakota Uniform Gifts to Minors Act for the coverage of custodial property of that kind or for a transfer from that source at the time the transfer was made.
2. Sections 1 through 22 apply to all transfers made before July 1, 1985, in a manner and form prescribed in the North Dakota Uniform Gifts to Minors Act, except insofar as the application impairs constitutionally vested rights or extends the duration of custodianships in existence on July 1, 1985.
3. Sections 1 and 20 with respect to the age of a minor for whom custodial property is held under sections 1 through 22 do not apply to custodial property held in a custodianship that terminated because of the minor's attainment of the age of eighteen before July 1, 1985.

SECTION 23. AMENDMENT. Subsection 45 of section 30.1-01-06 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

45. "Trust" includes any express trust, private or charitable, with additions thereto, wherever and however created. It also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. "Trust" excludes other constructive trusts, and it excludes resulting trusts, conservatorships, personal representatives, trust accounts as defined in custodial arrangements pursuant to chapter 11-22, sections 25-01.1-19 to 25-01.1-21, chapter 32-10,

section 32-16-37, chapter 32-26, former chapter 47-24, sections 1 through 22 of this Act, sections 54-23-27 to 54-23-29, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.

SECTION 24. REPEAL. Chapter 47-24 of the North Dakota Century Code is hereby repealed.

Approved March 31, 1985

CHAPTER 509

HOUSE BILL NO. 1117
(Committee on Industry, Business and Labor)
(At the request of the Secretary of State)

TRADE NAME REGISTRATION

AN ACT to amend and reenact sections 47-25-02 and 47-25-04 of the North Dakota Century Code, relating to trade names.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 47-25-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-25-02. Trade name - Registration - Statement - Contents - Change of registration. Any person who engages in business in this state under a trade name may register with the secretary of state for purposes of registering a trade name, a verified statement executed by each owner upon blanks furnished by the secretary of state, setting forth: (1) the trade name to be registered and all persons concerned in the business, (2) the name or names and residences addresses of each and every person interested in or owning any part owner of the business, and (3) the nature of the business in detail. If, however, the interest of any person or persons engaged in business under a trade name shall change or cease to exist, or any other person shall become interested therein, such change shall be registered within ninety days after any change shall take place in the ownership of the business or any part thereof in the same manner as an original registration.

SECTION 2. AMENDMENT. Section 47-25-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-25-04. Trade names - Registration - Fee - Renewal - Notice. For the registration of each trade name as provided for in this chapter, there shall be paid to the secretary of state a fee of twenty twenty-five dollars for an original registration, and a fee of two ten dollars for a change in the original registration as provided in this chapter. Any registration shall remain in force for a period of ten five years from the date of the original registration, and may be renewed by reregistering in the same manner as an original registration, if renewed within thirty days before the expiration date. The secretary of state shall notify the registrant by registered or certified mail at least ninety days before the expiration of such registrations.

Approved March 14, 1985

CHAPTER 510

SENATE BILL NO. 2178
(Committee on Industry, Business and Labor)
(At the request of the Commission on Uniform State Laws)

UNIFORM UNCLAIMED PROPERTY ACT

AN ACT to adopt the Uniform Unclaimed Property Act, relating to the disposition of abandoned and unclaimed property in this state; to create and enact a new section to chapter 15-02 of the North Dakota Century Code, relating to appointment of an administrator of this Act; to amend and reenact sections 6-07-46, 9-12-29, and subdivision v of subsection 1 of section 28-32-01 of the North Dakota Century Code, relating to the disposition of unclaimed moneys of an insolvent bank, the claim of moneys deposited by a debtor with the county treasurer when the creditor cannot be located, and exclusion from the Administrative Agencies Practice Act; to repeal chapter 47-30 of the North Dakota Century Code, relating to the disposition of abandoned and unclaimed property in this state; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Definitions and use of terms. As used in sections 1 through 38 of this Act:

1. "Administrator" means the administrator of the state abandoned property office.
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.
3. "Banking organization" means a bank, trust company, savings bank, private banker, or any organization defined by other law as a bank or banking organization.
4. "Business association" means a corporation, 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.

5. "Domicile" means the state of incorporation of a corporation and the state of the principal place of business of an unincorporated person.
6. "Financial organization" means a savings and loan association or credit union.
7. "Holder" means a person, wherever organized or domiciled, who is:
 - a. In possession of property belonging to another;
 - b. A trustee; or
 - c. Indebted to another on an obligation.
8. "Insurance company" means an insurance company as defined by section 26.1-02-01 and also includes a benevolent society, nonprofit health service corporation, and health maintenance organization.
9. "Intangible property" includes:
 - a. Moneys, checks, drafts, deposits, interest, dividends, and income.
 - b. Credit balances, customer overpayments, gift certificates, security deposits, refunds, credit memos, unpaid wages, unused airline tickets, and unidentified remittances.
 - c. Stocks and other intangible ownership interests in business associations.
 - d. Moneys deposited to redeem stocks, bonds, coupons, and other securities, or to make distributions.
 - e. Amounts due and payable under the terms of insurance policies.
 - f. 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.
 - g. Amounts distributable from a mineral interest in land.
10. "Last known address" means a description of the location of the apparent owner sufficient for the purpose of the delivery of mail.

11. "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 sections 1 through 38 of this Act or that person's legal representative.
12. "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.
13. "State" means any state, district, commonwealth, territory, insular possession, or any other area subject to the legislative authority of the United States.
14. "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.

SECTION 2. Property presumed abandoned - General rule.

1. Except as otherwise provided by sections 1 through 38 of this Act, 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 sections 1 through 38 of this Act notwithstanding the owner's failure to make demand or to present any instrument or document required to receive payment.

SECTION 3. General rules for taking custody of intangible unclaimed property. Unless otherwise provided in sections 1 through 38 of this Act or by other statute of this state, intangible property is subject to the custody of this state as unclaimed property if the conditions raising a presumption of abandonment under section 2 and sections 5 through 16 are satisfied and:

1. The last known address, as shown on the records of the holder, of the apparent owner is in this state;
2. 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;

3. The records of the holder do not reflect the last known address of the apparent owner, and it is established that:
 - a. The last known address of the person entitled to the property is in this state; or
 - b. The holder is a domiciliary or a government or governmental subdivision or agency 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;
4. 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 or a government or governmental subdivision or agency of this state;
5. 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 or a government or governmental subdivision or agency of this state; or
6. The transaction out of which the property arose occurred in this state, and
 - a. (1) The last known address of the apparent owner or other person entitled to the property is unknown; or
 - (2) 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
 - b. 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.

SECTION 4. Traveler's checks and money orders.

1. Subject to subsection 4, 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. Subject to subsection 4, any sum payable on a money order or similar written instrument, other than a third-party bank 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.
3. A holder may not deduct from the amount of a traveler's check or money order any charge imposed 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 those charges and does not regularly reverse or otherwise cancel them.
4. No sum payable on a traveler's check, money order, or similar written instrument, other than a third-party bank check, described in subsections 1 and 2 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.
5. Notwithstanding any other provision in sections 1 through 38 of this Act, subsection 4 applies to sums payable on traveler's 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 before January 1, 1974.

SECTION 5. 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 4, 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. A holder may not deduct from the amount of any instrument subject to this section any charge imposed 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 those charges and does not regularly reverse or otherwise cancel them.

SECTION 6. 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 twenty 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 subdivision a, b, or c applies and if 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 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:
 - (1) Communicated in writing with the banking or financial organization; or

- (2) 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 if the banking or financial organization communicates in writing with the owner with regard to the property that would otherwise be abandoned under this subsection at the address to which communications regarding the other relationship regularly are sent.
2. For purposes of subsection 1 property includes interest and dividends.
3. A holder may not impose with respect to property described in subsection 1 any charge due 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 a 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 charges at the last known address of the owner stating that those charges will be imposed or that interest will cease, but the notice provided in this section need not be given with respect to charges imposed or interest ceased before July 1, 1985; and
 - c. The holder regularly imposes those 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 that is automatically renewable is matured for purposes of subsection 1 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 19, 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.

SECTION 7. 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, but property described in subdivision b of subsection 3 is presumed abandoned if unclaimed for more than four 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 sections 1 through 38 of this Act, 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.
 - (1) The insured has attained, or would have attained if the insured were living, the limiting age under the mortality table on which the reserve is based;
 - (2) The policy was in force at the time the insured attained, or would have attained, the limiting age specified in paragraph 1; and
 - (3) Neither the insured nor any other person appearing to have an interest in the policy within the preceding four 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 sections 1 through 38 of this Act, 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 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 those 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, 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 the death, the company shall take reasonable steps to pay the proceeds to the beneficiary.
7. Commencing two years after July 1, 1985, 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 must 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.

SECTION 8. Deposits held by utilities. A deposit, including any interest thereon, made by a subscriber with a utility to secure payment or any sum paid in advance 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.

SECTION 9. 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 two years 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.

SECTION 10. Stock and other intangible interests in business associations.

1. Except as provided in subsections 2 and 5, 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 seven years and the owner within seven 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 seven-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 seven dividends, distributions, or other sums paid during the period, none of which has been claimed by the owner. If seven dividends, distributions, or other sums are paid during the seven-year period, the period leading to a presumption of abandonment commences on the date payment of the first unclaimed dividend, distribution, or other sum became due and payable. If seven dividends, distributions, or other sums are not paid during the presumptive period, the period continues to run until there have been seven dividends, distributions, or other sums that have not been claimed by the owner.
3. The running of the seven-year period of abandonment ceases immediately upon the occurrence of a communication referred to in subsection 1. If any future dividend, distribution, or other sum payable to the owner as a result of the interest is subsequently not claimed by the 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. Sections 1 through 38 of this Act do not apply to 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 seven years communicated in any manner described in subsection 1.

SECTION 11. Property of business associations held in 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.

SECTION 12. 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 five 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 federal Internal Revenue Code are not payable or distributable within the meaning of subsection 1 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 holds 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 sections 1 through 38 of this Act, a person who holds 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.

SECTION 13. 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 five years after becoming payable or distributable is presumed abandoned. However, unclaimed intangible property held for the

owner by a public employee pension program in this state is not subject to abandonment under this Act.

SECTION 14. Gift certificates and credit memos.

1. 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.

SECTION 15. Wages. Unpaid wages, including wages represented by unrepresented payroll checks, owing in the ordinary course of the holder's business which remain unclaimed by the owner for more than two years after becoming payable are presumed abandoned.

SECTION 16. 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 other law, which remain unclaimed by the owner for more than ten years after the lease or rental period on the box or other repository has expired, are presumed abandoned.

SECTION 17. Report of abandoned property.

1. A person holding property, tangible or intangible, presumed abandoned and subject to custody as unclaimed property under sections 1 through 38 of this Act shall report to the administrator concerning the property as provided in this section.
2. The report must be verified and include:
 - a. Except with respect to traveler's checks and money orders, the name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of property of the value of one hundred dollars or more presumed abandoned under sections 1 through 38 of this Act.
 - b. In the case of unclaimed funds of one hundred dollars or more held or owing under any life or endowment insurance policy or annuity contract, the full name and last known address of the insured or annuitant and of the beneficiary according to the records of the insurance company holding or owing the funds.

SECTION 18. Notice and publication of lists of abandoned property.

1. The administrator shall cause a notice to be published not later than March first, or in the case of property reported by life insurance companies, September first, of the year immediately following the report required by section 17 at least once a week for two consecutive weeks in a newspaper of general circulation in the county of this state in which is located the last known address of any person to be named in the notice. If no address is listed or the address is outside this state, the notice must be published in the county in which the holder of the property has its principal place of business within this state.
2. The published notice must be entitled "Notice of Names of Persons Appearing to be Owners of Abandoned Property" and contain:
 - a. The names in alphabetical order and last known address, if any, of persons listed in the report and entitled to notice within the county as specified in subsection 1.
 - b. A statement that information concerning the property and the name and last known address of the holder may be obtained by any person possessing an interest in the property by addressing an inquiry to the administrator.
 - c. A statement that, if proof of claim is not presented by the owner to the holder and the owner's right to receive the property is not established to the holder's satisfaction before April twentieth, or, in the case of property reported by life insurance companies, before October twentieth, the property will be placed not later than May first, or in the case of property reported by life insurance companies, not later than November first, in the custody of the administrator and all further claims must thereafter be directed to the administrator.
3. The administrator is not required to publish in the notice any items of less than one hundred dollars unless the administrator considers their publication to be in the public interest.
4. Not later than March first, or in the case of property reported by life insurance companies, not later than September first, of the year immediately following the report required by section 17, 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 one hundred dollars or more presumed abandoned under sections 1 through 38 of this Act 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, according to a report filed with the administrator, property is being held to which the addressee appears entitled.

b. The name and last known address of the person holding the property and any necessary information regarding the changes of name and last known address of the holder.

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

6. This section is not applicable to sums payable on traveler's checks, money orders, and other written instruments presumed abandoned under section 4.

SECTION 19. Payment or delivery of abandoned property.

1. Except as otherwise provided in subsections 2 and 3, a person who is required to file a report under section 17, within six months after the final date for filing the report as required by section 17, shall pay or deliver to the administrator all abandoned property required to be reported.

2. If the owner establishes the right to receive the abandoned property to the satisfaction of the holder before the property has been delivered or 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 verified written explanation of the proof of claim or of the error in the presumption of abandonment.

3. Property reported under section 17 for which the holder is not required to report the name of the apparent owner must be delivered to the administrator at the time of filing the report.

4. The holder of an interest under section 10 shall deliver a duplicate certificate or other evidence of ownership if

the holder does not issue certificates of ownership to the administrator. Upon delivery of a duplicate certificate to the administrator, the holder and any transfer agent, registrar, or other person acting for or on behalf of a holder in executing or delivering the duplicate certificate is relieved of all liability of every kind in accordance with section 20 to every person, including any person acquiring the original certificate or the duplicate of the certificate issued to the administrator, for any losses or damages resulting to any person by the issuance and delivery to the administrator of the duplicate certificate.

SECTION 20. Custody by state - Holder relieved from liability - Reimbursement of holder paying claim - Reclaiming for owner - Defense of holder - Payment of safe deposit box or repository charges.

1. 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.
2. A holder who has paid money to the administrator pursuant to sections 1 through 38 of this Act 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 traveler's check or money order, the holder must be reimbursed under this subsection 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 even if the payment was made to a person whose claim was barred under subsection 1 of section 29.
3. A holder who has delivered property, including a certificate of any interest in a business association, other than money to the administrator pursuant to sections 1 through 38 of this Act 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 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 sections 1 through 38 of this Act;
 - 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 that person, that the property was abandoned for the purposes of sections 1 through 38 of this Act; 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 to be reimbursed for the actual cost of the opening and 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 out of the proceeds remaining after deducting the administrator's selling cost.

SECTION 21. Crediting of dividends, interest, or increments to owner's account. Whenever property other than money is paid or delivered to the administrator under sections 1 through 38 of this Act, 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.

SECTION 22. Public sale of abandoned property.

1. Except as provided in subsections 2 and 3, 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 at the time of sale on the exchange. 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, other than those presumed abandoned under section 10, delivered to the administrator must be held for at least one year before the administrator may sell them.
 4. Unless the administrator considers it to be in the best interest of the state to do otherwise, all securities presumed abandoned under section 10 and delivered to the administrator must be held for at least three years before the administrator may sell them. If the administrator sells any securities delivered pursuant to section 10 before the expiration of the three-year period, any person making a claim pursuant to sections 1 through 38 of this Act before the end of the three-year period is entitled to either the proceeds of the sale of the securities or the market value of the securities at the time the claim is made, whichever amount is greater, less any deduction for fees pursuant to subsection 2 of section 23 of this Act. A person making a claim under sections 1 through 38 of this Act after the expiration of this period is entitled to receive either the securities delivered to the administrator by the holder, if they still remain in the hands of the administrator, or the proceeds received from sale, less any amounts deducted pursuant to subsection 2 of section 23 of this Act, but no person has any claim under sections 1 through 38 of this Act against the state, the holder, any transfer agent, registrar, or other person acting for or on behalf of a holder for any appreciation in the value of the property occurring after delivery by the holder to the administrator.
 5. The purchaser of property at any sale conducted by the administrator pursuant to sections 1 through 38 of this Act 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.

SECTION 23. Deposit of funds.

1. Except as otherwise provided by this section, the administrator shall promptly deposit in the state treasury to the credit of the common schools trust fund all funds received under sections 1 through 38 of this Act, including the proceeds from the sale of abandoned property under section 22. The administrator shall retain in a separate trust fund an amount not less than one hundred thousand dollars from which prompt payment of claims duly allowed must be made. Before making the deposit, the administrator shall record the name and last known address of each person appearing from the holders' reports to be entitled to the property and the name and last known address of each insured person or annuitant and beneficiary and with respect to each policy or contract listed in the report of an insurance company its number, the name of the company, and the amount due. The record must be available for public inspection at all reasonable business hours.
2. Before making any deposit to the credit of the common school trust fund, the administrator may deduct:
 - a. Any costs in connection with the sale of abandoned property;
 - b. Costs of mailing and publication in connection with any abandoned property;
 - c. Reasonable service charges; and
 - d. Costs incurred in examining records of holders of property and in collecting the property from those holders.

SECTION 24. Filing of claim with administrator.

1. A person, excluding another state, claiming an interest in any property paid or delivered to the administrator may file with him a claim on a form prescribed by him and verified by the claimant.
2. The administrator shall consider each claim within ninety days after it is filed and give written notice to the claimant if the claim is denied in whole or in part. The notice may be given by mailing it to the last address, if any, stated in the claim as the address to which notices are to be sent. If no address for notices is stated in the claim, the notice may be mailed to the last 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 address to which notices are to be sent or the address of the claimant.

3. 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 21. If the claim is for property presumed abandoned under section 10 which was sold by the administrator within three years after the date of delivery, the amount payable for that claim is the value of the property at the time the claim was made or the net proceeds of sale, whichever is greater.

SECTION 25. Claim of another state to recover property - Procedure.

1. At any time after property has been paid or delivered to the administrator under sections 1 through 38 of this Act 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 sections 1 through 38 of this Act, 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 under the laws of that state the property escheated to or became 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 escheated to or became 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 became subject to a claim of abandonment by that state;
 - d. The property was subjected to custody by this state under subsection 6 of section 3 and under the laws of the state of domicile of the holder the property has escheated to or became subject to a claim of abandonment by that state; or

- e. The property is the sum payable on a traveler's check, money order, or other similar instrument that was subjected to custody by this state under section 4, 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 the administrator determines that the other state is entitled to the abandoned property under subsection 1.
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.

SECTION 26. 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 the appropriate district court, 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 the administrator has failed to act on it. If the aggrieved person establishes and is awarded the claim in an action against the administrator, the court shall award costs and reasonable attorney's fees.

SECTION 27. Election to take payment or delivery.

1. The administrator may decline to receive any property reported under sections 1 through 38 of this Act which 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 17.
2. A holder, with the written consent of the administrator and upon conditions and terms prescribed by the administrator, may report and deliver property before the property is presumed abandoned. Property delivered under this subsection must be held by the administrator and is not presumed abandoned until such time as it otherwise would be presumed abandoned under sections 1 through 38 of this Act.

SECTION 28. Destruction or disposition of property having insubstantial commercial value - Immunity from liability. If the administrator determines after investigation that any property delivered under sections 1 through 38 of this Act 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.

SECTION 29. Periods of limitation. The expiration, before or after the effective date of sections 1 through 38 of this Act, 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 sections 1 through 38 of this Act.

SECTION 30. Requests for reports and examination of records.

1. The administrator may require any person who has not filed a report to file a verified report stating whether or not the person is holding any unclaimed property reportable or deliverable under sections 1 through 38 of this Act.
2. The administrator, at reasonable times and upon reasonable notice, may examine the records of any person to determine whether the person has complied with sections 1 through 38 of this Act. The administrator may conduct the examination even if the person believes it is not in possession of any property reportable or deliverable under sections 1 through 38 of this Act.
3. If a person is treated under section 12 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, may examine the records of the person if the administrator has given the notice required by subsection 2 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 sections 1 through 38 of this Act, the administrator may assess the cost of the examination against the holder at the rate of one hundred 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 may be imposed only against the business association.

5. If a holder fails after July 1, 1985, to maintain the records required by section 31 and the records of the holder available for the periods subject to sections 1 through 38 of this Act are insufficient to permit the preparation of a report, the administrator may require the holder to report and pay such amounts as may reasonably be estimated from any available records.

SECTION 31. Retention of records.

1. Every holder required to file a report under section 17, 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 ten years after the property becomes reportable, except to the extent that a shorter time is provided in subsection 2 or by rule of the administrator.
2. Any business association that sells in this state its traveler's checks, money orders, or other similar written instruments, other than third-party bank checks on which the business association is directly liable, or that provides those 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.

SECTION 32. Enforcement. The administrator may bring an action in a court of competent jurisdiction to enforce sections 1 through 38 of this Act.

SECTION 33. 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.
2. To avoid conflicts between the administrator's procedures and the procedures of administrators in other jurisdictions that enact the Uniform Unclaimed Property Act, the administrator, so far as is consistent with the purposes, policies, and provisions of sections 1 through 38 of this Act, before adopting, amending, or repealing rules, shall advise and consult with administrators in other jurisdictions that enact substantially the Uniform Unclaimed Property Act and take into consideration the

rules of administrators in other jurisdictions that enact the Uniform Unclaimed Property Act.

3. The administrator may join with other states to seek enforcement of sections 1 through 38 of this Act against any person who is or may be holding property reportable under sections 1 through 38 of this Act.
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's fees in any action under this subsection. The administrator may agree to pay the person bringing the action attorney's fees based in whole or in part on a percentage of the value of any property recovered in the action. Any expenses paid pursuant to this subsection may not be deducted from the amount that is subject to the claim by the owner under sections 1 through 38 of this Act.

SECTION 34. Penalties.

1. A person who willfully fails to render any report or perform other duties required under sections 1 through 38 of this Act 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 the value of the property that should have been paid or delivered.
2. A person who willfully fails to pay or deliver property to the administrator as required under sections 1 through 38 of this Act shall pay a civil penalty equal to twenty-five percent of the value of the property that should have been paid or delivered.
3. A person who willfully refuses after written demand by the administrator to pay or deliver property to the administrator as required under sections 1 through 38 of this Act is guilty of a class B misdemeanor.

SECTION 35. Agreement to locate reported property. All agreements to pay compensation to recover or assist in the recovery of property reported under section 17, made within twenty-four months after the date payment or delivery is made under section 19, are unenforceable.

SECTION 36. Foreign transactions. Sections 1 through 38 of this Act do not apply to any property held, due and owing in a foreign country and arising out of a foreign transaction.

SECTION 37. Effect of new provisions - Clarification of application.

1. Sections 1 through 38 of this Act do not relieve a holder of a duty that arose before July 1, 1985, to report, pay, or deliver property. A holder who has not complied with the law in effect before July 1, 1985, is subject to the applicable enforcement and penalty provisions that then existed and they are continued in effect for the purpose of this subsection, subject to subsection 2 of section 29.
2. The initial report filed under sections 1 through 38 of this Act for property that was not required to be reported before July 1, 1985, but which is subject to sections 1 through 38 of this Act must include all items of property that would have been presumed abandoned during the ten-year period preceding July 1, 1985, as if sections 1 through 38 of this Act had been in effect during that period.

SECTION 38. Rules. The administrator may adopt necessary rules to carry out sections 1 through 38 of this Act.

SECTION 39. AMENDMENT. Section 6-07-46 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-07-46. Disposition of unclaimed dividends or other moneys delivered to commissioner. Any unclaimed dividend or other moneys delivered to the commissioner by the receiver of an insolvent bank pursuant to the provisions of section 6-07-38 prior to July 1, 1975, shall be paid to the state treasurer who shall credit such payments to the general fund of this state. Any unclaimed dividends or other moneys credited to such fund may thereafter be paid to the lawful owner thereof, his heirs, executors, administrators, or assigns when proven to the satisfaction of the commissioner that he is legally entitled thereto. Such payment shall be made by a warrant drawn by the office of management and budget and issued in payment of a claim voucher certified to by the claimant and approved by the commissioner. The moneys required for the payment of such claims are hereby appropriated out of the general fund.

Any unclaimed dividend or other moneys delivered to the commissioner by the receiver of an insolvent bank pursuant to the provisions of section 6-07-38 after July 1, 1975, shall be transferred to the commissioner of university and school lands and voucher for the payment of such dividends to persons entitled thereto in accordance with ~~chapter 47-39~~ sections 1 through 38 of this Act.

SECTION 40. AMENDMENT. Section 9-12-29 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

9-12-29. Claim of money by creditor - Extinguishment of lien. The creditor is entitled to claim the amount of money from the county treasurer within nine months of the date of deposit upon a showing to the county treasurer of a satisfaction of the lien, encumbrance, or cloud which includes an indication by the register of deeds that the satisfaction has been duly recorded. If the creditor does not claim the money in nine months from the date of first publication of the notice, the money, a copy of the debtor's affidavit, and a copy of the published notice shall be forwarded by the county treasurer to the state land commissioner for deposit to the credit of the state of North Dakota for the use and benefit of the common schools trust fund of the state. At the same time these items are forwarded to the state land commissioner, the county treasurer shall record in the office of the register of deeds a notice to the effect that the lien, encumbrance, or cloud affecting or related to the title to the real property, giving the specific legal description of the property, has been discharged by the procedures set out in section 9-12-28 and this section. The debtor shall pay the register of deeds' fees for recording the county treasurer's notice.

At any time after the original nine-month period, the creditor, or the creditor's heirs, successors, or assigns, may claim the full amount of the original deposit without any interest or penalty from the state ~~estate~~ administrator of abandoned and unclaimed property in the manner specified in ~~chapter 47-30~~ sections 1 through 38 of this Act for claiming the proceeds of other abandoned and unclaimed property.

SECTION 41. A new section to chapter 15-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

Administrator of abandoned property - Employment. The commissioner of university and school lands shall employ an administrator of abandoned property and other personnel as necessary for the proper administration of sections 1 through 38 of this Act and shall set their salaries, within limits of legislative appropriations. All public officers shall assist the administrator in carrying out the administration of sections 1 through 38 of this Act.

SECTION 42. AMENDMENT. Subdivision v of subsection 1 of section 28-32-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- v. The board of university and school lands except with respect to activities under sections 1 through 38 of this Act.

SECTION 43. REPEAL. Chapter 47-30 of the North Dakota Century Code is hereby repealed.

Approved April 15, 1985