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Revision of Pennsylvania Escheat Laws

ROBERT B. ELY, III*

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I. INTRODUCTION

The mills of the law grind slowly, but in most instances, given enough time, they grind exceedingly fine. Such has been the case with Pennsylvania laws as to unclaimed property,¹ formerly known as escheats.

These unclaimed property laws have long been of considerable importance to legal advisors and businessmen doing business in Pennsylvania, or about to enter Pennsylvania from another state.

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1. For a codification of the existing laws of Pennsylvania dealing with unclaimed property see PA. STAT. ANN. tit. 27, §§ 1 et seq. (1958); PA. STAT. ANN. tit. 68, § 250.303 (1965); PA. STAT. ANN. tit. 72, §§ 504, 1301-14 (1949).

Unclaimed property laws define in part the answers to fundamental business questions: What are or will be the costs of operations and sales efforts, apart from known or estimated expenses of manufacture or performance? How much will the Commonwealth want for license fees, taxes and the like? How much unproductive time and effort must be allocated for reports to and examination by the Commonwealth?

Ten years ago when the laws of escheat had become big business for the Commonwealth,² they failed to supply satisfactory answers to the fundamental business questions listed above. At that time the unclaimed property laws were a fantastic maze of more than forty different statutes,³ in many instances inconsistent and overlapping.⁴ Pennsylvania had more laws in the unclaimed property field than any other state in the Union. Moreover, Pennsylvania's laws shared the worst features of the statutes from foreign jurisdictions.

The following are some of the detrimental features contained in the Pennsylvania laws prior to reform. Many of these detrimental features remain in the present law but would be corrected by legislation presently pending in the Pennsylvania General Assembly.⁵

(a) Pennsylvania's escheat legislation was doubly "open-ended." Instead of clarifying the classes of unclaimed property which the Commonwealth might take outright or as custodian, the laws left this definition to the imagination of State officials⁶ and to paid informers or escheators seeking personal gain.⁷

2. According to figures supplied by the Pennsylvania Department of Revenue and published by the Pennsylvania State Chamber of Commerce, receipts by the Commonwealth's General Fund from escheats amounted to \$1.9 million for the twelve month period of June, 1960, through May, 1961, \$1.5 million for the thirteen month period of June, 1961, through June, 1962, and \$1.0 million for the seven month period of July, 1962, through January, 1963. PENNSYLVANIA BUSINESS, March-April, 1963, at 5.

3. See PA. STAT. ANN. tit. 27, §§ 1 et seq. (1958); PA. STAT. ANN. tit. 72, §§ 504, 1301-14 (1949).

4. See PENNSYLVANIA JOINT STATE GOVERNMENT COMMISSION, PENNSYLVANIA STATUTORY LAW PERTAINING TO ESCHETS (Oct. 19, 1966); Ely, *Pennsylvania Escheat Laws: Proposals for Revision*, 64 DICK. L. REV. 329, 352 (1964) (Table of Effective Acts).

5. S.B. 1107, Printer's Number 1266, 1969 Session; see discussion of the 1969 proposed legislation at p. 183 et seq. *infra*.

6. PA. STAT. ANN. tit. 27, § 333 (1958) (making absolutely escheatable "any real or personal property within or subject to the control of the Commonwealth"). But see note 72 *infra*. This statute would be repealed by approval of legislation now pending. S.B. 1107, § 29(a)(2), Printer's Number 1266, 1969 Session.

7. PA. STAT. ANN. tit. 72, § 1304 (Supp. 1969) (providing for rewards of 25 per cent of the first \$50,000.00 recovered in cases of intestacy without heirs and scaling down for greater amounts); PA. STAT. ANN. tit. 72, § 614 (Supp. 1969) (providing for rewards of 15 per cent of the first \$100,000.00 of all types of property recovered and scaling down for greater amounts). These statutes would be repealed by approval of legislation now pending. S.B. 1107, § 29(a)(5), Printer's Number 1266, 1969 Session.

(b) Some of the unclaimed property laws expressly removed the bars of statutes of limitation and presumptions of payment which normally gave alleged debtors repose from state claims.⁸ State officials, in fact, persistently asserted that no unmet demand would be barred and that the Commonwealth could delay indefinitely the bringing of suit.⁹

(c) Due to a lack of definition of the geographical or other limitations restricting Pennsylvania's jurisdiction to assume custody or control of unclaimed property, Pennsylvania holders of such property were open to multiple, conflicting claims of other sovereigns.¹⁰

With these considerations in mind, representatives of insurance, financial, utility, manufacturing and other business interests appeared in 1959 before the Pennsylvania House Judiciary Committee in support of House Bill 1417.¹¹ The purpose of House Bill 1417 was "to consolidate, amend and revise the escheat laws of the Commonwealth."¹² Regrettably this bill did not pass, but with its

8. PA. STAT. ANN. tit. 20, §§ 1-13 (1950) (as to decedent's estates); PA. STAT. ANN. tit. 27, § 261 (1958) (as to special types of property covered by the Act of June 7, 1915, [1915] Pa. Laws 878); PA. STAT. ANN. tit. 27, § 446 (1958) (as to debts as defined in § 435); PA. STAT. ANN. tit. 27, § 473 (1958) (as to life insurance proceeds). These statutes would be repealed by approval of legislation now pending. S.B. 1107, § 29(a) (3, 8, 9), Printer's Number 1266, 1969 Session. No limitation of the bar of limitations occurs with respect to the "catch-all" clause of PA. STAT. ANN. tit. 27, § 333 (1958) (discussed at note 6 and accompanying text *supra*). Compare the limitation of PA. STAT. ANN. tit. 27, § 101 (1958) (21 years after death in the case of intestacy with heirs) with the limitation of PA. STAT. ANN. tit. 27, § 601 (Supp. 1969) (15 years after first escheatability or collectibility of any type of property). The § 101 limitation would be repealed by S.B. 1107, § 29(a) (2), 1969 Session, while the § 601 limitation is incorporated in S.B. 1107, § 17, 1969 Session.

9. See PENNSYLVANIA BUSINESS, March-April, 1963, at 5:

Two railroads have felt obliged to make six figure settlement payments to the Commonwealth with respect to transactions which the companies had thought to be closed long since, and were about to forget. One of the companies had actually won a suit with the State on the same subject, only to find the law changed against it ten years later, and sought by the State to be applied retroactively. A pair of banks are in litigation with the State over several millions of dollars which supposedly became unclaimed and due the State more than forty years before it began suit. A lending institution was recently compelled to turn over to the State a mass of items totaling one-quarter million dollars, generally amounting to less than a dime each, and not distributed "because the cost of mailing and issuing checks would have been prohibitive." A leading insurance company has been told that it must open for State examination all of its records for the 170 years it has been in existence.

10. See *Western Union Tel. Co. v. Pennsylvania*, 368 U.S. 71 (1961).

11. H.B. 1417, 1959 Session.

12. *Id.*

introduction the legislative mill was set in motion.

Because of the complexity of the situation and the lack of time, the problem of revising the outmoded escheat laws was referred to the Joint State Government Commission for study, report and recommendation to the next session of the General Assembly.¹³ The study was undertaken, but no report or recommendation was made by 1964.

In 1964 Senate Resolution 108¹⁴ renewed the Commission's directive.¹⁵ Pursuant to Resolution 108, an Escheat Laws Task Force was appointed.¹⁶ The task force consisted of a legislative committee and an advisory committee. The legislative committee included Senate and House members chaired by Senator Preston B. Davis. The advisory committee, led by Dean W. Edward Sell,¹⁷ represented the judiciary, the State Department of Justice and the interests which had endorsed the 1959 proposals. Five years after Senate Resolution 108, the Joint State Government Commission completed its assignment with recommendation of the *Proposed Distribution of Abandoned and Unclaimed Property Act*.¹⁸ The recommended act was introduced as Senate Bill 1107 of the 1969 Session¹⁹ and is discussed as the theme of this writing.

Prior to Senate Bill 1107, there were two developments affecting what has been called Pennsylvania's "fantastic maze" of escheat laws:

(a) The "multi-state-many-claims-to-same-property problem"²⁰ was recognized by the Supreme Court of the United States in *Western Union Telegraph Co. v. Pennsylvania*.²¹ The issue was formally presented to the Supreme Court of the United States in *Texas v. New Jersey*²² and the Court's solution was incorporated in the proposed legislation under discussion.²³

13. H.R. 119, Printer's Number 1788, 1959 Session.

14. S.R. 108, Printer's Number 48, 1964 Session.

15. S.R. 108, Printer's Number 48, 1964 Session provided:

That the Joint State Government Commission be directed to make a thorough study of the laws relating to the escheat of money and property to the Commonwealth of Pennsylvania as well as the laws relating to the payment, without escheat, of money and property subject to escheat, to the Commonwealth of Pennsylvania; prepare, under the direction of the Legislative Reference Bureau, a codification and revision thereof, and make a report to the General Assembly when it convenes in 1965.

16. A listing of the Escheat Laws Task Force is published in PENNSYLVANIA JOINT STATE GOVERNMENT COMMISSION, PROPOSED DISPOSITION OF ABANDONED AND UNCLAIMED PROPERTY ACT at iv (1969).

17. Dean of the University of Pittsburgh School of Law.

18. PENNSYLVANIA JOINT STATE GOVERNMENT COMMISSION, PROPOSED DISPOSITION OF ABANDONED AND UNCLAIMED PROPERTY ACT (1969).

19. S.B. 1107, Printer's Number 1266, 1969 Session.

20. Discussed at text accompanying note 10 *supra*.

21. 368 U.S. 71 (1961).

22. 379 U.S. 674 (1965).

23. S.B. 1107, § 3, Printer's Number 1266, 1969 Session, discussed at notes 42-45 and accompanying text *infra*.

(b) A solution to the "statute-of-limitation-presumption of payment problem"²⁴ was attempted in 1963, when the General Assembly enacted legislation²⁵ which unconditionally barred the Commonwealth from further action if it did not bring an action within fifteen years after property in question first became escheatable or collectible without escheat. The Attorney General has read into this statute, by interpretation,²⁶ an exception in cases where the holder has failed to make required reports to the Commonwealth. Although litigation is still in progress, the Supreme Court of Pennsylvania has apparently reached the same conclusion.²⁷

II. THE 1969 PROPOSED LEGISLATION

The discussion of the proposed *Disposition of Abandoned and Unclaimed Property Act*, Senate Bill 1107,²⁸ is divided into three sections. First the general purpose and format of the Bill is stated. Next a section is devoted to the persons and property involved in the Bill. Finally there is a discussion of the operation of the Bill. Within the separate sections of the discussion, subsections contain examinations of the provisions of the proposed legislation followed by comments by the author.

A. General Purpose and Format

The stated and accomplished purpose of the Joint State Government Commission Task Force was to codify

into one act existing statutory and judicial law, thereby eliminating obsolete matter and terminology, clarifying ambiguities, and fixing with greater certainty the rights, duties, liabilities, and privileges of the Commonwealth and corporations, associations, partnerships and persons with respect to escheats [more accurately abandoned and unclaimed property].²⁹

The format which was chosen is a well balanced compromise between the wording of the widely accepted Uniform Disposition of

24. Discussed at notes 8-9 and accompanying text *supra*.

25. PA. STAT. ANN. tit. 27, § 601 (Supp. 1969).

26. Limitations of Escheat, 31 Pa. D. & C.2d 769, 773 (C.P. Dauph. 1963).

27. *Sennett v. Insurance Co. of North America*, 432 Pa. 525 (1968). Note "no final adverse order was entered against [appellant holder]" and the matter was remitted procedendo. *Id.* at 528, 534, n.3.

28. S.B. 1107, Printer's Number 1266, 1969 Session [hereinafter also referred to in the text as the Bill and cited in shortened form including only the Bill number and section number being discussed].

29. PENNSYLVANIA JOINT STATE GOVERNMENT COMMISSION, PROPOSED DISPOSITION OF ABANDONED AND UNCLAIMED PROPERTY ACT (1969).

Unclaimed Property Act³⁰ and phraseology peculiar to and properly cherished by Pennsylvania.

B. *Persons and Property Involved*

The rights and obligations to be considered exist among holders, owners, and the Commonwealth with respect to certain types of property. Each of these terms is defined in section 2 of the proposed legislation.³¹

1. *Definitions*

Holder—"includes any person in possession of property subject to this act belonging to another, or who is a trustee in case of a trust, or is indebted to another on an obligation subject to this act."³²

Owner—"includes a depositor in case of a deposit, a creditor, claimant, or payee in case of other choses in action, or any other person having a legal or equitable interest in property subject to this act, or his legal representative."³³

Property—"includes all real and personal property, tangible or intangible, all legal and equitable interests therein, together with any income, accretions, or profits thereof and thereon, and all other rights to property, subject to all legal demands on the same."³⁴ This general definition of property is narrowed in sections 4 to 10 as to each of financial institutions,³⁵ insurers,³⁶ utilities³⁷ and business associations,³⁸ whether active or in course of dissolution, fiduciaries,³⁹ and courts and public officers and agencies.⁴⁰ Section 11 partially restores generality, within proper limits, by

30. Annot., 98 A.L.R.2d 304 (1964) (containing important provisions of the act). The UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT has been adopted by Arizona, California, Connecticut, Florida, Idaho, Illinois, Indiana, Iowa, Maryland, Minnesota, Montana, Nebraska, New Mexico, Oklahoma, Oregon, Rhode Island, Utah, Virginia, Washington, and West Virginia. AM. JUR. 2d Desk Book Doc. 129 (1962, Supp. 1969).

31. S.B. 1107, § 2. Derivations of these and all other terms used in the Bill are stated in PENNSYLVANIA JOINT STATE GOVERNMENT COMMISSION, PROPOSED DISPOSITION OF ABANDONED AND UNCLAIMED PROPERTY ACT (1969).

32. S.B. 1107, § 2(3). For an expansion of the terms in this definition, see § 2(6) (as to person); as to particular holders, see § 2(1) (definition of business association), § 2(2) (definition of financial institution), § 2(4) (definition of insurer), § 2(9) (definition of utility). No separate definitions are given for the following generally recognizable holders: fiduciaries, courts and public officers and agencies.

33. S.B. 1107, § 2(5).

34. S.B. 1107, § 2(7).

35. S.B. 1107, §§ 4, 8.

36. S.B. 1107, §§ 5, 8.

37. S.B. 1107, §§ 6, 8.

38. S.B. 1107, §§ 7, 8.

39. S.B. 1107, § 9.

40. S.B. 1107, § 10.

including "all property, *not otherwise covered* [but] *admitted* in writing by the holder *and adjudicated* to be due. . . ."41

The above definitions, restrictions and expansions concerning holder, owner and property are all to apply within the overall framework of "abandoned and unclaimed property *subject to custody and control of the Commonwealth*."⁴² Whether the property is subject to the custody and control of the Commonwealth as outlined in section 3 of the proposed legislation, depends on the nature of the property. If the property is tangible, the criterion is its physical location within the Commonwealth.⁴³ If the property is intangible, four rules originally defined by the Supreme Court of the United States⁴⁴ and incorporated in section 3⁴⁵ determine which state has custody and control of the property. The determination depends on the record address of the owner, the domicile of the holder, and the escheat or custodial taking laws of other jurisdictions.

2. Comments

These provisions of sections 3 and 11 remove the objections to earlier laws, that holders were required at their peril to outguess imaginative state officials and paid informers who were free to assert retroactively and without warning that property, previously thought by holders to be free of Commonwealth claims, was subject to escheat.⁴⁶ Section 11 refines the "without a rightful/lawful owner" catch-all phrase embodied in earlier law⁴⁷ by restricting it to "property . . . admitted . . . and adjudicated to be due [to some

41. S.B. 1107, § 11 (emphasis added).

42. S.B. 1107, § 3 (emphasis added).

43. S.B. 1107, § 3(1).

44. *Texas v. New Jersey*, 379 U.S. 674 (1965).

45. S.B. 1107, § 3(2) provides:

- (2) If it is intangible, and
- (i) The last known address of the owner, as shown by the records of the holder, is within the Commonwealth; or
 - (ii) The last known address of the owner as shown by the records of the holder is within a jurisdiction, the laws of which do not provide for the escheat or custodial taking of such property, and the domicile of the holder is within the Commonwealth; or
 - (iii) No address of the owner appears on the records of the holder and the domicile of the holder is within the Commonwealth; or
 - (iv) No address of the owner appears on the records of the holder and the domicile of the holder is not within the Commonwealth, but it is proved that the last known address of the owner is in the Commonwealth.

46. See note 9 *supra*.

47. See, e.g., PA. STAT. ANN. tit. 27, §§ 332-33 (1958).

owner]."⁴⁸ Retroactivity is prevented under the proposed legislation by the provisions of section 29(c) which state that "all existing causes of action and defenses . . . shall be preserved."⁴⁹ This phraseology is especially important to the issuance of gift certificates by business associations. Section 7(1) of the proposed legislation would reverse *Murdock v. John B. Stetson Co.*⁵⁰ holding that the consideration paid for gift certificates is not escheatable.

This Bill also seems to relieve holders of the needless peril of conflicting claims to the same property asserted by both Pennsylvania and other jurisdictions. This relief is the result of both the incorporation in section 3 of the resolution-of-conflict rules announced by the United States Supreme Court,⁵¹ and the exclusion, in section 28, of

any property that has been presumed abandoned, escheated, or subject to custody and control of another jurisdiction under the laws of such other jurisdiction prior to the effective date of this act.⁵²

A relevant question can be raised as to the failure to define and to deal separately with the obligations of religious, educational, fraternal and charitable organizations since they might well be given the privilege, withheld from other persons, of applying abandoned and unclaimed property held by them to their general philanthropic purposes, rather than turning it over to the Commonwealth. However, if it is necessary to cure this omission, it can be done by a later amendment to the Bill.

An ambiguity presently exists in the Bill as to the rights of the Commonwealth and the finder in treasure troves. The definition of property in section 2(7)⁵³ of the Bill is sufficiently broad to encompass treasure trove. The sections covering property held by specific holders⁵⁴ do not, however, include any suggestions on the treatment of property held by finders. Finally, in narrowing the catch-all clause of the miscellaneous property section⁵⁵ to "property . . . admitted . . . and adjudicated to be due . . .",⁵⁶ property held by finders seems to have been written out of the Bill. The Bill would repeal the Act of May 2, 1889⁵⁷ which presently appears to cover escheat of treasure trove,⁵⁸ therefore, leaving the

48. S.B. 1107, § 11.

49. S.B. 1107, § 29(c).

50. 32 Pa. D. & C. 2d 300 (1962).

51. Discussed at notes 44-45 and accompanying text *supra*.

52. S.B. 1107, § 28.

53. Discussed at notes 34-41 and accompanying text *supra*.

54. S.B. 1107, §§ 4-10.

55. S.B. 1107, § 11, discussed at text accompanying notes 46-47 *supra*.

56. S.B. 1107, § 11.

57. PA. STAT. ANN. tit. 27, § 333 (1958).

58. "Whensoever . . . property . . . has been or shall remain unclaimed for a period of seven successive years, such . . . property . . . shall escheat." PA. STAT. ANN. tit. 27, § 333(c) (1958). "Whensoever . . . property . . . shall be without a rightful or lawful owner, such . . . property . . . shall escheat. . . ." *Id.* § 333(d).

finder of treasure trove apparently free from the claims of the Commonwealth.

C. Operation of the Bill

Inasmuch as the "abandoned and unclaimed property"⁵⁹ with which the Bill is concerned was normally given by a *private* owner to a *private* holder under the terms of a *private* arrangement between the parties, it is at first difficult to understand why the Commonwealth should become involved in the transaction. No single and simple explanation exists. There are several opinions regarding the proper disposition of property held by a holder who admits, or against whom it has been adjudicated,⁶⁰ that he should pay or deliver to an owner who has not collected due to oversight, absence, incapacity or other unknown reasons.

Some, including the writer, believe that the transaction is a matter *usually* between private parties and that there is no reason to disturb the holder's status. Admittedly, this reasoning is weakened if the holder is licensed and regulated by the state to operate in the public interest as in the case of financial institutions, insurers and utilities, or where the holder was never meant to have any interest in the property apart from his compensation, as with fiduciaries, or where the holder is an arm of the state, as with courts, public officers and agencies. In these cases it can be urged that the state should "take over" from the holder to prevent a windfall. The above conclusion has less support where the holder is a non-profit organization and operates for altruistic, quasi-public purposes, as with religious, educational, fraternal or charitable organizations. For such organizations, as suggested above,⁶¹ there might be made an exception from take-over by the state.

Conceding that the state has some justification for intervention into dormant claims, the question arises as to what interest the state should be given in the property. The answer is either absolute title by "escheat" or merely custody and control by "taking." So far as depriving the holder of a windfall or unjust enrichment, either answer is satisfactory since the holder must give up the property under either solution. So far as substituting a more worthy custodian until the absent-minded, merely absent, or in-

59. "Abandoned and unclaimed property" is the terminology used in S.B. 1107, §§ 3-11, to denote property which when "subject to the custody and control of the Commonwealth," *Id.* § 3, is claimed under the Bill. Discussed at notes 34-45 and accompanying text *supra*.

60. S.B. 1107, § 11.

61. Discussed at p. 186 *supra*.

capacitated owner reacts, it is sufficient for the state to "take" until recollection, return or recovery occurs.

1. *Subjection of Property to the Commonwealth*

The Bill under consideration adopts the best of the foregoing reasoning.

Sections 4 to 11, dealing respectively with claims arising from transactions with financial institutions, insurers, utilities, business associations,⁶² fiduciaries, courts and public officers or agencies,⁶³ all provide for subjection to control and custody of the Commonwealth only in transactions where it is clear that the holders were not originally intended by the parties to have any interest apart from compensation. The transactions involved in sections 4 to 11 include deposits, payments on shares or other similar interest, checks or other writings imposing direct liability on the holder to a third party, property in safe keeping;⁶⁴ insurance proceeds, return premiums or dividends;⁶⁵ customer advances, tolls, deposits, collateral security or refunds;⁶⁶ consideration for gift certificates, certificates of stock or participation, distributable dividends or profits, overdue principal or interest on bonds or debentures;⁶⁷ and property held in a fiduciary⁶⁸ or official capacity.⁶⁹ In addition, the "catch-all" phrase in section 11⁷⁰ is restricted properly to

[a]ll property, not otherwise covered by this act, that is admitted in writing by the holder and adjudicated to be due, that is held or owing in the ordinary course of the holder's business, and that has remained unclaimed by the owner for more than seven years. . . .⁷¹

As to method of intervention by the Commonwealth, the Bill has again made the better choice by utilizing the custodial taking method.⁷² After reports required by section 12 and after notice when required by section 13, holders are required by section 14 to

62. S.B. 1107, §§ 4-8 (§§ 4-7 cover property held by the particular holder while actively engaged in a business, § 8 covers property held by the particular holders in §§ 4-7 when these holders are engaged in the course of dissolution).

63. S.B. 1107, §§ 9-10.

64. S.B. 1107, § 4.

65. S.B. 1107, § 5.

66. S.B. 1107, § 6.

67. S.B. 1107, § 7.

68. S.B. 1107, § 9.

69. S.B. 1107, § 10.

70. Discussed at notes 41, 46-47, 55-58 and accompanying text *supra*.

71. S.B. 1107, § 11.

72. S.B. 1107, § 20. Many of the existing Pennsylvania laws on unclaimed property are written in terminology which indicates the property is absolutely escheatable by the Commonwealth. See, e.g., PA. STAT. ANN. tit. 27, §§ 1, 282-83, 333-34 (1958). There are, however, provisions which provide for refunds to owners. See, e.g., PA. STAT. ANN. tit. 27, §§ 91, 301, 401 (1958) (§§ 91, 301 apply only to persons who did not receive actual notice of the proceeding in escheat).

pay or deliver [to the Commonwealth] all property subject to custody and control of the Commonwealth . . . except that, if the owner establishes his right to receive the property . . . or if it appears that for some other reason the property is not then subject to custody and control of the Commonwealth . . . the holder need not pay or deliver . . . but in lieu thereof shall file a verified written explanation. . . .⁷³

Property received under section 14, other than cash, is required to be sold to the highest bidder under section 18. The proceeds of sales under section 18 and cash received under section 14 are deposited in accordance with section 19 in the General Fund of the Commonwealth. Before making the deposits into the General Fund, the Commonwealth is permitted to make deductions for reasonable costs and service charges.⁷⁴

The owner may claim the cash, property or proceeds at any time under section 20,⁷⁵ and may claim income or increments under section 16. Furthermore, under section 22 he may have judicial action upon any adverse determination of his claim or under section 21 upon the failure of the Secretary of Revenue to consider it.

In support of his privilege to make takings under section 14, the Secretary of Revenue is armed with rights, where proper grounds exist under sections 24 and 25, to examine records of holders reasonably believed not to have reported,⁷⁶ and to compel the making of neglected reports or deliveries.⁷⁷ Under sections 25 and 26 the non-complying holder may become subject to the sanction of interest at twelve per cent per annum⁷⁸ or the penalties of fine⁷⁹ or imprisonment.⁸⁰ Under section 26, the Secretary may make rules and regulations necessary to carry out the provisions of the Bill.

2. Comments

As between the alternative methods of subjecting property to the custody or control of the Commonwealth, either outright escheats or custodial taking, the Bill correctly chooses in favor of

73. S.B. 1107, § 14.

74. S.B. 1107, § 19(b).

75. Existing Pennsylvania law permitting refunds requires proof that the owner did not have notice of the escheat proceedings. *See, e.g.*, PA. STAT. ANN. tit. 27, §§ 91, 301 (1958). *But see* PA. STAT. ANN. tit. 27, § 401 (1958).

76. S.B. 1107, § 24.

77. S.B. 1107, § 25(a).

78. S.B. 1107, § 25(b).

79. S.B. 1107, § 26(a).

80. S.B. 1107, § 26(b).

the latter.⁸¹

It also narrows to a single choice the multiplicity of procedural provisions for reports,⁸² advertising,⁸³ examinations⁸⁴ and actions to compel compliance.⁸⁵ Query whether, since the failure to "pay or deliver property . . . as required under this act"⁸⁶ will normally not be heinous, the penalty of imprisonment provided in section 26 should not be eliminated or at least restricted to instances involving the withholding of large sums or of gross fraud.

This Bill wisely eliminates the generally objectionable rewards to informers.⁸⁷ Such rewards are no longer needed in view of the precise wording replacing the ambiguities of earlier legislation and the wide publicity, given by the press to earlier litigation against prominent corporations,⁸⁸ which has brought the topics of escheat and unclaimed property to the general knowledge of those most likely to be affected by it.

3. *Obligations and Termination*

The obligations of holders to report and to pay over abandoned and unclaimed property do not arise *immediately* upon abandonment or failure to claim. Instead, there must be a period of dormancy variously specified in sections 4 to 11. The period of dormancy ranges from seven to twenty-one years depending on the nature of the holder and of the original transaction out of which the property or claim arose.

Termination of duties to report or pay over can occur in two ways, either by limitation or by discharge.

Section 15 provides in part

[a]ny person who pays or delivers property to the secretary under this act is relieved of all liability with respect to such property so paid or delivered for any claim which then exists or which thereafter may arise or be made in respect to such property.⁸⁹

81. Discussed at notes 72-75 and accompanying text *supra*.

82. S.B. 1107, § 12. For the present provisions on reporting, *see, e.g.*, PA. STAT. ANN. tit. 27, §§ 11, 262, 436, 464 (1958); PA. STAT. ANN. tit. 72, § 1314 (1949).

83. S.B. 1107, § 13. For the present provisions on advertising, *see, e.g.*, PA. STAT. ANN. tit. 27, §§ 43, 281, 381, 438, 465, 496 (1958).

84. S.B. 1107, §§ 24-25. For the present provisions on examination, *see, e.g.*, PA. STAT. ANN. tit. 27, §§ 22, 282, 437 (1958).

85. S.B. 1107, §§ 25-26. For the present provisions covering actions to compel compliance, *see, e.g.*, PA. STAT. ANN. tit. 27, §§ 42, 263, 362, 444, 472 (1958); PA. STAT. ANN. tit. 72, § 1720 (1949).

86. S.B. 1107, § 26.

87. *See, e.g.*, PA. STAT. ANN. tit. 72, § 1304 (Supp. 1969). *But see* PA. STAT. ANN. tit. 27, §§ 243, 447 (1958).

88. Among the many corporations subjected to search and litigation have been the Philadelphia Electric Company, the Pennsylvania Railroad, the Reading Railroad, Stetson Hat Company and Insurance Company of North America. *See, e.g.*, PENNSYLVANIA BUSINESS, March-April, 1963, and note 2, 9 *supra*.

89. S.B. 1107, § 15.

A holder who, after paying or delivering, receives a true claim from the owner, may pay the claim and be reimbursed by the Commonwealth.⁹⁰ If the Secretary of Revenue decides that the value of any property collectible is less than costs of notice and sale, he may under section 23 decline to take. The holder is thereby discharged from any further claim by the Commonwealth to the same property.⁹¹

Section 17 controls discharge by lapse of time. In general terms, section 17 provides that, contrary to the case between private holder and claimant, no lapse of time prevents the property from becoming collectible by the Commonwealth or bars action by the Commonwealth. Likewise, no lapse relieves the holder from his duties to report and pay. Exceptions to the above provisions of section 17 are: (a) where a holder is required to file a report and complies, the Commonwealth must act within 15 years of the filing,⁹² and (b) where no report is required, the Commonwealth must act within 15 years from the date the property first became escheatable or collectible without escheat.⁹³

4. Comments

The provisions as to termination of the holders' obligations upon compliance with the Bill are complete, correct and clear.

The validity of the section 17 provisions, preventing discharge of Commonwealth claims through lapse of time, is questionable in light of a recent Texas case.⁹⁴ In *Central Power & Light Co. v. Texas*,⁹⁵ it was held that the state's right to escheat or take custody is derivative from the rights of the owner. Under the reasoning of this Texas case, if the owner would be barred by lapse of time, then the Commonwealth should also be barred from its claim since the Commonwealth's claim is derived from the claim of the owner. The statute of limitation applicable to the owner would then likewise become applicable to the Commonwealth.

Two distinctions between *Central Power & Light Co. v. Texas* and the proposed legislation under consideration must be borne in mind. Both distinctions support the proposed legislation and do not contradict the case. First, the Texas court dealt with mere disputed or doubtful claims of the owner. The Bill, on the other

90. *Id.*

91. S.B. 1107, § 23.

92. S.B. 1107, § 17(a).

93. S.B. 1107, § 17(b).

94. *Central Power & Light Co. v. Texas*, 410 S.W.2d 18 (Tex. 1966), cert. denied, 389 U.S. 933 (1967).

95. 410 S.W.2d 18 (Tex. 1966).

hand, deals only with items which show on their face an absence of ownership by the holder⁹⁶ or which have been admitted by the holder or adjudicated to be so held.⁹⁷ Second, the Bill, with one minor exception,⁹⁸ correctly singled out, does not impair any rights of the holder, whereas a contrary decision of the Texas court might have affected possible rights of the holder. The one holder right affected by the Bill is the present right of business associations under *Murdock v. John B. Stetson Co.*⁹⁹ to receive the proceeds of unredeemed gift certificates. The Bill would subject unredeemed gift certificates to the custody and control of the Commonwealth.¹⁰⁰

The contractual limitations of actions against holders, as in insurance policy provisions barring claims not brought to suit within specified periods, would not be affected by the Bill.

III. CONCLUSION

It appears that the *Disposition of Abandoned and Unclaimed Property Act*, Senate Bill 1107, has been well and deliberately considered. The general format and particular phraseology of the Bill adopt the best of nationwide traits while preserving worthwhile Pennsylvania peculiarities. The specific provisions are both complete and fair. They represent reasonable compromises among the interests of holders, owners and the Commonwealth. The Bill eliminates multiplicity, ambiguity and other detrimental features of present statutes. Subject to two slight and easily made corrections, *i.e.*, the exemption of certain religious, fraternal, education or charitable holders, and the elimination of the present ambiguity concerning the finding of treasure trove, the Bill is legislation worthy of enactment.

96. See S.B. 1107, §§ 4-10.

97. S.B. 1107, § 11.

98. S.B. 1107, § 7(1), discussed at text accompanying notes 49-50 *supra*, and text accompanying notes 99-100 *infra*.

99. 32 Pa. D. & C.2d 300 (C.P. Dauph. 1962).

100. S.B. 1107, § 7(1).