

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 244*

Short Title: Unclaimed Property Act/AB.

(Public)

Sponsors: Senator Hartsell.

Referred to: Judiciary I

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO ENACT THE NORTH CAROLINA UNCLAIMED PROPERTY ACT AND TO MAKE CONFORMING AMENDMENTS TO THE GENERAL STATUTES, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 116B-4 reads as rewritten:

"§ 116B-4. Claim for escheated property.

Any escheated property or proceeds from the sale of escheated property held by the Escheat Fund pursuant to ~~G.S. 116B-27~~ G.S. 116B-5 may be claimed by an heir of the decedent or by a creditor of the decedent who is not barred from presenting a claim under the provisions of Article 19 of ~~Chapter 28A~~ Chapter 28A of the General Statutes. ~~The claim shall be made on a form prescribed by the Treasurer and shall be presented to the Treasurer. If the Treasurer determines that the claimant is entitled to all or a portion of the escheated property or the proceeds from its sale, he shall make payment of the claim or return of the property. The claimant shall agree to indemnify the State, the State Treasurer and the Escheat Fund from any claim arising out of or in connection with refund of the property claimed. The provisions of G.S. 116B-38(b) and (c) G.S. 116B-66(a), (c), (d), and (e) and G.S. 116B-67 shall apply to a claim under this subsection.~~ section."

Section 2. Article 2 of Chapter 116B of the General Statutes is repealed.

1 Section 3.(a) Except as provided in subsection (b) of this section, Article 3 of
2 Chapter 116B of the General Statutes is repealed.

3 Section 3.(b) G.S. 116B-27 is recodified as G.S. 116B-5 within article 1 of
4 Chapter 116B of the General Statutes. G.S. 116B-36 is recodified as G.S. 116B-6 within
5 Article 1 of Chapter 116B of the General Statutes. G.S. 116B-37 is recodified as G.S.
6 116B-7 within Article 1 of Chapter 116B of the General Statutes. G.S. 116B-47 is
7 recodified as G.S. 116B-8 within Article 1 of Chapter 116B of the General Statutes.

8 Section 4.(a) G.S. 116B-6(b), as recodified by subsection (b) of Section 3 of this
9 act, reads as rewritten:

10 "(b) Investment and Transfer of Assets; Income. – The Treasurer ~~shall be~~ is the
11 trustee of the Escheat Account and ~~shall have~~ has full power to invest and reinvest the
12 assets of the Escheat Account and the Escheat Fund. Subject to the Treasurer's
13 withholding an amount necessary to accomplish ~~his~~ the Treasurer's duties as set out in
14 this Chapter, including subsections (e), (f) and (g) of this section, the Treasurer shall
15 transfer, at least annually, to the Escheat Account all moneys then in ~~his~~ the Treasurer's
16 custody received as, or derived from the disposition of, escheated and abandoned
17 property and shall disburse to the State Education Assistance Authority, as provided in
18 ~~G.S. 116B-37~~, G.S. 116B-7, the income derived from the investment of the Escheat
19 Account and the Escheat Fund. All moneys transferred to the Escheat Account under this
20 section shall be accounted for and administered separately from other assets and money
21 in the trust fund created under G.S. 116-209."

22 Section 4.(b) G.S. 116B-6(h) as recodified by subsection (b) of Section 3 of this
23 act, reads as rewritten:

24 "(h) Expenditures. – The Treasurer may expend the funds in the Escheat Fund,
25 other than funds in the Escheat Account, for the payment of claims for refunds to owners,
26 holders and claimants under G.S. 116B-4; for the payment of costs of maintenance and
27 upkeep of abandoned or escheated property; costs of preparing lists of names of owners
28 of abandoned property to be furnished to clerks of superior court; costs of notice and
29 publication; costs of appraisals; fees of persons employed pursuant to ~~G.S. 116B-47~~; G.S.
30 116B-8 costs involved in determining whether a decedent died without heirs; costs of a
31 title search of real property that has escheated; and costs of auction or sale under this
32 Chapter. All other costs, including salaries of personnel, necessary to carry out the duties
33 of the Treasurer under this Chapter, shall be appropriated from the funds of the Escheat
34 Fund pursuant to the provisions of Article 1, Chapter 143 of the General Statutes."

35 Section 5. G.S. 116B-8, as recodified by subsection (b) of Section 3 of this act,
36 reads as rewritten:

37 **"§ 116B-8. Employment of persons with specialized skills or knowledge.**

38 The Treasurer may employ the services of such independent consultants, real estate
39 managers and other persons possessing specialized skills or knowledge as ~~he shall deem~~
40 the Treasurer deems necessary or appropriate for the administration of this Chapter,
41 ~~including, but specifically not limited to,~~ including valuation, maintenance, upkeep,
42 management, sale and conveyance of property and determination of sources of
43 unreported abandoned property. The Treasurer may also employ the services of an

1 attorney to perform a title search or to provide an accurate legal description of real
2 property which ~~he~~ the Treasurer has reason to believe may have escheated."

3 Section 6. Chapter 116B of the General Statutes is amended by adding the
4 following new article to read:

5 **"ARTICLE 4.**

6 **"NORTH CAROLINA UNCLAIMED PROPERTY ACT.**

7 **"§ 116B-51. Short title.**

8 This Article may be cited as the 'North Carolina Unclaimed Property Act.'

9 **"§ 116B-52. Definitions.**

10 In this Chapter:

- 11 (1) 'Apparent owner' means a person whose name appears on the records of
12 a holder as the person entitled to property held, issued, or owing by the
13 holder.
- 14 (2) 'Business association' means a corporation, joint stock company,
15 investment company, partnership, unincorporated association, joint
16 venture, limited liability company, business trust, trust company, land
17 bank, safe deposit company, safekeeping depository, financial
18 organization, insurance company, mutual fund, utility, or other business
19 entity consisting of one or more persons, whether or not for profit.
- 20 (3) 'Domicile' means the state of incorporation of a corporation and the state
21 of the principal place of business of a holder other than a corporation.
- 22 (4) 'Financial organization' means a savings and loan association, building
23 and loan association, savings bank, industrial bank, bank, banking
24 organization, or credit union.
- 25 (5) 'Holder' means a person obligated to hold for the account of or deliver
26 or pay to the owner property that is subject to this Chapter.
- 27 (6) 'Insurance company' means an association, corporation, or fraternal or
28 mutual benefit organization, whether or not for profit, engaged in the
29 business of providing life endowments, annuities, or insurance,
30 including accident, burial, casualty, credit life, contract performance,
31 dental, disability, fidelity, fire, health, hospitalization, illness, life,
32 malpractice, marine, mortgage, surety, wage protection, and workers'
33 compensation insurance.
- 34 (7) 'Mineral' means gas, oil, coal, other gaseous, liquid, and solid
35 hydrocarbons, oil shale, cement material, sand and gravel, road material,
36 building stone, chemical raw material, gemstone, fissionable and
37 nonfissionable ores, colloidal and other clay, steam and other
38 geothermal resource, or any other substance defined as a mineral by the
39 law of this State.
- 40 (8) 'Mineral proceeds' means amounts payable for the extraction,
41 production, or sale of minerals, or, upon the abandonment of those
42 payments, all payments that become payable thereafter. The term
43 includes amounts payable:

- 1 a. For the acquisition and retention of a mineral lease, including
2 bonuses, royalties, compensatory royalties, shut-in royalties,
3 minimum royalties, and delay rentals;
- 4 b. For the extraction, production, or sale of minerals, including net
5 revenue interests, royalties, overriding royalties, extraction
6 payments, and production payments; and
- 7 c. Under an agreement or option, including a joint operating
8 agreement, unit agreement, pooling agreement, and farm-out
9 agreement.
- 10 (9) 'Owner' means a person who has a legal or equitable interest in property
11 subject to this Chapter or the person's legal representative. The term
12 includes a depositor in the case of a deposit, a beneficiary in the case of
13 a trust other than a deposit in trust, and a creditor, claimant, or payee in
14 the case of other property.
- 15 (10) 'Person' means an individual, business association, financial
16 organization, estate, trust, government, governmental subdivision,
17 agency, or instrumentality, or any other legal or commercial entity.
- 18 (11) 'Property' means tangible personal property physically located within
19 this State or a fixed and certain interest in intangible property that is
20 held, issued, or owed in the course of a holder's business, or by a
21 government, governmental subdivision, agency, or instrumentality, and
22 all income or increments therefrom. The term includes property that is
23 referred to as or evidenced by:
- 24 a. Money, a check, draft, deposit, interest, or dividend;
- 25 b. Credit balance, customer's overpayment, gift certificate, security
26 deposit, refund, credit memorandum, unpaid wage, unused ticket,
27 mineral proceeds, or unidentified remittance;
- 28 c. Stock or other evidence of ownership of an interest in a business
29 association;
- 30 d. A bond, debenture, note, or other evidence of indebtedness;
- 31 e. Money deposit to redeem stocks, bonds, coupons, or other
32 securities, or to make distributions;
- 33 f. An amount due and payable under the terms of an annuity or
34 insurance policy, including policies providing life insurance,
35 property and casualty insurance, workers' compensation
36 insurance, or health and disability insurance; and
- 37 g. An amount distributable from a trust or custodial fund
38 established under a plan to provide health, welfare, pension,
39 vacation, severance, retirement, death, stock purchase, profit
40 sharing, employee savings, supplemental unemployment
41 insurance, or similar benefits.

- 1 (12) 'Record' means information that is inscribed on a tangible medium or
2 that is stored in an electronic or other medium and is retrievable in
3 perceivable form.
- 4 (13) 'State' means a state of the United States, the District of Columbia, the
5 Commonwealth of Puerto Rico, or any territory or insular possession
6 subject to the jurisdiction of the United States.
- 7 (14) 'Treasurer' means the Treasurer of the State of North Carolina or the
8 Treasurer's designated agent.
- 9 (15) 'Utility' means a person who owns or operates for public use any plant,
10 equipment, real property, franchise, or license for the transportation of
11 the public, the transmission of communications, or the production,
12 storage, transmission, sale, delivery, or furnishing of electricity, water,
13 steam, or gas.

14 **"§ 116B-53. Presumptions of abandonment.**

15 (a) Property is unclaimed if the apparent owner has not communicated in writing
16 or by other means reflected in a contemporaneous record prepared by or on behalf of the
17 holder, with the holder concerning the property or the account in which the property is
18 held, and has not otherwise indicated an interest in the property. A communication with
19 an owner by a person (other than the holder or its representative) who has not, in writing,
20 identified the property to the owner is not an indication of interest in the property by the
21 owner.

22 (b) An indication of an interest in property includes:

- 23 (1) The presentment of a check or other instrument of payment of a
24 dividend or other distribution made with respect to an account or
25 underlying stock or other interest in a business association or, in the
26 case of a distribution made by electronic or similar means, evidence that
27 the distribution has been received;
- 28 (2) The presentment of a check or other instrument of payment of interest
29 made with respect to debt of a business association or, in the case of an
30 interest payment made by electronic or similar means, evidence that the
31 interest payment has been received;
- 32 (3) Owner-directed activity in the account in which the property is held,
33 including a direction by the owner to increase, decrease, or change the
34 amount or type of property held in the account;
- 35 (4) The making of a deposit to or withdrawal from an account in a financial
36 organization;
- 37 (5) Owner activity in another account with the holder of a deposit described
38 in subdivisions (c)(2) and (c)(6) of this section; and
- 39 (6) The payment of a premium with respect to a property interest in an
40 insurance policy; but the application of an automatic premium loan
41 provision or other nonforfeiture provision contained in an insurance
42 policy does not prevent a policy from maturing or terminating if the
43 insured has died or the insured or the beneficiary of the policy has

1 otherwise become entitled to the proceeds before the depletion of the
2 cash surrender value of a policy by the application of those provisions.

3 (c) Property is presumed abandoned if it is unclaimed by the apparent owner
4 during the time set forth below for the particular property:

- 5 (1) Traveler's check, 15 years after issuance;
6 (2) Time deposit, including a deposit that is automatically renewable, 10
7 years after the later of initial maturity or the date of the last indication
8 by the owner of interest in the property;
9 (3) Money order, cashier's check, teller's check, and certified check, seven
10 years after issuance;
11 (4) Stock or other equity interest in a business association, including a
12 security entitlement under Article 8 of the Uniform Commercial Code,
13 Chapter 25 of the General Statutes, five years after the earlier of:
14 a. The date of a cash dividend or other cash distribution unclaimed
15 by the apparent owner, or
16 b. The date of the second mailing of a stock certificate or other
17 evidence of ownership, a statement of account, or other
18 notification or communication which second mailing was
19 returned as undeliverable or the date the holder discontinued
20 mailings, notifications, or communications to the apparent
21 owner;
22 (5) Debt of a business association, other than a bearer bond or an original
23 issue discount bond, five years after the date of an interest payment
24 unclaimed by the apparent owner;
25 (6) Demand or savings deposit, five years after the date of the last
26 indication by the owner of interest in the property;
27 (7) Money or credits owed to a customer as a result of a retail business
28 transaction, three years after the obligation accrued;
29 (8) Gift certificate, three years after December 31 of the year in which the
30 certificate was sold, but if redeemable in merchandise only, the amount
31 abandoned is deemed to be sixty percent (60%) of the certificate's face
32 value;
33 (9) Amount owed by an insurer on a life or endowment insurance policy or
34 an annuity that has matured or terminated, three years after the
35 obligation to pay arose or, in the case of a policy or annuity payable
36 upon proof of death, three years after the insured has attained, or would
37 have attained if living, the limiting age under the mortality table on
38 which the reserve is based;
39 (10) Property distributable by a business association in a course of
40 dissolution, one year after the property becomes distributable;
41 (11) Property received by a court as proceeds of a class action, and not
42 distributed pursuant to the judgment, one year after the distribution date;

- 1 (12) Property held by a court, government, governmental subdivision,
2 agency, or instrumentality, one year after the property becomes
3 distributable;
- 4 (13) Wages or other compensation for personal services, one year after the
5 compensation becomes payable;
- 6 (14) Deposit or refund owed to a subscriber by a utility, one year after the
7 deposit or refund becomes payable;
- 8 (15) Property in an individual retirement account, defined benefit plan, or
9 other account or plan that is qualified for tax deferral under the income
10 tax laws of the United States, three years after the earliest of the date of
11 the distribution or attempted distribution of the property, the date of the
12 required distribution as stated in the plan or trust agreement governing
13 the plan, or the date, if determinable by the holder, specified in the
14 income tax laws of the United States by which distribution of the
15 property must begin in order to avoid a tax penalty; and
- 16 (16) All other property, five years after the owner's right to demand the
17 property or after the obligation to pay or distribute the property arises,
18 whichever first occurs.

19 (d) At the time that an interest in property is presumed abandoned under
20 subsection (c) of this section, any other property right accrued or accruing to the owner as
21 a result of the interest, and not previously presumed abandoned, is also presumed
22 abandoned.

23 (e) Property is payable or distributable for purposes of this Chapter
24 notwithstanding the owner's failure to make demand or present an instrument or
25 document otherwise required to obtain payment or distribution.

26 **"§ 116B-54. Exclusion for forfeited reservation deposits.**

27 A forfeited reservation deposit is not abandoned property. For the purposes of this
28 section the term 'reservation deposit' means an amount of money paid to a business
29 association to guarantee that the business association holds a specific service, such as a
30 room accommodation at a hotel, seating at a restaurant, or an appointment with a doctor,
31 for a specified date and place. The term 'reservation deposit' does not include an
32 application fee, a utility deposit, or a deposit made toward the purchase of real property.

33 **"§ 116B-55. Contents of safe deposit box or other safekeeping depository.**

34 Contents of a safe deposit box or other safekeeping depository held by a financial
35 organization is presumed abandoned if the apparent owner has not claimed the property
36 within the period established by G.S. 53-43.7 and shall be delivered to the administrator
37 as provided by that section. If the contents include property described in G.S. 116B-53,
38 the Treasurer shall hold the property for the remainder of the applicable period set forth
39 in that section before the property is deemed to be received for purpose of sale under G.S.
40 116B-65.

41 **"§ 116B-56. Rules for taking custody.**

1 (a) Except as otherwise provided in this Chapter or by other statute of this State,
2 property that is presumed abandoned, whether located in this or another state, is subject
3 to the custody of this State if:

4 (1) The last known address of the apparent owner, as shown on the records
5 of the holder, is in this State;

6 (2) The records of the holder do not reflect the identity of the person
7 entitled to the property, and it is established that the last known address
8 of the person entitled to the property is in this State;

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

11 a. The last known address of the person entitled to the property is in
12 this State; or

13 b. The holder is domiciled in this State or is a government or
14 governmental subdivision, agency, or instrumentality of this
15 State and has not previously paid or delivered the property to the
16 state of the last known address of the apparent owner or other
17 person entitled to the property;

18 (4) The last known address of the apparent owner, as shown on the records
19 of the holder, is in a state that does not provide for the escheat or
20 custodial taking of the property, and the holder is domiciled in this
21 State or is a government or governmental subdivision, agency, or
22 instrumentality of this State;

23 (5) The last known address of the apparent owner, as shown on the records
24 of the holder, is in a foreign country, and the holder is domiciled in this
25 State or is a government or governmental subdivision, agency, or
26 instrumentality of this State;

27 (6) The transaction out of which the property arose occurred in this State,
28 the holder is domiciled in a state that does not provide for the escheat or
29 custodial taking of the property, and the last known address of the
30 apparent owner or other person entitled to the property is unknown or is
31 in a state that does not provide for the escheat or custodial taking of the
32 property; or

33 (7) The property is a traveler's check or money order purchased in this State
34 or the issuer of the traveler's check or money order has its principal
35 place of business in this State and the issuer's records show that the
36 instrument was purchased in a state that does not provide for the escheat
37 or custodial taking of the property or do not show the state in which the
38 instrument was purchased.

39 (b) In the case of an amount payable under the terms of an annuity or insurance
40 policy, the last known address of the person entitled to the property is presumed to be the
41 same as the last known address of the insured or the principal, as shown on the records of
42 the insurance company, if:

1 (1) A person other than the insured or the principal is entitled to the
2 property; and

3 (2) Either:

4 a. No address of the person is known to the insurance company; or

5 b. The records of the insurance company do not reflect the identity
6 of the person.

7 **"§ 116B-57. Dormancy charge.**

8 A holder may deduct from property presumed abandoned a reasonable charge
9 imposed by reason of the owner's failure to claim the property within a specified time
10 only if there is a valid and enforceable written contract between the holder and the owner
11 under which the holder may impose the charge and the holder regularly imposes the
12 charge, which is not regularly reversed or otherwise canceled.

13 **"§ 116B-58. Burden of proof as to property evidenced by record of check or draft.**

14 A record of the issuance of a check, draft, or similar instrument is prima facie
15 evidence of an obligation. In claiming property from a holder who is also the issuer, the
16 Treasurer's burden of proof as to the existence and amount of the property and its
17 abandonment is satisfied by showing issuance of the instrument and passage of the
18 requisite period of abandonment. Defenses of payment, satisfaction, discharge, and want
19 of consideration are affirmative defenses that must be established by the holder.

20 **"§ 116B-59. Notice by holders to apparent owners.**

21 (a) A holder of property presumed abandoned shall make a good faith effort to
22 locate an apparent owner.

23 (b) The holder shall send written notice, by first-class mail, to the apparent owner,
24 not more than 120 days or less than 60 days before filing the report required by G.S.
25 116B-60, to the last known address of the apparent owner as reflected in the holder's
26 records, if the value of the property is fifty dollars (\$50.00) or more.

27 (c) The notice must contain:

28 (1) A statement that, according to the records of the holder, property is
29 being held to which the addressee appears entitled and the amount or
30 description of the property;

31 (2) The name and address of the person holding the property and any
32 necessary information regarding changes of name and address of the
33 holder;

34 (3) A statement that, if satisfactory proof of claim is not presented by the
35 owner to the holder by the following October 1 or, if the holder is an
36 insurance company, by the following April 1, the property will be
37 placed in the custody of the Treasurer, to whom all further claims shall
38 be directed.

39 **"§ 116B-60. Report of abandoned property; certification by holders with tax return.**

40 (a) A holder of property presumed abandoned shall make a report to the Treasurer
41 concerning the property.

42 (b) The report must be verified and must contain:

43 (1) A description of the property;

- 1 (2) Except with respect to a traveler's check or money order, the name, if
2 known, and last known address, if any, and the social security number
3 or taxpayer identification number, if readily ascertainable, of the
4 apparent owner of property of the value of fifty dollars (\$50.00) or
5 more;
- 6 (3) An aggregated amount of items valued under fifty dollars (\$50.00) each;
7 (4) In the case of an amount of fifty dollars (\$50.00) or more held or owing
8 under an annuity or a life or endowment insurance policy, the full name
9 and last known address of the annuitant or insured and of the
10 beneficiary;
- 11 (5) The date, if any, on which the property became payable, demandable, or
12 returnable, and the date of the last transaction or communication with
13 the apparent owner with respect to the property; and
- 14 (6) Other information that the administrator by rule prescribes as necessary
15 for the administration of this Chapter.
- 16

17 (c) If a holder of property presumed abandoned is a successor to another person
18 who previously held the property for the apparent owner or the holder has changed its
19 name while holding the property, the holder shall file with the report its former names, if
20 any, and the known names and addresses of all previous holders of the property.

21 (d) The report must be filed before November 1 of each year and cover the 12
22 months next preceding July 1 of that year, but a report with respect to a life insurance
23 company must be filed before May 1 of each year for the calendar year next preceding.

24 (e) Before the date for filing the report, the holder of property presumed
25 abandoned may request the Treasurer to extend the time for filing the report. The
26 Treasurer may grant the extension for good cause. The holder, upon receipt of the
27 extension, may make an interim payment on the amount the holder estimates will
28 ultimately be due, which terminates the accrual of additional interest on the amount paid.

29 (f) The holder of property presumed abandoned shall file with the report an
30 affidavit stating that the holder has complied with G.S. 116B-59.

31 (g) Every business association holding property presumed abandoned under this
32 Chapter shall certify the holding in the income tax return required by Chapter 105 of the
33 General Statutes. The certification shall be a part of the tax return with which it is filed.
34 If the business association is not required to file an income tax return under Chapter 105,
35 the certification shall be made in the form and manner required by the Secretary of
36 Revenue. The information appearing on the certification is not privileged or confidential,
37 and this information shall be furnished by the Secretary of Revenue to the Escheat Fund
38 on October 1 of each year, or if this date shall fall on a weekend or holiday, on the next
39 regular business day.

40 **"§ 116B-61. Payment or delivery of abandoned property.**

41 (a) Upon filing the report required by G.S. 116B-60, the holder of property
42 presumed abandoned shall pay, deliver, or cause to be paid or delivered to the Treasurer
43 the property described in the report, but if the property is an automatically renewable

1 deposit, and a penalty or forfeiture in the payment of interest would result, the time for
2 compliance is extended to the next filing and delivery date at which a penalty or
3 forfeiture would not longer result.

4 (b) If the property reported to the Treasurer is a security or security entitlement
5 under Article 8 of Chapter 25 of the General Statutes, the Treasurer is an appropriate
6 person to make an indorsement, instruction, or entitlement order on behalf of the apparent
7 owner to invoke the duty of the issuer or its transfer agent or the securities intermediary
8 to transfer or dispose of the security or the security entitlement in accordance with Article
9 8 of Chapter 25 of the General Statutes.

10 (c) If the holder of property reported to the Treasurer is the issuer of a certificated
11 security, the Treasurer has the right to obtain a replacement certificate pursuant to G.S.
12 25-8-405, but an indemnity bond is not required.

13 (d) An issuer, the holder, and any transfer agent or other person acting pursuant to
14 the instructions of and on behalf of the issuer or holder in accordance with this section is
15 not liable to the apparent owner and must be indemnified against claims of any person in
16 accordance with G.S. 116B-63.

17 **"§ 116B-62. Preparation of list of owners by Treasurer.**

18 (a) There shall be delivered to the clerk of superior court of each county prior to
19 June 30 of each year a list prepared by the Treasurer of escheated and abandoned
20 property reported to the Treasurer. The list shall contain:

21 (1) The names, if known, in alphabetical order of surname, and last known
22 addresses, if any, of apparent owners of escheated and abandoned
23 property;

24 (2) The names and addresses of the holders of the abandoned property; and

25 (3) A statement that claim and proof of legal entitlement to escheated or
26 abandoned property shall be presented by the owner to the Treasurer,
27 which statement shall set forth where further information may be
28 obtained.

29 (b) At the time the lists are distributed to the clerks of superior court, the Treasurer
30 shall cause to be published once each week for two consecutive weeks, in at least two
31 newspapers having general circulation in this State, a notice stating the nature of the lists
32 and that the lists are available for inspection at the offices of the respective clerks of
33 superior court, together with any other information the Treasurer deems appropriate to
34 appear in the notice.

35 (c) The Treasurer is not required to include in any list any item of a value, as
36 determined by the Treasurer, in the Treasurer's discretion, of less than fifty dollars
37 (\$50.00), unless the Treasurer deems inclusion of items of lesser amounts to be in the
38 public interest.

39 (d) The clerks of superior court shall retain the lists on permanent file in their
40 offices and shall make them available for public inspection.

41 (e) The lists prepared by the Treasurer shall include only escheated and abandoned
42 property reported for the current reporting date and are not required to be cumulative lists
43 of escheated and abandoned property previously reported.

1 (f) Notwithstanding the provisions of Chapter 132 of the General Statutes, the
2 supporting data and lists of apparent owners of escheated and abandoned property may be
3 confidential until six months after the notice to clerks of superior court required by
4 subsection (b) of this section has been distributed. This subsection shall not apply to
5 owners of reported property making inquiries about their property to the Escheat Fund.

6 **"§ 116B-63. Custody by State; recovery by holder; defense of holder.**

7 (a) In this section, payment or delivery is made in 'good faith' if:

8 (1) Payment or delivery was made in a reasonable attempt to comply with
9 this Chapter;

10 (2) The holder was not then in breach of a fiduciary obligation with respect
11 to the property and had a reasonable basis for believing, based on the
12 facts then known, that the property was presumed abandoned; and

13 (3) There is no showing that the records under which the payment or
14 delivery was made did not meet reasonable commercial standards of
15 practice.

16 (b) Upon payment or delivery of property to the Treasurer, the State assumes
17 custody and responsibility for the safekeeping of the property. A holder who pays or
18 delivers property to the Treasurer in good faith is relieved of all liability arising thereafter
19 with respect to the property.

20 (c) a holder who has paid money to the Treasurer pursuant to this Chapter may
21 subsequently make payment to a person reasonably appearing to the holder to be entitled
22 to payment. Upon a filing by the holder of proof of payment and proof that the payee
23 was entitled to the payment, the Treasurer shall promptly reimburse the holder for the
24 payment without imposing a fee or other charge. If reimbursement is sought for a
25 payment made on a negotiable instrument, including a traveler's check or money order,
26 the holder must be reimbursed upon filing proof that the instrument was duly presented
27 and that payment was made to a person who reasonably appeared to be entitled to
28 payment. The holder must be reimbursed for payment made even if the payment was
29 made to a person whose claim was barred under G.S. 116B-71(a).

30 (d) A holder who has delivered property other than money to the Treasurer
31 pursuant to this Chapter may reclaim the property if it is still in the possession of the
32 Treasurer, without paying any fee or other charge, upon filing proof that the apparent
33 owner has claimed the property from the holder.

34 (e) The Treasurer may accept a holder's affidavit as sufficient proof of the holder's
35 right to recover money and property under this section.

36 (f) If a holder pays or delivers property to the Treasure in good faith and thereafter
37 another person claims the property from the holder or another state claims the money or
38 property under its laws relating to escheat or abandoned or unclaimed property, the
39 Treasurer, upon written notice of the claim, shall defend the holder against the claim and
40 indemnify the holder against any liability on the claim resulting from payment or delivery
41 of the property to the Treasurer.

42 **"§ 116B-64. Income or gain accruing after payment or delivery.**

1 If property other than money is delivered to the Treasurer under this Chapter, the
2 owner is entitled to receive from the Treasurer any income or gain realized or accruing on
3 the property at or before liquidation or conversion of the property into money. If the
4 property is interest-bearing or pays dividends, the interest or dividends shall be paid until
5 the date on which the amount of the deposits, accounts, or funds, or the shares must be
6 remitted or delivered to the Treasurer under G.S. 116B-61. Otherwise, when property is
7 delivered or paid to the Treasurer, the Treasurer shall hold the property without liability
8 for income or gain.

9 **"§ 116B-65. Public sale of abandoned property.**

10 (a) Except as otherwise provided in this section, the Treasurer, within three years
11 after the receipt of abandoned property, shall sell it to the highest bidder at public sale at
12 a location in the State which in the judgment of the Treasurer affords the most favorable
13 market for the property. The Treasurer may decline the highest bid and reoffer the
14 property for sale if the Treasurer considers the bid to be insufficient. The Treasurer need
15 not offer the property for sale if the Treasurer considers that the probable cost of sale will
16 exceed the proceeds of the sale. A sale held under this section must be preceded by a
17 single publication of notice, at least three weeks before sale, in a newspaper of general
18 circulation in the county in which the property is to be sold. The Treasurer is not
19 required to sell money unless it is a collector's species having value greater than the face
20 value of the money as cash.

21 (b) Securities listed on an established stock exchange must be sold at prices
22 prevailing on the exchange at the time of sale. Other securities may be sold over the
23 counter at prices prevailing at the time of sale or by any reasonable method selected by
24 the Treasurer. If securities are sold by the Treasurer before the expiration of three years
25 after their delivery to the Treasurer, a person making a claim under this Chapter before
26 the end of the three-year period is entitled to the proceeds of the sale of the securities or
27 the market value of the securities at the time the claim is made, whichever is greater, less
28 any deduction for expenses of sale. A person making a claim under this Chapter after the
29 expiration of the three-year period is entitled to receive the securities delivered to the
30 Treasurer by the holder, if they still remain in the custody of the Treasurer, or the net
31 proceeds received from sale, and is not entitled to receive any appreciation in the value of
32 the property occurring after delivery to the Treasurer, except in a case of intentional
33 misconduct by the Treasurer.

34 (c) a purchaser of property at a sale conducted by the Treasurer pursuant to this
35 Chapter takes the property free of all claims of the owner or previous holder and of all
36 persons claiming through or under them. The Treasurer shall execute all documents
37 necessary to complete the transfer of ownership.

38 **"§ 116B-66. Claim of another state to recover property.**

39 (a) After property has been paid or delivered to the Treasurer under this Article,
40 another state may recover the property if:

- 41 (1) The property was paid or delivered to the custody of this State because
42 the records of the holder did not reflect a last known location of the
43 apparent owner within the borders of the other state, and the other state

1 establishes that the apparent owner or other person entitled to the
2 property was last known to be located within the borders of that state
3 and under the laws of that state the property has escheated or become
4 subject to a claim of abandonment by that state;

5 (2) The property was paid or delivered to the custody of this State because
6 the laws of the other state did not provide for the escheat or custodial
7 taking of the property, and under the laws of that state subsequently
8 enacted, the property has escheated or become subject to a claim of
9 abandonment by that state;

10 (3) The records of the holder were erroneous in that they did not accurately
11 identify the owner of the property and the last known location of the
12 owner within the borders of another state, and under the laws of that
13 state the property has escheated or become subject to a claim of
14 abandonment by that state;

15 (4) The property was subjected to custody by this State under G.S. 116B-
16 56(6), and under the laws of the state of domicile of the holder, the
17 property has escheated or become subject to a claim of abandonment by
18 that state; or

19 (5) The property is a sum payable on a traveler's check, money order, or
20 similar instrument that was purchased in the other state and delivered
21 into the custody of this State under G.S. 116B-56(7), and under the laws
22 of the other state, the property has escheated or become subject to a
23 claim of abandonment by that state.

24 (b) A claim of another state to recover escheated or abandoned property must be
25 presented in a form prescribed by the Treasurer, who shall decide the claim within 90
26 days after it is presented. The Treasurer shall allow the claim upon determining that the
27 other state is entitled to the abandoned property under subsection (a) of this section.

28 (c) The Treasurer shall require another state, before recovering property under this
29 section, to agree to indemnify this State and its officers and employees against any
30 liability on a claim to the property.

31 **§ 116B-67. Claim for property paid or delivered to the Treasurer.**

32 (a) A person, excluding another state, claiming property paid or delivered to the
33 Treasurer may file a claim on a form prescribed by the Treasurer and verified by the
34 claimant.

35 (b) At the discretion of the Treasurer, the claim shall be made to the holder or to
36 the holder's successor. If the holder is satisfied that the claim is valid and that the
37 claimant is the owner of the property, the holder shall so certify to the Treasurer by
38 written statement attested by the holder under oath, or in the case of a corporation, by two
39 principal officers, or one principal officer and an authorized employee the corporation.
40 The determination of the holder that the claimant is the owner shall, in the absence of
41 fraud, be binding upon the Treasurer and upon receipt of the certificate of the holder to
42 this effect, the Treasurer shall forthwith authorize and make payment of the claim or
43 return of the property, or if the property has been sold, the amount received from the sale,

1 to the owner, or to the holder in the event the owner has assigned the claim to the holder
2 and the certificate of the holder is accompanied by an assignment. In the event the holder
3 rejects the claim, the claimant may appeal to the Treasurer.

4 If the holder, or the holder's successor, is not available, the owner may file a claim
5 with the Treasurer on a form prescribed by the Treasurer. In addition to any other
6 information, the claim shall state the facts surrounding the unavailability of the holder
7 and the lack of a successor.

8 (c) Within 90 days after a claim is filed, the Treasurer shall allow or deny the
9 claim and give written notice of the decision to the claimant. If the claim is denied, the
10 Treasurer shall inform the claimant of the reasons for the denial and specify what
11 additional evidence is required before the claim will be allowed. The claimant may then
12 file a new claim with the Treasurer or maintain an action under G.S. 116B-68.

13 (d) Within 30 days after a claim is allowed, the property or the net proceeds of a
14 sale of the property must be delivered or paid by the Treasurer to the claimant.

15 (e) The claimant or claimants and the holder, if the holder either certifies that the
16 claimant is the owner under subsection (b) of this section or recovers money and property
17 from the Treasurer under G.S. 116B-63, shall agree to indemnify, save harmless, and
18 defend the State, the Treasurer, and the Escheat Fund from any claim arising out of or in
19 connection with refund of the property claimed. In like manner, the claimant shall also
20 agree to indemnify, save harmless, and defend the holder, if the holder certifies the claim
21 under subsection (b) of this section or pays or delivers property to the claimant under
22 G.S. 116B-63.

23 **"§ 116B-68. Action to establish claim.**

24 A person aggrieved by a decision of the Treasurer or whose claim has not been acted
25 upon within 90 days after its filing may maintain an original action to establish the claim
26 in the Superior Court of Wake County, naming the Treasurer as a defendant.

27 **"§ 116B-69. Election to take payment or delivery.**

28 (a) The Treasurer may decline to receive property reported under this Chapter
29 which the Treasurer considers to have a value less than the expenses of notice and sale.

30 (b) A holder, with the written consent of the Treasurer and upon conditions and
31 terms prescribed by the Treasurer, may report and deliver property before the property is
32 presumed abandoned. Property so delivered must be held by the Treasurer and is not
33 presumed abandoned until it otherwise would be presumed abandoned under this Article.

34 **"§ 116B-70. Destruction or disposition of property having no substantial
35 commercial value; immunity from liability; property of historical
36 significance.**

37 (a) If the Treasurer determines after investigation that property delivered under
38 this Chapter has no substantial commercial value, the Treasurer may destroy or otherwise
39 dispose of the property at any time. An action or proceeding may not be maintained
40 against the State or any officer, employee, or agent of the State, both past and present, in
41 the person's individual and official capacity, or against the holder for or on account of an
42 act of the Treasurer under this subsection, except for intentional misconduct.

1 (b) Notwithstanding the provisions of G.S. 116B-65, the Treasurer may retain any
2 tangible property delivered to the Treasurer, if the property has recognized historic
3 significance. The historic significance shall be certified by the Treasurer, with the advice
4 of the Secretary of Cultural Resources; and a statement of the appraised value of the
5 property shall be filed with the certification. Historic property retained under this
6 subsection may be stored and displayed at any suitable location.

7 **"§ 116B-71. Periods of limitation.**

8 (a) The expiration, before or after the effective date of this Article, of a period of
9 limitation on the owner's right to receive or recover property, whether specified by
10 contract, statute, or court order, does not preclude the property from being presumed
11 abandoned or affect a duty of a holder to file a report or to pay or deliver or transfer
12 property to the Treasurer as required by this Article.

13 (b) An action or proceeding may not be maintained by the Treasurer to enforce
14 this Article in regard to the reporting, delivery, or payment of property more than 10
15 years after the holder filed a report with the Treasurer in which the holder specifically
16 identified or should have identified the property or gave express notice to the Treasurer of
17 a dispute regarding the property. In the absence of such a report or other express notice,
18 the period of limitation is tolled. The period of limitation is also tolled by the filing of a
19 report that is fraudulent.

20 **"§ 116B-72. Requests for reports and examination of records.**

21 (a) The Treasurer may require a person who has not filed a report, or a person who
22 the Treasurer believes has filed an inaccurate, incomplete, or false report, to file a
23 verified report in a form specified by the Treasurer. The report must state whether the
24 person is holding property reportable under this Chapter, describe property not previously
25 reported or as to which the Treasurer has made inquiry, and specifically identify and state
26 the value of property that may be in issue.

27 (b) The Treasurer, at reasonable times and upon reasonable notice, may examine
28 the records of any person to determine whether the person has complied with this
29 Chapter. The Treasurer may conduct the examination even if the person believes it is not
30 in possession of any property that must be reported, paid, or delivered under this Chapter.
31 The Treasurer may contract with any other person to conduct the examination on behalf
32 of the Treasurer.

33 (c) The Treasurer at reasonable times may examine the records of an agent,
34 including a dividend disbursing agent or transfer agent, of a business association that is
35 the holder of property presumed abandoned if the Treasurer has given the notice required
36 by subsection (b) of this section to both the association and the agent at least 90 days
37 before the examination.

38 (d) Documents and working papers obtained or compiled by the Treasurer, or the
39 Treasurer's agents, employees, or designated representatives, in the course of conducting
40 an examination are confidential, but the documents and papers may be:

- 41 (1) Used by the Treasurer in the course of an action to collect unclaimed
42 property or otherwise enforce this Chapter;

1 (2) Used in joint examinations conducted with or pursuant to an agreement
2 with another state, the federal government, or any other governmental
3 subdivision, agency, or instrumentality;

4 (3) Produced pursuant to subpoena or court order; or

5 (4) Disclosed to the abandoned property office of another state for that
6 state's use in circumstances equivalent to those described in this
7 subsection, if the other state is bound to keep the documents and papers
8 confidential.

9 (e) If an examination results in the disclosure of property reportable under this
10 Chapter, the Treasurer may assess against a holder who willfully failed to report or who
11 made a fraudulent report the cost of the examination at the rate of two hundred dollars
12 (\$200.00) a day for each examiner, or a greater amount that is reasonable and was
13 incurred, but the assessment may not exceed the value of the property found to be
14 reportable. The cost of an examination made pursuant to subsection (c) of this section
15 may be assessed only against the business association.

16 (f) If a holder does not maintain the records required by G.S. 116B-73 and the
17 records of the holder available for the periods subject to this Chapter are insufficient to
18 permit the preparation of a report, the Treasurer may require the holder to report and pay
19 to the Treasurer the amount the Treasurer reasonably estimates, on the basis of any
20 available records of the holder or by any other reasonable method of estimation, that
21 should have been but was not reported.

22 **"§ 116B-73. Retention of records.**

23 (a) Except as otherwise provided in subsection (b) of this section, a holder
24 required to file a report under G.S. 116B-60 shall maintain the records containing the
25 information required to be included in the report for 10 years after the holder files the
26 report, unless a shorter period is provided by rule of the Treasurer.

27 (b) A business association that sells, issues, or provides to others for sale or issue
28 in this State, traveler's checks, money orders, or similar instruments other than third-party
29 bank checks, on which the business association is directly liable, shall maintain a record
30 of the instruments while they remain outstanding, indicating the state and date of issue,
31 for three years after the holder files the report.

32 **"§ 116B-74. Enforcement.**

33 (a) The Treasurer may maintain an action in this or another state to enforce this
34 Chapter.

35 (b) The Treasurer may order a person required to report, pay, or deliver property
36 under this Chapter, or an officer or employee of the person, or a person having
37 possession, custody, care, or control of records relevant to the matter under inquiry, or
38 any other person having knowledge of the property or records, to appear before the
39 Treasurer, at a time and place named in the order, and to produce the records and to give
40 such testimony under oath or affirmation relevant to the inquiry. For purposes of this
41 subsection, the Treasurer may administer oaths or affirmations. If a person refuses to
42 obey an order of the Treasurer, the Treasurer may apply to the Superior Court of Wake

1 County for an order requiring the person to obey the order of the Treasurer. Failure to
2 comply with the court order is punishable for contempt.

3 **"§ 116B-75. Interstate agreements and cooperation; joint and reciprocal actions**
4 **with other states.**

5 (a) The Treasurer may enter into an agreement with another state to exchange
6 information relating to abandoned property or its possible existence. The agreement may
7 permit the other state, or another person acting on behalf of a state, to examine records as
8 authorized in G.S. 116B-72. The Treasurer by rule may require the reporting of
9 information needed to enable compliance with an agreement made under this section and
10 prescribe the form.

11 (b) The Treasurer may join with another state to seek enforcement of this Chapter
12 against any person who is or may be holding property reportable under this Chapter.

13 (c) At the request of another state, the Attorney General of this State may maintain
14 an action on behalf of the other state to enforce, in this State, the unclaimed property laws
15 of the other state against a holder of property subject to escheat or a claim of
16 abandonment by the other state, if the other state has agreed to pay expenses incurred by
17 the Attorney General in maintaining the action.

18 (d) The Treasurer may request that the attorney general of another state or another
19 attorney commence an action in the other state on behalf of the Treasurer. With the
20 approval of the Attorney General of this State, the Treasurer may retain any other
21 attorney to commence an action in this State on behalf of the Treasurer. This State shall
22 pay all expenses, including attorneys' fees, in maintaining an action under this subsection.
23 With the Treasurer's approval, the expenses and attorneys' fees may be paid from money
24 received under this Chapter. The Treasurer may agree to pay expenses and attorneys'
25 fees based in whole or in part on a percentage of the value of any property recovered in
26 the action. Any expenses or attorneys' fees paid under this subsection may not be
27 deducted from the amount that is subject to the claim by the owner under this Chapter.

28 (e) The treasurer is authorized to make such expenditures from the funds of the
29 Escheat Fund as may be necessary to effectuate the provisions of this section.

30 **"§ 116B-76. Interest and penalties; waiver.**

31 (a) A holder who fails to report, pay, or deliver property within the time prescribed
32 by this Chapter shall pay to the Treasurer interest at the rate established pursuant to this
33 subsection on the property or value of the property from the date the property should
34 have been reported, paid, or delivered. On or before June 1 and December 1 of each
35 year, the Treasurer shall establish the interest rate to be in effect during the six-month
36 period beginning on the next succeeding July 1 and January 1, respectively, after giving
37 due consideration to current market conditions. If no new rate is established, the rate in
38 effect during the preceding six-month period shall continue in effect. The rate
39 established by the Treasurer may not be less than five percent (5%) per year and may not
40 exceed sixteen percent (16%) per year.

41 (b) A holder who willfully fails to report, pay, or deliver property within the time
42 prescribed by this Chapter, or willfully fails to perform other duties imposed by this
43 Chapter, shall pay to the Treasurer, in addition to interest as provided in subsection (a) of

1 this section , a civil penalty of one thousand dollars (\$1,000) for each day the report,
2 payment, or delivery is withheld, or the duty is not performed, up to a maximum of
3 twenty-five thousand dollars (\$25,000), plus twenty-five percent (25%) of the value of
4 any property that should have been but was not reported.

5 (c) A holder who makes a fraudulent report shall pay to the Treasurer, in addition
6 to interest as provided in subsection (a) of this section, a civil penalty of one thousand
7 dollars (\$1,000) for each day from the date a report under this Chapter was due, up to a
8 maximum of twenty-five thousand dollars (\$25,000), plus twenty-five percent (25%) of
9 the value of any property that should have been but was not reported.

10 (d) The Treasurer for good cause may waive, in whole or in part, interest under
11 subsection (a) of this section and penalties under subsection (b) of this section.

12 **"§ 116B-77. Agreement to locate property.**

13 (a) An agreement by an owner, the primary purpose of which is to locate, deliver,
14 recover, or assist in the recovery of property that is presumed abandoned, is void and
15 unenforceable if it was entered into during the period commencing on the date the
16 property was presumed abandoned and extending to a time that is 24 months after the
17 date the property is paid or delivered to the Treasurer. This subsection does not apply to
18 an owner's agreement with an attorney to file a claim as to identified property or contest
19 the Treasurer's denial of a claim.

20 (b) An agreement by an owner, the primary purpose of which is to locate, deliver,
21 recover, or assist in the recovery of property, is enforceable only if the agreement is in
22 writing, clearly sets forth the nature of the property and the services to be rendered, is
23 signed by the owner, and states the value of the property before and after the fee or other
24 compensation has been deducted.

25 (c) If an agreement covered by this section applies to mineral proceeds and the
26 agreement contains a provision to pay compensation that includes a portion of the
27 underlying minerals or any mineral proceeds not then presumed abandoned, the provision
28 is void and unenforceable.

29 (d) An agreement covered by this section that provides for compensation in an
30 amount greater than twenty-five percent (25%) of the actual value of the property
31 recovered, or is otherwise unconscionable, is unenforceable except by the owner. An
32 owner who has made an agreement to pay compensation that is unenforceable, or the
33 Treasurer on behalf of the owner, may maintain an action to reduce the compensation.
34 The court may award reasonable attorneys' fees to an owner who prevails in the action.

35 (e) This section does not preclude an owner from asserting that an agreement
36 covered by this section is invalid on grounds other than as provided in subsection (d) of
37 this section.

38 **"§ 116B-78. Transitional provisions.**

39 (a) An initial report filed under this Article for property that was not required to be
40 reported before the effective date of this Article but which is subject to this Article must
41 include all items of property that would have been presumed abandoned during the 10-
42 year period next preceding the effective date of this Article as if this Article had been in
43 effect during that period.

1 (b) This Article does not relieve a holder of a duty that arose before the effective
2 date of this Article to report, pay, or deliver property. Except as otherwise provided in
3 G.S 116B-71(b) and G.S. 116B-76(d), a holder who did not comply with the law in effect
4 before the effective date of this Article is subject to the applicable provisions for
5 enforcement and penalties which then existed, which are continued in effect for the
6 purpose of this section.

7 **"§ 116B-79. Rules.**

8 The Treasurer may adopt rules necessary to carry out this Chapter."

9 Section 7. G.S. 44A-4(b)(1) reads as rewritten:

10 "(b) Notice and Hearings. –

11 (1) If the property upon which the lien is claimed is a motor vehicle that is
12 required to be registered, the lienor following the expiration of the
13 relevant time period provided by subsection (a) shall give notice to the
14 Division of Motor Vehicles that a lien is asserted and sale is proposed
15 and shall remit to the Division a fee of ten dollars (\$10.00). The
16 Division of Motor Vehicles shall issue notice by registered or certified
17 mail, return receipt requested, to the person having legal title to the
18 property, if reasonably ascertainable, to the person with whom the lienor
19 dealt if different, and to each secured party and other person claiming an
20 interest in the property who is actually known to the Division or who
21 can be reasonably ascertained. The notice shall state that a lien has been
22 asserted against specific property and shall identify the lienor, the date
23 that the lien arose, the general nature of the services performed and
24 materials used or sold for which the lien is asserted, the amount of the
25 lien, and that the lienor intends to sell the property in satisfaction of the
26 lien. The notice shall inform the recipient that the recipient has the right
27 to a judicial hearing at which time a determination will be made as to
28 the validity of the lien prior to a sale taking place. The notice shall
29 further state that the recipient has a period of 10 days from the date of
30 receipt in which to notify the Division by registered or certified mail,
31 return receipt requested, that a hearing is desired and that if the recipient
32 wishes to contest the sale of his property pursuant to such lien, the
33 recipient should notify the Division that a hearing is desired. The notice
34 shall state the required information in simplified terms and shall contain
35 a form whereby the recipient may notify the Division that a hearing is
36 desired by the return of such form to the Division. The Division shall
37 notify the lienor whether such notice is timely received by the Division.
38 In lieu of the notice by the lienor to the Division and the notices issued
39 by the Division described above, the lienor may issue notice on a form
40 approved by the Division pursuant to the notice requirements above. If
41 notice is issued by the lienor, the recipient shall return the form
42 requesting a hearing to the lienor, and not the Division, within 10 days
43 from the date the recipient receives the notice if a judicial hearing is

1 requested. Failure of the recipient to notify the Division or lienor, as
2 specified in the notice, within 10 days of the receipt of such notice that a
3 hearing is desired shall be deemed a waiver of the right to a hearing
4 prior to the sale of the property against which the lien is asserted, and
5 the lienor may proceed to enforce the lien by public or private sale as
6 provided in this section and the Division shall transfer title to the
7 property pursuant to such sale. If the Division or lienor, as specified in
8 the notice, is notified within the 10-day period provided above that a
9 hearing is desired prior to sale, the lien may be enforced by sale as
10 provided in this section and the Division will transfer title only pursuant
11 to the order of a court of competent jurisdiction.

12 If the registered or certified mail notice has been returned as
13 undeliverable, or if the name of the person having legal title to the
14 vehicle cannot reasonably be ascertained and the fair market value of
15 the vehicle is less than eight hundred dollars (\$800.00), the lienor may
16 institute a special proceeding in the county where the vehicle is being
17 held, for authorization to sell that vehicle. Market value shall be
18 determined by the schedule of values adopted by the Commissioner
19 under G.S. 105-187.3.

20 In such a proceeding a lienor may include more than one vehicle, but
21 the proceeds of the sale of each shall be subject only to valid claims
22 against that vehicle, and any excess proceeds of the sale shall ~~escheat to~~
23 ~~the State and be paid immediately to the treasurer~~ Treasurer for
24 disposition pursuant to Chapter 116B of the General Statutes. ~~A vehicle~~
25 ~~owner or possessor claiming an interest in such proceeds shall have a right of~~
26 ~~action under G.S. 116B-38.~~

27 The application to the clerk in such a special proceeding shall
28 contain the notice of sale information set out in subsection (f) hereof. If
29 the application is in proper form the clerk shall enter an order
30 authorizing the sale on a date not less than 14 days therefrom, and the
31 lienor shall cause the application and order to be sent immediately by
32 first-class mail pursuant to G.S. 1A-1, Rule 5, to each person to whom
33 notice was mailed pursuant to this subsection. Following the authorized
34 sale the lienor shall file with the clerk a report in the form of an
35 affidavit, stating that the lienor has complied with the public or private
36 sale provisions of G.S. 44A-4, the name, address, and bid of the high
37 bidder or person buying at a private sale, and a statement of the
38 disposition of the sale proceeds. The clerk then shall enter an order
39 directing the Division to transfer title accordingly.

40 If prior to the sale the owner or legal possessor contests the sale or
41 lien in a writing filed with the clerk, the proceeding shall be handled in
42 accordance with G.S. 1-399."

43 Section 8. G.S. 29-12 reads as rewritten:

1 **"§ 29-12. Escheats.**

2 If there is no person entitled to take under G.S. 29-14 or ~~29-15~~, G.S. 29-15, or if in
3 case of an illegitimate intestate, there is no one entitled to take under G.S. 29-21 or ~~29-22~~
4 G.S. 29-22 the net estate shall escheat as provided in ~~G.S. 116A-2~~, G.S. 116B-2."

5 Section 9. G.S. 53-43.7(b)

6 "(b) Any property, including documents or writings of a private nature, which has
7 little or no apparent value, need not be sold but may be destroyed ~~by the Treasurer or~~ by
8 the lessor, ~~if retained by the lessor pursuant to a determination by the Treasurer under G.S.~~
9 ~~116B-31(e).~~ lessor if the Treasurer declines to receive the property under G.S. 116B-
10 69(a)."

11 Section 10. G.S. 53-43.7(d) reads as rewritten:

12 "(d) The lessor shall submit to the Treasurer a verified inventory of all of the
13 contents of the safe-deposit box upon delivery of the contents of the box or such part
14 thereof as shall be required by the Treasurer under ~~G.S. 116B-31(e)~~; G.S. 116B-55; but the
15 lessor may deduct from any cash of the lessee in the safe-deposit box an amount equal to
16 accumulated charges for rental and shall submit to the Treasurer a verified statement of
17 such charges and deduction. If there is no cash, or insufficient cash to pay accumulated
18 charges, in the safe-deposit box, the lessor may submit to the Treasurer a verified
19 statement of accumulated charges or balance of accumulated charges due, and the
20 Treasurer shall remit to the lessor the charges or balance due, up to the value of the
21 property in the safe-deposit box delivered to ~~him~~, the Treasurer, less any costs or
22 expenses of sale; but if the charges or balance due exceeds the value of such property, the
23 Treasurer shall remit only the value of the property, less costs or expenses of sale. Any
24 accumulated charges for safe-deposit box rental paid by the Treasurer to the lessor shall
25 be deducted from the value of the property of the lessee delivered to the Treasurer."

26 Section 11. G.S. 53B-4 reads as rewritten:

27 **"§ 53B-4. Access to financial records.**

28 Notwithstanding any other provision of law, no government authority may have
29 access to a customer's financial record held by a financial institution unless the financial
30 record is described with reasonable specificity and access is sought pursuant to:

- 31 (1) Customer authorization that meets the requirements of the Right to
32 Financial Privacy Act § 1104, 12 U.S.C. § 3404, provided, however, a
33 customer authorization received by a State agency or a county
34 department of social services for the purpose of determining eligibility
35 for the programs of public assistance under Chapter 108A of the
36 General Statutes, or for purposes of a government inquiry concerning
37 these same programs of public assistance, cannot be revoked and shall
38 remain valid for 12 months unless a shorter period is specified in the
39 authorization, or a customer authorization that is given by a licensed
40 attorney with respect to an account in which the attorney holds funds as
41 a fiduciary;
- 42 (2) Authorization under G.S. 105-251, 105-251.1, or 105-258;

- 1 (3) Search warrant as provided in Article 11 of Chapter 15A of the General
2 Statutes;
- 3 (4) Statutory authority of a supervisory agency to examine or have access to
4 financial records in the exercise of its supervisory, regulatory, or
5 monetary functions with respect to a financial institution;
- 6 (5) The authority granted under ~~G.S. 116B-39;~~ G.S. 116B-72 and G.S.
7 116B-74;
- 8 (6) Examination and review by the State Auditor or his authorized
9 representative under G.S. 147-64.6(c)(9) or ~~147-64.7(a);~~ G.S. 147-
10 64.7(a);
- 11 (7) Request by a government authority authorized to buy and sell student
12 loan notes under Article 23 of Chapter 116 of the General Statutes for
13 financial records relating to insured student loans;
- 14 (8) Pending litigation to which the government authority and the customer
15 are parties;
- 16 (9) Subpoena or court order in connection with a grand jury proceeding;
- 17 (10) A writ of execution under Article 28 of Chapter 1 of the General
18 Statutes; or
- 19 (11) Other court order or administrative or judicial subpoena authorized by
20 law if the requirements of G.S. 53B-5 are met.

21 As used in this section, the term 'reasonable specificity' means that degree of
22 specificity reasonable under all the circumstances, ~~and~~ and, with respect to requests under
23 G.S. 116B-72 and G.S. 116B-74, may include designation by general type or class as
24 authorized in G.S. 116B-39. class."

25 Section 12. G.S. 116-209.3 reads as rewritten:

26 **"§ 116-209.3. Additional powers.**

27 The Authority is authorized to develop and administer programs and perform all
28 functions necessary or convenient to promote and facilitate the making and insuring of
29 student loans and providing such other student loan assistance and services as the
30 Authority shall deem necessary or desirable for carrying out the purposes of this Article
31 and for qualifying for loans, grants, insurance and other benefits and assistance under any
32 program of the United States now or hereafter authorized fostering student loans. There
33 shall be established and maintained a trust fund which shall be designated 'State
34 Education Assistance Authority Loan Fund' (the 'Loan Fund') which may be used by the
35 Authority in making student loans directly or through agents or independent contractors,
36 insuring student loans, acquiring, purchasing, endorsing or guaranteeing promissory
37 notes, contracts, obligations or other legal instruments evidencing student loans made by
38 banks, educational institutions, nonprofit corporations or other eligible lenders, and for
39 defraying the expenses of operation and administration of the Authority for which other
40 funds are not available to the Authority. There shall be deposited to the credit of such
41 Loan Fund the proceeds (exclusive of accrued interest) derived from the sale of its
42 revenue bonds by the Authority and any other moneys made available to the Authority
43 for the making or insuring of student loans or the purchase of obligations. There shall

1 also be deposited to the credit of the Loan Fund surplus funds from time to time
2 transferred by the Authority from the sinking fund. Such Loan Fund shall be maintained
3 as a revolving fund. There is also deposited to the credit of the Loan Fund the income
4 derived from the investment or deposit of the Escheat Fund distributed to the Authority
5 pursuant to ~~G.S. 116B-37.~~ G.S. 116B-7. The income shall be held, administered and
6 applied by the Authority as provided in any resolution adopted or trust agreement
7 approved by the Authority, subject to the provisions of Chapter 116B of the General
8 Statutes and this Article.

9 In lieu of or in addition to the Loan Fund, the Authority may provide in any resolution
10 authorizing the issuance of bonds or any trust agreement securing such bonds that any
11 other trust funds or accounts may be established as may be deemed necessary or
12 convenient for securing the bonds or for making student loans, acquiring obligations or
13 otherwise carrying out its other powers under this Article, and there may be deposited to
14 the credit of any such fund or account proceeds of bonds or other money available to the
15 Authority for the purposes to be served by such fund or account."

16 Section 13. If any provision of this act or the application thereof to any person
17 or circumstance is held invalid, the invalidity does not affect the provisions or
18 applications of this act which can be given effect without the invalid provision or
19 application, and to this end the provisions of this act are severable.

20 Section 14. The Revisor of Statutes shall cause to be printed with this act all
21 explanatory comments of the drafters of this act as the Revisor may deem appropriate.

22 Section 15. This act becomes effective January 1, 2000.