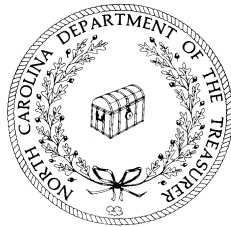


Unclaimed Property Manual



A Guide to the Unclaimed Property Program of North Carolina

Administered by
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North Carolina

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FOREWORD

This Manual is designed to explain the applications of the Escheat and Unclaimed Property Law of North Carolina, General Statute 116B, which became effective January 1, 1981. The General Statutes are presented as amended by the North Carolina General Assembly. These amendments now provide North Carolina with a law that brings it into greater uniformity with most other States. As a result, it is hoped that the burden of the reporting requirements on the holder community will be eased.

In order to provide a more concentrated understanding of escheatable property to selected holders, the law was developed in many instances to address the specific concerns of these holders. Therefore, sections of the General Statute should not be individually taken as the sole authority for the obligations imposed by the Escheat and Unclaimed Property law. To ensure compliance with G.S. 116B, the law should be examined in its entirety.

As a result of increased public awareness, the number of inquiries received by the Unclaimed Property Program concerning the law has grown considerably. It is hoped that this manual will provide a resource for better understanding the law and the purpose of the Escheat Fund. If there are questions concerning any aspect of the Unclaimed Property Program, inquiries should be directed to:

Department of State Treasurer
Unclaimed Property Program
325 North Salisbury Street
Raleigh, North Carolina 27603-1385
Telephone: (919) 508-1000
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BACKGROUND

A. "Escheat" Defined

An escheat is the succession of abandoned property to the State. It is not a tax. It results from the failure of a person legally entitled to the property to make a valid claim against the holder of the property within a prescribed period of time. Property is also escheated from the estate of a person dying intestate or partially intestate without any known or discoverable heirs.

The North Carolina escheat statute G.S. 116B became effective January 1, 1981, to replace G.S. 116A which was enacted in 1971. A reprint of General Statute 116B is presented in the following pages. This manual is designed to serve as a general guide to the application of the Escheat Law.

NOTE: The general term "escheat," as used functionally in this Manual, refers specifically to the process whereby any unclaimed, abandoned or uninherited property, of any type, passes to the custody of the State. It does not refer to the historical concept of escheat.

B. Historical Background

The principle of escheat originated in the elaborate feudal landholding system which existed in England during the Middle Ages. The basic premise was that property which remained without an owner or upon failure to make claim by a descendant's heirs, reverted to the Sovereign from whom all property rights were derived.

This concept was brought to the American colonies by the English settlers and was included in the instrument by which the Lords Proprietors governed the Province of Carolina. When North Carolina became a Royal Province in the early Eighteenth Century, the King maintained the right of escheat.

Upon the conclusion of the Revolutionary War, the State of North Carolina succeeded to the rights previously held by the Crown, including the right of escheat. The North Carolina Legislature adopted the University Act of 1789 which gave the newly formed University "all the property that has heretofore or shall hereafter escheat to the state." Throughout the early decades of the University, the escheat collections, though often minimal, provided a vital source of funds for the institution. The Treasurer of the University was responsible for the collection of escheat property under the law. For the period through June 30, 1971, the University of North Carolina had collected and was maintaining a fund of \$4,946,191.02.

NOTE:

There was a seven year statute of limitation whereby an owner could claim this property from the University. Since this time period has already lapsed, any funds remitted to the University as unclaimed property are not refundable.

Effective July 1, 1971, the State Treasurer was designated the Escheat Officer for the State of North Carolina with the responsibility for collection, management, and investment of moneys in the Escheat Fund. This manual contains the provisions of the law which were adopted through the 1999 Session of the North Carolina General Assembly.

C. Purpose of the Escheat Fund

The primary purpose of the Escheat Fund is to provide a means by which unclaimed property can be brought under the control of the State and converted to the benefit of the people of North Carolina. The State Treasurer invests the escheated moneys in the same manner that the State retirement funds are invested. The income derived from this investment is distributed annually to the State Education Assistance Authority to be used to make loans to worthy and needy North Carolina resident students who are enrolled in State public institutions offering post-secondary education [G.S. 116B-6].

Real or personal property which escheats under North Carolina law is liquidated and is placed in the Escheat Fund along with all other moneys collected or earned. The escheated money is held in trust for the rightful owners. The State then attempts to locate the rightful owner so that the owners may claim their money [G.S. 116B-67].

ARTICLE 1.

Escheats.

G.S. 116B-1. Escheats to Escheat Fund.

All real estate which has accrued to the State since June 30, 1971, or shall hereafter accrue from escheats, shall be vested in the Escheat Fund. Title to any such real property which has escheated to the Escheat Fund shall be conveyed by deed in the manner now provided by G.S. 146-74 through G.S. 146-78, except as is otherwise provided herein: Provided, that in any action in the superior court of North Carolina wherein the State Treasurer is a party, and wherein said court enters a judgment of escheat for any real property, then, upon petition of the State Treasurer in said action, said court shall have the authority to appoint the State Treasurer or his designated agent as a commissioner for the purpose of selling said real property at a public sale, for cash, at the courthouse door in the county in which the property is located, after properly advertising the sale according to law. The said commissioner, when appointed by the court, shall have the right to convey a valid title to the purchaser of the property at public sale. The funds derived from the sale of any such escheated real property by the commissioner so appointed shall thereafter be paid by him into the Escheat Fund.

(Const., art. 9, s. 7; 1789, c. 306, s. 2; P.R.; R.C., c. 113, s. 11; Code, s. 2626; Rev., s. 4282; C.S., s. 5784; 1947, c. 494; 1961, c. 257; 1971, c. 1135, s. 2; 1979, 2nd Sess., c. 1311, s. 1.)

G.S. 116B-2. Unclaimed real and personal property escheats to the Escheat Fund.

Whenever the owner of any real or personal property situated or located within this State dies intestate, or dies testate but did not dispose of all real or personal property by will, without leaving surviving any heirs, as defined in G.S. 29-2(3), to inherit said property under the laws of this State, such real and personal property shall escheat. The State Treasurer shall have the right to institute a civil action in the superior court of any county in which such real or personal property is situated, against any administrator, executor, and unknown heirs or unknown claimants as party defendants, which unknown heirs or unknown claimants may be served with summons and notice of such action by publication as is now provided by the laws of this State. If an administrator or executor has been appointed, he shall make a determination that there are no known heirs or unknown claimants and shall inform the State Treasurer of that determination. The superior court in which such civil action is instituted shall have the authority to enter a judgment therein declaring the real and personal property unclaimed as having escheated, and the real property may be sold according to the provisions of G.S. 116B-1. A default final judgment may be entered by the clerk of the superior court in such cases when no answer is filed by the administrator, executor, unknown heirs or unknown claimants to the complaint, or if any answer is filed, the allegations of the complaint are either admitted or not denied by such party defendants, and no claim is made in the answer to the property left by said deceased person. The funds derived from such sale shall be paid into the Escheat Fund where said funds, together with all other escheated funds, shall be held without liability for profit or interest, subject to any just claims therefore.

(1957, c. 1105, s. 1; 1971, c. 1135, s. 2; 1979, 2nd Sess., c. 1311, s. 1.)

NOTE:

When Real Property Escheats. — Real Property escheats only when the owner dies intestate or dies testate without disposing of the same by will and without leaving surviving any heir, kindred or spouse to inherit such property under the laws of this State. In re Estate of Nixon, 2 N.C. App. 422, 163 S.E.2d 274 (1968), decided under earlier statute.

There is a distinction between derelict property and escheated property. — An escheat occurs when the property owner dies intestate and without relatives descended from a common parent or grandparent. Derelict property, though abandoned, still belongs to a known owner. North Carolina State Treas. v. City of Asheville — N.C. App. — 300 S.E.2d 283 (1983).

G.S. 116B-3. Unclaimed personalty on settlements of decedents' estates to the Escheat Fund.

All sums of money or other personal estate of whatever kind which shall remain in the hands of any administrator, executor, administrator c.t.a., or personal representative when the administration of an estate of a person dying intestate, or partially intestate, without leaving any known heirs to inherit same, is ready to be closed, unrecovered or unclaimed by suit, by creditors, heirs, or others entitled thereto, shall, prior to the closing of the administration of the estate, be paid or delivered by such administrator or executor to the State Treasurer as an escheat and shall be included in the disbursements in the final account of such estate. In such cases as above described, the State Treasurer is authorized to demand, sue for, recover, and collect such unclaimed moneys or other personal estate of whatever kind from any administrator or executor after the estate is ready to be closed, or from the clerk of the superior

court if the unclaimed assets have been paid over to him, and the State Treasurer shall hold the same without liability for profit or interest, subject to any just claims therefore. The provisions of this section and G.S. 116B-2 shall apply to the estate of a person missing for 30 days or more and the State Treasurer may bring an action to have a receiver appointed in such case under the provisions of Chapter 28C, Estates of Missing Persons.

(1957, c. 1105, ss. 2, 2 1/2; 1971, c. 1135, s. 2; 1979, 2nd Sess., c. 1311, s.1; 1981, c. 531, s. 1.)

G.S. 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-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 of the General Statutes. The provisions of G.S. 116B-67(a), (c), (d), and (e) and G.S. 116B-68 shall apply to a claim under this section."

G.S. 116B-5. Escheat Fund.

All property escheated or abandoned under the provisions of this Chapter and all property escheated or abandoned since June 30, 1971, under the provisions of former Chapter 116A, as amended, shall be paid into a fund to be administered by the Treasurer, which fund shall be designated the Escheat Fund. Nor escheated or abandoned property hereto fore paid or delivered to the University of North Carolina pursuant to any constitutional provision or statute of this State shall be subject to the provisions of this Chapter.

(1979, 2nd Sess., c. 1311, s.1.)

G.S. 116B-6. Administration of Escheat Fund; Escheat Account.

(a) Escheat Account. – All funds received by the Treasurer as escheated or abandoned property and which were transferred prior to January 1, 1980, to the trust fund created under G.S. 116-209 shall remain in that trust fund and shall be placed in a special fund designated the "Escheat Account."

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

(c) Security Interest in Escheat Account. – The State Education Assistance Authority in addition to other powers vested under G.S. 116-201 to G.S. 116-209.23, inclusive, is authorized to pledge and vest a security interest in all or any part of the Escheat Account, by resolution adopted or trust agreement approved by it, as security for or insurance respecting the payment of bonds or other obligations, as defined in G.S. 116-201, including principal, interest and redemption premium, if any; provided, that such pledge and security interest in the Escheat Account shall, in the determination of the Authority, constitute a use of the Escheat Fund to aid worthy and needy students who are residents of this State and are enrolled in public institutions of higher education in this State. The Authority may submit to the Treasurer, from time to time as it deems necessary, requisitions for transfers of money in the Escheat Account to pay such bonds and other obligations to the extent necessary under such pledge of, or security interest in, the Escheat Account, or any part thereof, and the Treasurer is authorized and directed to pay such money so requisitioned to the Authority for such purposes.

(d) Limitation on Amount of Obligations Secured.— The principal amount of bonds and other obligations insured or secured by the Escheat Account shall not exceed 10 times the amount held for the credit of the Escheat Account, as certified from time to time by the Treasurer, and, in no event, shall exceed three hundred fifty million dollars (\$350,000,000). If the amount held for the credit of the Escheat Account, as certified by the Treasurer, shall be ten percent (10%) or less of the principal amount of the bonds and other obligations so insured or secured, the Authority shall not issue any additional bonds or cause additional obligations to be insured or secured by the Escheat Account until such time as the amount held for the credit of the Escheat Account exceeds ten percent (10%) of the principal amount of the bonds and other obligations secured or insured by the Escheat Account.

(e) Use of Excess Funds.— If the amount held for the credit of the Escheat Account at any time shall exceed the sum of thirty-five million dollars (\$35,000,000), such excess may be used by the State Education Assistance Authority, with the written approval of the Treasurer, for the purpose of either (i) making student loans or (ii) refunding outstanding

bonds or other obligations issued by the Authority and secured by a pledge of, or a security interest in, the Escheat Account. Any excess so used shall be repaid by the Authority to the Escheat Account in the manner agreed between the Authority and the Treasurer.

(f) Refund Reserve.— The Treasurer shall retain in the Escheat Fund, as a permanent refund reserve, either the sum of five million dollars (\$5,000,000) or a sum equal to the total value of escheated or abandoned property received in the preceding fiscal year, whichever is greater, for the purpose of payment of refunds of escheated or abandoned property to persons entitled thereto.

(g) Additional Funds for Refunds.— If at any time the amount of the refund reserve shall be insufficient to make refunds required to be made, the Treasurer, in addition, may use all current receipts derived from escheated or abandoned property, exclusive of earnings and profits on investments of the Escheat Fund and the Escheat Account, for the purpose of making such refunds; and if all such funds shall be inadequate for such refunds, the Treasurer may apply to the Council of State, pursuant to the Executive Budget Act, to the limit of funds available from the Contingency and Emergency Fund, for a loan, without interest, to supply any deficiencies, in whole or in part. No receipts derived from escheated or abandoned property, other than earnings or profits on investments, shall be paid to the Authority until: (i) all valid claims for refund have been paid; (ii) the reserve for refund shall equal five million dollars (\$5,000,000); and (iii) the amount loaned from the Contingency and Emergency Fund shall have been repaid by the Escheat Fund.

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

(i) Records.— Before making a deposit to the Escheat Fund, or retaining or destroying property, the Treasurer shall record the name and address of the holder, the name and last known address of each person appearing from the holder's reports to be entitled to the abandoned property, the name and last known address of each insured person or annuitant, the amount or description of the property, and, with respect to each policy or contract listed in the report of an insurer, its number and the name of the corporation. The records shall be available for public inspection at all reasonable business hours.

G.S. 116B-7. Distribution of income of fund.

The income derived from the investment or deposit of the Escheat Fund shall be distributed annually on or before July 15 to the State Education Assistance Authority for grants and loans to aid worthy and needy students who are residents of this State and are enrolled in public institutions of higher education in this State. Such grants and loans shall be made upon terms, consistent with the provisions of this Chapter, pursuant to which the State Education Assistance Authority makes grants and loans to other students under G.S. 116-201 to 116-209.23, Article 23 of Chapter 116 of the General Statutes, policies of the Board of Governors of The University of North Carolina regarding need-based grants for students of The University of North Carolina, and policies of the State Board of Community Colleges regarding need-based grants for students of the community colleges. (1979, 2nd Sess., c. 1311, s. 1; 1999-460, s. 3(b); 2002-126 s. 9.19(a).)

116B-8. Employment of persons with specialized skills or knowledge.

The Treasurer may employ the services of such independent consultants, real estate managers and other persons possessing specialized skills or knowledge as the Treasurer deems necessary or appropriate for the administration of this Chapter, including valuation, maintenance, upkeep, management, sale and conveyance of property and determination of sources of unreported abandoned property. The Treasurer may also employ the services of an attorney to perform a title search or to provide an accurate legal description of real property which he the Treasurer has reason to believe may have escheated. Persons whose services are employed by the Treasurer pursuant to this section to determine sources and amounts of unreported property are subject to the same policies, including confidentiality and ethics, as employees of the Department of State Treasurer assigned to determine sources and amounts of unreported property. Compensation of persons whose services are employed pursuant to this section on a contingent fee basis shall be limited to twelve percent (12%) of the final assessment.

Article 2

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

Article 3

Article 3 of Chapter 116B of the General Statutes is repealed with the exception of the following chapters being recodified into Article 1: G.S. 116B-36 is recodified as G.S. 116B-6, G.S. 116B-37 is recodified as G.S. 116B-7, and G.S. 116B-47 is recodified as G.S. 116B-8.

Article 4

North Carolina Unclaimed Property Act

"§ 116B-51. Short title.

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

"§ 116B-52. Definitions.

In this Chapter:

- (1) "Apparent owner" means a person whose name appears on the records of a holder as the person entitled to property held, issued, or owing by the holder.
- (2) "Business association" means a corporation, joint stock company, investment company, partnership, unincorporated association, joint venture, limited liability company, business trust, trust company, land bank, safe deposit company, safekeeping depository, financial organization, insurance company, mutual fund, utility, or other business entity consisting of one or more persons, whether or not for profit.
- (3) "Domicile" means the state of incorporation of a corporation and the state of the principal place of business of a holder other than a corporation.
- (4) "Financial organization" means a savings and loan association, building and loan association, savings bank, industrial bank, bank, banking organization, or credit union.
- (5) "Holder" means a person obligated to hold for the account of or deliver or pay to the owner property that is subject to this Chapter.
- (6) "Insurance company" means an association, corporation, or fraternal or mutual benefit organization, whether or not for profit, engaged in the business of providing life endowments, annuities, or insurance, including accident, burial, casualty, credit life, contract performance, dental, disability, fidelity, fire, health, hospitalization, illness, life, malpractice, marine, mortgage, surety, wage protection, and workers' compensation insurance.
- (7) "Mineral" means gas, oil, coal, other gaseous, liquid, and solid hydrocarbons, oil shale, cement material, sand and gravel, road material, building stone, chemical raw material, gemstone, fissionable and nonfissionable ores, colloidal and other clay, steam and other geothermal resource, or any other substance defined as a mineral by the law of this State.
- (8) "Mineral proceeds" means amounts payable for the extraction, production, or sale of minerals, or, upon the abandonment of those payments, all payments that become payable thereafter. The term includes amounts payable:
 - a. For the acquisition and retention of a mineral lease, including bonuses, royalties, compensatory royalties, shut-in royalties, minimum royalties, and delay rentals;
 - b. For the extraction, production, or sale of minerals, including net revenue interests, royalties, overriding royalties, extraction payments, and production payments; and
 - c. Under an agreement or option, including a joint operating agreement, unit agreement, pooling agreement, and farm-out agreement.

- (9) "Owner" means a person who has a legal or equitable interest in property subject to this Chapter or the person's legal representative. The term includes a depositor in the case of a deposit, a beneficiary in the case of a trust other than a deposit in trust, and a creditor, claimant, or payee in the case of other property.
- (10) "Person" means an individual, business association, financial organization, estate, trust, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
- (11) "Property" means tangible personal property physically located within this State or a fixed and certain interest in intangible property that is held, issued, or owed in the course of a holder's business, or by a government, governmental subdivision, agency, or instrumentality, and all income or increments therefrom. The term includes property that is referred to as or evidenced by:
 - a. Money, a check, draft, deposit, interest, or dividend;
 - b. Credit balance, customer's overpayment, gift certificate, security deposit, refund, credit memorandum, unpaid wage, unused ticket, mineral proceeds, or unidentified remittance;
 - c. Stock or other evidence of ownership of an interest in a business association;
 - d. A bond, debenture, note, or other evidence of indebtedness;
 - e. Money deposited to redeem stocks, bonds, coupons, or other securities, or to make distributions;
 - f. An amount due and payable under the terms of an annuity or insurance policy, including policies providing life insurance, property and casualty insurance, workers' compensation insurance, or health and disability insurance; and
 - g. An amount 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.
- (12) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- (13) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.
- (14) "Treasurer" means the Treasurer of the State of North Carolina or the Treasurer's designated agent.
- (15) "Utility" means a person who owns or operates for public use any plant, equipment, real property, franchise, or license for the transportation of the public, the transmission of communications, or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

"§ 116B-53. Presumptions of abandonment.

- (a) Property is unclaimed if the apparent owner has not communicated in writing or by other means reflected in a contemporaneous record prepared by or on behalf of the holder, with the holder concerning the property or the account in which the property is held, and has not otherwise indicated an interest in the property. A communication with an owner by a person (other than the holder or its representative) who has not, in writing, identified the property to the owner is not an indication of interest in the property by the owner.
- (b) An indication of an interest in property includes:
 - (1) The presentment of a check or other instrument of payment of a dividend or other distribution made with respect to an account or underlying stock or other interest in a business association or, in the case of a distribution made by electronic or similar means, evidence that the distribution has been received;

- (2) The presentment of a check or other instrument of payment of interest made with respect to debt of a business association or, in the case of an interest payment made by electronic or similar means, evidence that the interest payment has been received;
 - (3) Owner-directed activity in the account in which the property is held, including a direction by the owner to increase, decrease, or change the amount or type of property held in the account;
 - (4) The making of a deposit to or withdrawal from an account in a financial organization;
 - (5) Owner activity in another account with the holder of a deposit described in subdivisions (c)(2) and (c)(6) of this section; and
 - (6) The payment of a premium with respect to a property interest in an insurance policy; but the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent a policy from maturing or terminating if the insured has died or the insured or the beneficiary of the policy has otherwise become entitled to the proceeds before the depletion of the cash surrender value of a policy by the application of those provisions.
- (c) Property is presumed abandoned if it is unclaimed by the apparent owner during the time set forth below for the particular property:
- (1) Traveler's check, 15 years after issuance.
 - (2) Time deposit, including a deposit that is automatically renewable, 10 years after the later of initial maturity or the date of the last indication by the owner of interest in the property.
 - (3) Money order, cashier's check, teller's check, and certified check, seven years after issuance.
 - (4) Stock or other equity interest in a business association, including a security entitlement under Article 8 of the Uniform Commercial Code, Chapter 25 of the General Statutes, three years after the earlier of:
 - a. The date of a cash dividend or other distribution unclaimed by the apparent owner.
 - b. The date a second consecutive mailing, notification, or communication from the holder to the apparent owner is returned to the holder as unclaimed by or undeliverable to the apparent owner.
 - c. The date the holder discontinued mailings, notifications, or communications to the apparent owner.

This subdivision applies to both the underlying stock, share, or other intangible ownership interest of an owner, and any stock, share, or other intangible interest of which the business association is in possession of the certificate or other evidence or indicia of ownership, and to the stock, share, or other ownership interest of dividend and nondividend paying business associations whether or not the interest is represented by the certificate.
 - (5) Debt of a business association, including debt evidenced by a matured or called bearer bond or an original issue discount bond, three years after the date of an interest or principal payment unclaimed by the apparent owner.
 - (5a) Any dividend, profit, distribution, interest, redemption, payment on principal, cash compensation (including amounts from demutualized insurance company), or other sum held or owing by a business association for or to its shareholder, certificate holder, policyholder, member, bondholder, or other security holder, who has not claimed it, or corresponded in writing with the business association concerning it, within three years after the date prescribed for payment or delivery.
 - (6) Demand or savings deposit, five years after the date of the last indication by the owner of interest in the property.
 - (7) Money or credits owed to a customer as a result of a retail business transaction, three years after the obligation accrued.

- (8) Any gift certificate or electronic gift card bearing an expiration date and remaining unredeemed or dormant for more than three years after the gift certificate or electronic gift card was sold is deemed abandoned. The amount abandoned is deemed to be sixty percent (60%) of the unredeemed portion of the face value of the gift certificate or the electronic gift card.
 - (9) Amount owed by an insurer on a life or endowment insurance policy or an annuity that has matured or terminated, three years after the obligation to pay arose or, in the case of a policy or annuity payable upon proof of death, three years after the insured has attained, or would have attained if living, the limiting age under the mortality table on which the reserve is based.
 - (10) Property distributable by a business association in a course of dissolution, one year after the property becomes distributable.
 - (11) Property received by a court as proceeds of a class action, and not distributed pursuant to the judgment, one year after the distribution date.
 - (12) Property held by a court, government, governmental subdivision, agency, or instrumentality, one year after the property becomes distributable.
 - (13) Wages or other compensation for personal services, two years after the compensation becomes payable.
 - (14) Deposit or refund owed to a subscriber by a utility, one year after the deposit or refund becomes payable.
 - (15) Property in an individual retirement account, defined benefit plan, or other account or plan that is qualified for tax deferral under the income tax laws of the United States, three years after the earliest of the date of the distribution or attempted distribution of the property, the date of the required distribution as stated in the plan or trust agreement governing the plan, or the date, if determinable by the holder, specified in the income tax laws of the United States by which distribution of the property must begin in order to avoid a tax penalty.
 - (16) All other property, five years after the owner's right to demand the property or after the obligation to pay or distribute the property arises, whichever first occurs.
- (d) At the time that an interest in property is presumed abandoned under subsection (c) of this section, any other property right accrued or accruing to the owner as a result of the interest, and not previously presumed abandoned, is also presumed abandoned.
 - (e) Property is payable or distributable for purposes of this Chapter notwithstanding the owner's failure to make demand or present an instrument or document otherwise required to obtain payment or distribution, except as otherwise provided by the Uniform Commercial Code.

"§ 116B-54. Exclusion for forfeited reservation deposits, certain gift certificates or electronic gift cards, prepaid calling cards, certain manufactured home buyer deposits, and certain credit balances.

- (a) A forfeited reservation deposit is not abandoned property. For the purposes of this section, the term "reservation deposit" means an amount of money paid to a business association to guarantee that the business association holds a specific service, such as a room accommodation at a hotel, seating at a restaurant, or an appointment with a doctor, for a specified date and place. The term "reservation deposit" does not include an application fee, a utility deposit, or a deposit made toward the purchase of real property.
- (b) A gift certificate or electronic gift card is not abandoned property when the gift certificate or electronic gift card:
 - (1) Conspicuously states that the gift certificate or electronic gift card does not expire;
 - (2) Bears no expiration date; or
 - (3) States that a date of expiration printed on the gift certificate or electronic gift card is not applicable in North Carolina.

- (c) A prepaid calling card issued by a public utility as defined in G.S. 62-3(23)a.6. is not abandoned property.
- (d) A buyer deposit that a dealer is authorized to retain under either G.S. 143-143.21A or G.S. 143-143.21B is not abandoned property and is not subject to this Article.
- (e) Credit balances as shown on the records of a business association to or for the benefit of another business association, shall not constitute abandoned property. For purposes of this section, the term `credit balances' means items such as overpayments or underpayments on the sale of goods or services.

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

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

"§ 116B-56. Rules for taking custody.

- (a) Except as otherwise provided in this Chapter or by other statute of this State, property that is presumed abandoned, whether located in this or another state, is subject to the custody of this State if:
 - (1) The last known address of the apparent owner, as shown on the records of the holder, 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 domiciled in this State or is a government or governmental subdivision, agency, or instrumentality 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 of the apparent owner, as shown on the records of the holder, is in a state that does not provide for the escheat or custodial taking of the property, and the holder is domiciled in this State or is a government or governmental subdivision, agency, or instrumentality of this State;
 - (5) The last known address of the apparent owner, as shown on the records of the holder, is in a foreign country, and the holder is domiciled in this State or is a government or governmental subdivision, agency, or instrumentality of this State; or
 - (6) The property is a traveler's check or money order purchased in this State or the issuer of the traveler's check or money order has its principal place of business in this State and the issuer's records show that the instrument was purchased in a state that does not provide for the escheat or custodial taking of the property or do not show the state in which the instrument was purchased.
- (b) In the case of an amount payable under the terms of an annuity or insurance policy, the last known address of the person entitled to the property is presumed to be the same as the last known address of the insured or the principal, as shown on the records of the insurance company, if:
 - (1) A person other than the insured or the principal is entitled to the property; and
 - (2) Either:
 - a. No address of the person is known to the insurance company; or
 - b. The records of the insurance company do not reflect the identity of the person.

"§ 116B-57. Dormancy charge; other lawful charges.

- (a) A holder may deduct from property presumed abandoned a reasonable charge imposed by reason of the owner's failure to claim the property within a specified time only if there is a valid and enforceable written contract between the holder and the owner under which the holder may impose the charge and the holder regularly imposes the charge, which is not regularly reversed or otherwise canceled.
- (b) This Chapter does not prevent a holder from deducting from property presumed abandoned other lawful charges specifically authorized by statute or by a valid and enforceable contract.

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

A record of the issuance of a check, draft, or similar instrument is prima facie evidence of an obligation. In claiming property from a holder who is also the issuer, the Treasurer's burden of proof as to the existence and amount of the property and its abandonment is satisfied by showing issuance of the instrument and passage of the requisite period of abandonment. Defenses of payment, satisfaction, discharge, and want of consideration are affirmative defenses that must be established by the holder. In asserting these affirmative defenses, a holder who is also the issuer may satisfy the holder's burden of proof by showing a written acknowledgement by the payee of a check, draft, or similar instrument that no obligation is owed the payee.

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

- (a) A holder of property presumed abandoned shall make a good faith effort to locate an apparent owner.
- (b) The holder shall send written notice, by first-class mail, to the apparent owner, not more than 120 days or less than 60 days before filing the report required by G.S. 116B-60, to the last known address of the apparent owner as reflected in the holder's records, if the value of the property is fifty dollars (\$50.00) or more.
- (c) The notice must contain:
 - (1) A statement that, according to the records of the holder, property is being held to which the addressee appears entitled and the amount or description of the property;
 - (2) The name and address of the person holding the property and any necessary information regarding changes of name and address of the holder;
 - (3) A statement that, if satisfactory proof of claim is not presented by the owner to the holder by the following October 1 or, if the holder is a life insurance company, by the following April 1, the property will be placed in the custody of the Treasurer, to whom all further claims shall be directed.

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

- (a) A holder of property presumed abandoned shall make a report to the Treasurer concerning the property. Holders reporting 50 or more property owner records shall file the report in an electronic format prescribed by the National Association of Unclaimed Property Administrators and approved by the Treasurer. Holders reporting less than 50 property owner records may file the report electronically.
- (b) The report must be verified and must contain:
 - (1) A description of the property;
 - (2) Except with respect to a traveler's check or money order, the name, if known, and last known address, if any, and the social security number or taxpayer identification number, if readily ascertainable, of the apparent owner of property of the value of fifty dollars (\$50.00) or more;
 - (3) An aggregated amount of items valued under fifty dollars (\$50.00) each;

- (4) In the case of an amount of fifty dollars (\$50.00) or more held or owing under an annuity or a life or endowment insurance policy, the full name and last known address of the annuitant or insured and of the beneficiary;
 - (5) The date, if any, on which the property became payable, demandable, or returnable, and the date of the last transaction or communication with the apparent owner with respect to the property; and
 - (6) Other information that the Treasurer by rule prescribes as necessary for the administration of this Chapter.
- (c) If a holder of property presumed abandoned is a successor to another person who previously held the property for the apparent owner or the holder has changed its name while holding the property, the holder shall file with the report its former names, if any, and the known names and addresses of all previous holders of the property.
 - (d) The report must be filed before November 1 of each year and cover the 12 months next preceding July 1 of that year, but a report with respect to a life insurance company must be filed before May 1 of each year for the calendar year next preceding.
 - (e) Before the date for filing the report, the holder of property presumed abandoned may request the Treasurer to extend the time for filing the report. A request for an extension for filing a report shall be accompanied by an extension processing fee of ten dollars (\$10.00). The Treasurer may grant the extension for good cause. The holder, upon receipt of the extension, may make an interim payment on the amount the holder estimates will ultimately be due, which terminates the accrual of additional interest on the amount paid.
 - (f) The holder of property presumed abandoned shall file with the report an affidavit stating that the holder has complied with G.S. 116B-59.
 - (g) Every business association holding property presumed abandoned under this Chapter shall certify the holding in the income tax return required by Chapter 105 of the General Statutes. The certification shall be a part of the tax return with which it is filed. If the business association is not required to file an income tax return under Chapter 105, the certification shall be made in the form and manner required by the Secretary of Revenue. The information appearing on the certification is not privileged or confidential, and this information shall be furnished by the Secretary of Revenue to the Escheat Fund on October 1 of each year, or if this date shall fall on a weekend or holiday, on the next regular business day.

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

- (a) Upon filing the report required by G.S. 116B-60, the holder of property presumed abandoned shall pay, deliver, or cause to be paid or delivered to the Treasurer the property described in the report, but if the property is an automatically renewable deposit, and a penalty or forfeiture in the payment of interest would result, the time for compliance is extended to the next filing and delivery date at which a penalty or forfeiture would no longer result.
- (b) If the property reported to the Treasurer is a security or security entitlement under Article 8 of Chapter 25 of the General Statutes, the Treasurer is an appropriate person to make an indorsement, instruction, or entitlement order on behalf of the apparent owner to invoke the duty of the issuer or its transfer agent or the securities intermediary to transfer or dispose of the security or the security entitlement in accordance with Article 8 of Chapter 25 of the General Statutes.
- (c) If the holder of property reported to the Treasurer is the issuer of a certificated security, the Treasurer has the right to obtain a replacement certificate pursuant to G.S. 25-8-405, but an indemnity bond is not required.
- (d) An issuer, the holder, and any transfer agent or other person acting pursuant to the instructions of and on behalf of the issuer or holder in accordance with this section is not liable to the apparent owner and must be indemnified against claims of any person in accordance with G.S. 116B-63.

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

- (a) There shall be delivered annually in an electronic format to the Administrative Office of the Courts to be distributed to the clerk of superior court of each county prior a list prepared by the Treasurer of escheated and abandoned property reported to the Treasurer. The list shall contain all of the following:

- (1) The names, if known, in alphabetical order of surname, and last known addresses, if any, of apparent owners of escheated and abandoned property as of June 30 of that year.
- (2) The names and addresses of the holders of the abandoned property.
- (3) A statement that claim and proof of legal entitlement to escheated or abandoned property shall be presented by the owner to the Treasurer, which statement shall set forth where further information may be obtained.

The Treasurer shall send the list to the Administrative Office of the Courts as soon as possible after June 30 of each year but no later than July 31, and the Administrative Office of the Courts shall distribute the list to each clerk of superior court as soon as possible after receiving it but no later than August 31.

- (b) At the time the lists are distributed to the clerks of superior court, but no later than August 31 of each year, the Treasurer shall cause to be published once each week for two consecutive weeks, in at least two newspapers having general circulation in this State, a notice stating the nature of the lists and that the lists are available for inspection at the offices of the respective clerks of superior court, together with any other information the Treasurer deems appropriate to appear in the notice.
- (c) The Treasurer is not required to include in any list any item of a value, as determined by the Treasurer, in the Treasurer's discretion, of less than fifty dollars (\$50.00), unless the Treasurer deems inclusion of items of lesser amounts to be in the public interest.
- (d) The clerks of superior court shall make the lists available for public inspection.
- (e) The lists prepared by the Treasurer shall include only escheated and abandoned property reported for the current reporting date and are not required to be cumulative lists of escheated and abandoned property previously reported.
- (f) Notwithstanding the provisions of Chapter 132 of the General Statutes, the supporting data and lists of apparent owners of unclaimed property held by a clerk of superior court or any other office of State or local government may be confidential but shall be disclosed to the Treasurer in accordance with the reporting of escheated and abandoned property. The supporting data and lists of apparent owners of escheated and abandoned property held by the Treasurer may be confidential until six months after the list to the clerks of superior court required by subsection (b) of this section has been distributed. This subsection shall not apply to owners of reported property making inquiries about their property to the Escheat Fund.

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

- (a) In this section, payment or delivery is made in "good faith" if:
 - (1) Payment or delivery was made in a reasonable attempt to comply with this Chapter;
 - (2) The holder was not then in breach of a fiduciary obligation with respect to the property and had a reasonable basis for believing, based on the facts then known, that the property was presumed abandoned; and
 - (3) There is no showing that the records under which the payment or delivery was made did not meet reasonable commercial standards of practice.
- (b) Upon payment or delivery of property to the Treasurer, the State assumes custody and responsibility for the safekeeping of the property. A holder who pays or delivers property to the Treasurer in good faith is relieved of all liability arising thereafter with respect to the property.
- (c) A holder who has paid money to the Treasurer pursuant to this Chapter may subsequently make payment to a person reasonably appearing to the holder to be entitled to payment. Upon a filing by the holder of proof of payment and proof that the payee was entitled to the payment, the Treasurer shall promptly reimburse the holder for the payment without imposing a 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 upon

filing proof that the instrument was duly presented and that payment was made to a person who reasonably appeared to be entitled to payment. The holder must be reimbursed for payment made even if the payment was made to a person whose claim was barred under G.S. 116B-71(a).

- (d) A holder who has delivered property other than money to the Treasurer pursuant to this Chapter may reclaim the property if it is still in the possession of the Treasurer, without paying any fee or other charge, upon filing proof that the apparent owner has claimed the property from the holder.
- (e) The Treasurer may accept a holder's affidavit as sufficient proof of the holder's right to recover money and property under this section.
- (e) If a holder pays or delivers property to the Treasurer 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 Treasurer, upon written notice of the claim, shall defend the holder against the claim and indemnify the holder against any liability on the claim resulting from payment or delivery of the property to the Treasurer.

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

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

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

- (a) Except as otherwise provided in this section, the Treasurer, within three years after the receipt of abandoned property, shall sell it to the highest bidder at public sale at a location in the State which in the judgment of the Treasurer affords the most favorable market for the property. The Treasurer may decline the highest bid and reoffer the property for sale if the Treasurer considers the bid to be insufficient. The Treasurer need not offer the property for sale if the Treasurer considers that the probable cost of sale will exceed the proceeds of the sale. A sale held under this section must be preceded by a single publication of notice, at least three weeks before sale, in a newspaper of general circulation in the county in which the property is to be sold. The Treasurer is not required to sell money unless it is a collector's species having value greater than the face value of the money as cash.
- (b) Securities listed on an established stock exchange must be sold at prices prevailing on the exchange at the time of sale. Other securities may be sold over the counter at prices prevailing at the time of sale or by any reasonable method selected by the Treasurer. If securities are sold by the Treasurer before the expiration of three years after their delivery to the Treasurer, a person making a claim under this Chapter before the end of the three-year period is entitled to the proceeds of the sale of the securities or the market value of the securities at the time the claim is made, whichever is greater, less any deduction for expenses of sale. A person making a claim under this Chapter after the expiration of the three-year period is entitled to receive the securities delivered to the Treasurer by the holder, if they still remain in the custody of the Treasurer, or the net proceeds received from sale, and is not entitled to receive any appreciation in the value of the property occurring after delivery to the Treasurer, except in a case of intentional misconduct by the Treasurer.
- (c) A purchaser of property at a sale conducted by the Treasurer pursuant to this Chapter takes the property free of all claims of the owner or previous holder and of all persons claiming through or under them. The Treasurer shall execute all documents necessary to complete the transfer of ownership.

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

- (a) After property has been paid or delivered to the Treasurer under this Article, another state may recover the property if:
 - (1) The property was paid or delivered to the custody of this State because the records of the holder did not reflect a last known location of the apparent owner within the borders of the other state, and the other state

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

- (2) The property was paid or delivered to the custody of this State because the laws of the other state did not provide for the escheat or custodial taking of the property, and under the laws of that state subsequently enacted, the property has escheated or become subject to a claim of abandonment by that state;
- (3) The records of the holder were erroneous in that they did not accurately identify the owner of the property and the last known location of the owner within the borders of another state, and under the laws of that state the property has escheated or become subject to a claim of abandonment by that state;
- (4) The property was subjected to custody by this State under G.S. 116B-56(6), and under the laws of the state of domicile of the holder, the property has escheated or become subject to a claim of abandonment by that state; or
- (5) The property is a sum payable on a traveler's check, money order, or similar instrument that was purchased in the other state and delivered into the custody of this State under G.S. 116B-56(6), and under the laws of the other state, the property has escheated or become subject to a claim of abandonment by that state.
 - (b) A claim of another state to recover escheated or abandoned property must be presented in a form prescribed by the Treasurer, who shall decide the claim within 90 days after it is presented. The Treasurer shall allow the claim upon determining that the other state is entitled to the abandoned property under subsection (a) of this section.
 - (c) The Treasurer shall require another state, before recovering property under this section, to agree to indemnify this State and its officers and employees against any liability on a claim to the property.

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

- (a) A person, excluding another state, claiming property paid or delivered to the Treasurer may file a claim on a form prescribed by the Treasurer and verified by the claimant.
- (b) At the discretion of the Treasurer, the claim shall be made to the holder or to the holder's successor. If the holder is satisfied that the claim is valid and that the claimant is the owner of the property, the holder shall so certify to the Treasurer by written statement attested by the holder under oath, or in the case of a corporation, by two principal officers, or one principal officer and an authorized employee of the corporation. The determination of the holder that the claimant is the owner shall, in the absence of fraud, be binding upon the Treasurer and upon receipt of the certificate of the holder to this effect, the Treasurer shall forthwith authorize and make payment of the claim or return of the property, or if the property has been sold, the amount received from the sale, to the owner, or to the holder in the event the owner has assigned the claim to the holder and the certificate of the holder is accompanied by an assignment. In the event the holder rejects the claim, the claimant may appeal to the Treasurer. If the holder, or the holder's successor, is not available, the owner may file a claim with the Treasurer on a form prescribed by the Treasurer. In addition to any other information, the claim shall state the facts surrounding the unavailability of the holder and the lack of a successor.
- (c) Within 90 days after a claim is filed, the Treasurer shall allow or deny the claim and give written notice of the decision to the claimant. If the claim is denied, the Treasurer shall inform the claimant of the reasons for the denial and specify what additional evidence is required before the claim will be allowed. The claimant may then file a new claim with the Treasurer or maintain an action under G.S. 116B-68.
- (d) Within 30 days after a claim is allowed, the property or the net proceeds of a sale of the property must be delivered or paid by the Treasurer to the claimant.
- (e) The claimant or claimants and the holder, if the holder either certifies that the claimant is the owner under subsection (b) of this section or recovers money and property from the Treasurer under G.S. 116B-63, shall agree to indemnify, save harmless, and defend the State, the Treasurer, and the Escheat Fund from any claim arising out of or in connection with refund of the property claimed. In like manner, the claimant shall also agree

to indemnify, save harmless, and defend the holder, if the holder certifies the claim under subsection (b) of this section or pays or delivers property to the claimant under G.S. 116B-63.

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

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

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

- (a) The Treasurer may decline to receive property reported under this Chapter which the Treasurer considers to have a value less than the expenses of notice and sale.
- (b) A holder, with the written consent of the Treasurer and upon conditions and terms prescribed by the Treasurer, may report and deliver property before the property is presumed abandoned. Property so delivered must be held by the Treasurer and is not presumed abandoned until it otherwise would be presumed abandoned under this Article.

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

- (a) If the Treasurer determines after investigation that property delivered under this Chapter has no substantial commercial value, the Treasurer may destroy or otherwise dispose of the property at any time. An action or proceeding may not be maintained against the State or any officer, employee, or agent of the State, both past and present, in the person's individual and official capacity, or against the holder for or on account of an act of the Treasurer under this subsection, except for intentional misconduct.
- (b) Notwithstanding the provisions of G.S. 116B-65, the Treasurer may retain any tangible property delivered to the Treasurer, if the property has recognized historic significance. The historic significance shall be certified by the Treasurer, with the advice of the Secretary of Cultural Resources; and a statement of the appraised value of the property shall be filed with the certification. Historic property retained under this subsection may be stored and displayed at any suitable location.

"§ 116B-71. Periods of limitation.

- (a) The expiration, before or after the effective date of this Article, of a period of limitation on the owner's right to receive or recover property, whether specified by contract, statute, or court order, does not preclude the property from being presumed abandoned or affect a duty of a holder to file a report or to pay or deliver or transfer property to the Treasurer as required by this Article.
- (b) An action or proceeding may not be maintained by the Treasurer to enforce this Article in regard to the reporting, delivery, or payment of property more than five years after the holder filed a report with the Treasurer in which the holder specifically identified property, should have but failed to identify property, or gave express notice to the Treasurer of a dispute regarding property. In the absence of such a report or other express notice, the period of limitation is tolled. The period of limitation is also tolled by the filing of a report that is fraudulent.

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

- (a) The Treasurer may require a person who has not filed a report, or a person who the Treasurer believes has filed an inaccurate, incomplete, or false report, to file a verified report in a form specified by the Treasurer. The report must state whether the person is holding property reportable under this Chapter, describe property not previously reported or as to which the Treasurer has made inquiry, and specifically identify and state the value of property that may be in issue.
- (b) The Treasurer, at reasonable times and upon reasonable notice, may examine the records of any person to determine whether the person has complied with this Chapter. The Treasurer may conduct the examination even if the person believes it is not in possession of any property that must be reported, paid, or delivered under this Chapter. The Treasurer may contract with any other person to conduct the examination on behalf of the Treasurer.

- (c) The Treasurer at reasonable times may examine the records of an agent, including a dividend disbursing agent or transfer agent, of a business association that is the holder of property presumed abandoned if the Treasurer has given the notice required by subsection (b) of this section to both the association and the agent at least 90 days before the examination.
- (d) Documents and working papers obtained or compiled by the Treasurer, or the Treasurer's agents, employees, or designated representatives, in the course of conducting an examination are confidential, but the documents and papers may be:
 - (1) Used by the Treasurer in the course of an action to collect unclaimed property or otherwise enforce this Chapter;
 - (2) Used in joint examinations conducted with or pursuant to an agreement with another state, the federal government, or any other governmental subdivision, agency, or instrumentality;
 - (3) Produced pursuant to subpoena or court order; or
 - (4) Disclosed to the abandoned property office of another state for that state's use in circumstances equivalent to those described in this subsection, if the other state is bound to keep the documents and papers confidential.
- (e) If an examination results in the disclosure of property reportable under this Chapter, the Treasurer may assess, against a holder who made a fraudulent report, the cost of the examination at the rate of two hundred dollars (\$200.00) a day for each examiner, or a greater amount that is reasonable and was incurred, but the assessment may not exceed the value of the property found to be reportable. The cost of an examination made pursuant to subsection (c) of this section may be assessed only against the business association.
- (f) If a holder does not maintain the records required by G.S. 116B-73 and the records of the holder available for the periods subject to this Chapter are insufficient to permit the preparation of a report, the Treasurer may require the holder to report and pay to the Treasurer the amount the Treasurer reasonably estimates, on the basis of any available records of the holder or by any other reasonable method of estimation, should have been, but was not reported.

"§ 116B-73. Retention of records.

- (a) Except as otherwise provided in subsection (b) of this section, a holder required to file a report under G.S. 116B-60 shall maintain the records containing the information required to be included in the report for 10 years after the holder files the report, unless a shorter period is provided by rule of the Treasurer.
- (b) A business association that sells, issues, or provides to others for sale or issue in this State, traveler's checks, money orders, or similar instruments other than third-party bank checks, on which the business association is directly liable, shall maintain a record of the instruments while they remain outstanding, indicating the state and date of issue, for three years after the holder files the report.

"§ 116B-74. Discretionary precompliance review.

A holder may request the Treasurer to conduct a precompliance review of the holder's compliance program to educate the holder's employees on the unclaimed property laws and filing procedures and to recommend ways to facilitate the holder's compliance with the law. Subject to the availability of staff, the Treasurer may conduct a precompliance review upon request. The Treasurer may charge the holder a precompliance review fee of up to five hundred dollars (\$500.00) per day for conducting this review.

"§ 116B-75. Enforcement.

- (a) The Treasurer may maintain an action in this or another state to enforce this Chapter.
- (b) The Treasurer may order a person required to report, pay, or deliver property under this Chapter, or an officer or employee of the person, or a person having possession, custody, care, or control of records relevant to the

matter under inquiry, or any other person having knowledge of the property or records, to appear before the Treasurer, at a time and place named in the order, and to produce the records and to give such testimony under oath or affirmation relevant to the inquiry. For purposes of this subsection, the Treasurer may administer oaths or affirmations. If a person refuses to obey an order of the Treasurer, the Treasurer may apply to the Superior Court of Wake County for an order requiring the person to obey the order of the Treasurer. Failure to comply with the court order is punishable for contempt.

"§ 116B-76. Interstate agreements and cooperation; joint and reciprocal actions with other states.

- (a) The Treasurer may enter into an agreement with another state to exchange information relating to abandoned property or its possible existence. The agreement may permit the other state, or another person acting on behalf of a state, to examine records as authorized in G.S. 116B-72. The Treasurer by rule may require the reporting of information needed to enable compliance with an agreement made under this section and prescribe the form.
- (b) The Treasurer may join with another state to seek enforcement of this Chapter against any person who is or may be holding property reportable under this Chapter.
- (c) At the request of another state, the Attorney General of this State may maintain an action on behalf of the other state to enforce, in this State, the unclaimed property laws of the other state against a holder 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 maintaining the action.
- (d) The Treasurer may request that the attorney general of another state or another attorney commence an action in the other state on behalf of the Treasurer. With the approval of the Attorney General of this State, the Treasurer may retain any other attorney to commence an action in this State on behalf of the Treasurer. This State shall pay all expenses, including attorneys' fees, in maintaining an action under this subsection. With the Treasurer's approval, the expenses and attorneys' fees may be paid from money received under this Chapter. The Treasurer may agree to pay expenses and attorneys' fees based in whole or in part on a percentage of the value of any property recovered in the action. Any expenses or attorneys' fees paid under this subsection may not be deducted from the amount that is subject to the claim by the owner under this Chapter.
- (e) The Treasurer is authorized to make such expenditures from the funds of the Escheat Fund as may be necessary to effectuate the provisions of this section.

"§ 116B-77. Interest and penalties; waiver.

- (a) A holder who fails to report, pay, or deliver property within the time prescribed by this Chapter shall pay to the Treasurer interest at the rate established pursuant to this subsection on the property or value of the property from the date the property should have been reported, paid, or delivered. On or before June 1 and December 1 of each year, the Treasurer shall establish the interest rate to be in effect during the six-month period beginning on the next succeeding July 1 and January 1, respectively, after giving due consideration to current market conditions. If no new rate is established, the rate in effect during the preceding six-month period shall continue in effect. The rate established by the Treasurer may not be less than five percent (5%) per year and may not exceed sixteen percent (16%) per year.
- (b) A holder who willfully fails to report, pay, or deliver property within the time prescribed by this Chapter, or willfully fails to perform other duties imposed by this Chapter, shall pay to the Treasurer, in addition to interest as provided in subsection (a) of this section, a civil penalty of one thousand dollars (\$1,000) for each day the report, payment, or delivery is withheld, or the duty is not performed, up to a maximum of twenty-five thousand dollars (\$25,000), plus twenty-five percent (25%) of the value of any property that should have been but was not reported.
- (c) A holder who makes a fraudulent report shall pay to the Treasurer, in addition to interest as provided in subsection (a) of this section, a civil penalty of one thousand dollars (\$1,000) for each day from the date a report under this Chapter was due, up to a maximum of twenty-five thousand dollars (\$25,000), plus twenty-five percent (25%) of the value of any property that should have been but was not reported.
- (d) The Treasurer for good cause may waive, in whole or in part, interest under subsection (a) of this section and penalties under subsection (b) of this section.

§ 116B-78. Agreement to locate property.

- (a1) Agreements Covered. – An agreement by an owner is covered by this section if its primary purpose is to locate, deliver, recover, or assist in the recovery of property that is distributable to the owner or presumed abandoned.
- (a2) Void Agreements. – An agreement covered by this section is void and unenforceable if it was entered into during the period commencing on the date the property was distributable to the owner and extending to a time that is 24 months after the date the property is paid or delivered to the Treasurer. This subsection does not apply to an owner's agreement with an attorney to file a claim or special proceeding as to identified property or contest the Treasurer's denial of a claim or a clerk's denial of a petition.
- (b) Criteria for Agreements. - An agreement covered by this section is enforceable only if it meets all of the following criteria:
1. Is in writing and clearly sets forth the nature of the property and the services to be rendered.
 2. Is signed by the owner, with signature notarized.
 3. Describes the property, which includes the type of property, the property ID held by the State Treasurer, and the name of the holder.
 4. States that there may be other claims to the property that may reduce the share of the owner.
 5. States the value of the property, to the extent known, before and after the fee or other compensation has been deducted.
 6. States clearly the fees and costs for services. Total fees and cost shall be limited as follows:
 - a. For an agreement covered by this section other than one covered by G.S 28A-22-11, total fees and costs shall not exceed one thousand dollars (\$1,000) or twenty percent (20%) of the value of the property recovered, whichever is less.
 - b. For an agreement subject to G.S 28A-22-11 by an heir, unknown or known but unlocated, the primary purpose of which is to locate or recover, or assist in the recovery, of a share in a decedent's estate, or surplus funds in a special proceeding, total fees and costs shall not exceed twenty percent (20%) of the value of the property recovered.
 7. Discloses that the property is being held by the North Carolina Department of State Treasurer's Unclaimed Property Program.
- (c) Mineral Proceeds. - If an agreement covered by this section applies to mineral proceeds and the agreement contains a provision to pay compensation that includes a portion of the underlying minerals or any mineral proceeds not then presumed abandoned, the provision is void and unenforceable.
- (d) Means of Payment. – Any person who enters into an agreement covered by this section with an owner shall be allowed to receive cash property, but not tangible property or securities, on behalf of the owner but shall not be authorized to negotiate the check made payable to the owner. Tangible property shall be delivered to the owner by the Treasurer, and securities will be re-registered into the owner's name.
- (e) Other Remedies. - This section does not preclude an owner from asserting that an agreement covered by this section is invalid on grounds other than as provided in subsection (b) of this section.
- (f) Registration. - Any person who enters into an agreement covered by this section with an owner shall register each calendar year with the Treasurer. The information to be required under this subsection shall include the person's name, address, telephone number, state of incorporation or residence, as applicable, and the person's social security or federal identification number. A registration fee of one hundred dollars (\$100.00) shall be paid to the Treasurer at the time of the filing of the registration information. Fees received under this subsection shall be credited to the General Fund.
- (g) Unfair Trade Practice. – In addition to rendering an agreement void and unenforceable, a failure to comply with the provisions of this section constitutes an unfair or deceptive trade practice under G.S. 75-1.1.

"§ 116B-79. Transitional provisions.

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

(b) This Article does not relieve a holder of a duty that arose before the effective date of this Article to report, pay, or deliver property. Except as otherwise provided in G.S 116B-71(b) and G.S. 116B-77(d), a holder who did not comply with the law in effect before the effective date of this Article is subject to the applicable provisions for enforcement and penalties which then existed, which are continued in effect for the purpose of this section.

"§ 116B-80. Rules.

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

STATUTES RELATED TO G.S. 116B

Chapter 20-279.10	Custody, disposition and return of security; escheat.
Chapter 28A-22-9	Distribution to known but unlocated devisees or heirs.
Chapter 29	Intestate Succession Act
Chapter 40A-23	Service where parties unknown.
Chapter 40A-32(a)	Attorney for unknown parties appointed; pleadings amended; new commissions appointed.
Chapter 40A-50	Parties, orders, continuances.
Chapter 53-18	Voluntary liquidation.
Chapter 53-20(l)(p)(q)(r)(s)(x)	Liquidation of banks.
Chapter 53-43.7	Safe-deposit boxes; unpaid rentals; procedure; escheats.
Chapter 53-376	Unclaimed property.
Chapter 53-392	Unclaimed dividends held in trust.
Chapter 53-393	Action by the Commissioner following full settlement.
Chapter 53-394(a)	Annual report of Commissioner; items included; reports of condition of State trust companies.
Chapter 54B-70(p)	Involuntary liquidation.
Chapter 54C-83(p)	Involuntary liquidation.
Chapter 55-14-40	Disposition of amounts due to available shareholders and creditors.
Chapter 58-30-235(a)	Unclaimed and withheld funds.
Chapter 62-209 (c)	Sale of unclaimed baggage or household goods.
Chapter 64-4	Escheats.
Chapter 66-67	Disposition by laundries and dry cleaning establishments of certain unclaimed clothing.
Chapter 66-67.1	Disposal by repair businesses of certain unclaimed property.
Chapter 66-67.5	Requirements for maintenance fees for gift cards.
Chapter 90-210.87	Unclaimed funds of defunct burial association.
Chapter 93A-6(a)(12)	Disciplinary action by Commission
Chapter 93A-12	Disputed monies.
Chapter 96-6 (c)	Unemployment Insurance Fund
Chapter 105-151.20	Credit or partial refund for tax paid on certain federal retirement benefits.
Chapter 105-242(b)	Warrants for collection of taxes; garnishment and attachment; certificate or judgment of taxes.
Chapter 105-256(d)(2)	Reports prepared by Secretary of Revenue.
Chapter 105-259(b)(8)	Secrecy required of officials; penalty for violation.
Chapter 105-366	Remedies against personal property.
Chapter 105-368	Procedure for attachment and garnishment.
Chapter 116-43	Escheat receipts prior to July 1, 1971.
Chapter 147-86.22 (c)	Statewide accounts receivable program.
Chapter 160A-1	Application and meaning of terms.
Chapter 163-278.16B	Use of contributions for certain purposes.
Chapter 55-14-40	Disposition of amounts due to available shareholders and creditors

North Carolina Constitutional Reference

Article IX, Section 10. Escheats.

- (1) *Escheats prior to July 1, 1971.* All property that prior to July 1, 1971, accrued to the State from escheats, unclaimed dividends, or distributive shares of the estates of deceased persons shall be appropriated to the use of the University of North Carolina.
- (2) *Escheats after June 30, 1971.* All property that, after June 30, 1971, shall accrue to the State from escheats, unclaimed dividends, or distributive shares of the estates of deceased persons shall be used to aid worthy and needy students who are residents of this State and are enrolled in public institutions of higher education in this State. The method, amount, and type of distribution shall be prescribed by law.

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