

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #7

Filing Date

FILED

MAY 22 3 09 PM '98

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Effective Date

July 6, 1998

NOTICE OF AN EMERGENCY RULE

AGENCY: West Virginia State Treasurer's Office TITLE NUMBER: 112

CITE AUTHORITY: West Virginia Code - Section 36-8-28

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: Series 5

TITLE OF RULE BEING FILED AS AN EMERGENCY: Rule for Enforcement of the Uniform
Unclaimed Property Act

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

See Attached

Use additional sheets if necessary


Signature

\$3.60

Rule Title: Rule for Enforcement of the Uniform Unclaimed Property Act

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

Implementation of this rule will allow the Treasurer's Office to continue receiving and trying to find the rightful owner of unclaimed property. When an owner cannot be located, the proceeds are deposited into the State's general revenue fund.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

Holders of unclaimed property will be required to file returns and deliver it to the State.

C. Economic Impact on Citizens/Public at Large.

Rightful owners will in turn have their property returned to them.

Date: May 22, 1998

Signature of Agency Head or Authorized Representative

John D. Perdue

DATE: May 22, 1998

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: West Virginia State Treasurer's Office

EMERGENCY RULE TITLE: Rule for Enforcement of the Uniform Unclaimed Property Act (112CSR5)

1. **Date of Filing** May 22, 1998

2. **Statutory authority for promulgating emergency rule:**

West Virginia Code § 36-8-28

3. **Date of filing of proposed legislative rule:** May 22, 1998

4. **Does the emergency rule adopt new language or does it amend or appeal a current legislative rule?**

This rule adopts new language.

5. **Has the same or similar emergency rule previously been filed and expired?**

No, but a similar emergency rule was previously filed and withdrawn.

6. **State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.**

N/A

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

N/A

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

This emergency rule establishes procedures and guidelines protecting owners of

unclaimed property and provides for fair and prompt application of the process.

Failure to authorize this emergency rule may well result in substantial harm to the

public interest. (See Summary of Proposal Emergency Rule and Statement of

Circumstances Constituting Emergency).

**SUMMARY OF PROPOSED EMERGENCY RULE
AND
STATEMENT OF CIRCUMSTANCES CONSTITUTING EMERGENCY**

**TITLE 112
LEGISLATIVE RULE**

STATE TREASURER'S OFFICE

SERIES 5

**RULE FOR ENFORCEMENT OF THE
UNIFORM UNCLAIMED PROPERTY ACT**

This rule implements the provisions of the Code of West Virginia §36-8-1 et seq., relating to the Uniform Unclaimed Property Act. This rule has provisions for presumption of abandonment, safe deposit boxes, gift certificates, dormancy charges and other deductions, reporting/due diligence, payment or delivery of property, advertising, custody by state, crediting of dividends, interest, and increments, public sale of abandoned property, deposit of funds, claims, action to establish claims, election to take payment or delivery, destruction or disposition of property, periods of limitation, requests for reports and examination of records, retention of records, enforcement, interstate agreements, interest and penalties, transitional provisions, disposition/reporting of property held by law enforcement agencies, rules, and descent and distribution.

West Virginia Code §36-8-28 requires the Administrator to promulgate emergency rules on or before July 1, 1997, which was done. Concurrently, legislative rules were filed but were not acted upon during the 1998 legislative session due to timing problems, as filing on July 1, 1997 was not timely for Legislative Rule-making Review Committee requirements. Given that our emergency rule will expire without a legislative rule being authorized, we are forced to refile both an emergency and a legislative rule to guarantee fair and prompt application of the program, thereby preventing substantial harm to the public interest. In addition, numerous modifications have been made to the rule to meet objections of special interest groups. Therefore, we are withdrawing and refiling the emergency and legislative rule.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Rule for Enforcement of the Uniform Unclaimed Property Act. CSR1125

Type of Rule: X **Legislative** **Interpretive** **Procedural**

Agency West Virginia State Treasurer's Office

Address Building 1, Suite E-145, State Capitol Complex
Charleston, West Virginia 25305

Contact Person: Diana Stout - Telephone (304) 341-0781
Fax (304) 558-4177
E-Mail dstout@wvtreasury.com

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	HEREAFTER
ESTIMATED TOTAL COST	\$	\$	\$ -0-	\$ -0-	\$ -0-
PERSONAL SERVICES			-0-	-0-	-0-
CURRENT EXPENSE			-0-	-0-	-0-
REPAIRS & ALTERNATIONS			-0-	-0-	-0-
EQUIPMENT			-0-	-0-	-0-
OTHER			-0-	-0-	-0-

2. Explanation of above estimates:

Promulgation of this rule will have no cost effect on the State, but will aid in collections.

3. Objectives of these rules:

To aid in the implementation and enforcement of the Uniform Unclaimed Property Act as set forth in West Virginia Code § 36-8-1.

**TITLE 112
LEGISLATIVE RULE
STATE TREASURER'S OFFICE**

**SERIES 5
RULE FOR ENFORCEMENT OF THE
UNIFORM UNCLAIMED PROPERTY ACT**

§112-5-1. General.

1.1. Scope. -- This rule implements the provisions of West Virginia Code §36-8-1, et seq., relating to the Uniform Unclaimed Property Act.

1.2. Authority. -- W.Va. Code §36-8-28.

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Purpose. -- The purpose of this rule is to aid in the implementation and enforcement of the Uniform Unclaimed Property Act as set forth in W.Va. Code §36-8-1, et seq.

1.6. Repeal of former rule. -- This legislative rule repeals and replaces 112CSR5 "Rules for Enforcement of the Uniform Disposition of Unclaimed Property Act" filed May 17, 1991 and effective April 19, 1991.

§112-5-2. Definitions.

For the purposes of this rule, the definitions and use of terms contained in West Virginia Code §36-8-1 et seq., have the same use and meaning as prescribed to them by the Code, unless a different meaning is clearly required by the context. Additionally, for purposes of this rule, the following definitions apply:

2.1. "Act" means the Uniform Unclaimed Property Act, West Virginia Code §36-8-1, et seq., and the rules promulgated thereunder.

2.2. "Dormancy Charge" means any charge deducted by a holder from property subject to the Act, which is imposed solely by virtue of the inactivity of that property, including service charges, handling charges, and administrative costs.

2.3. "Holder" means a person obligated to hold for the account of, or deliver or pay to, the owner property that is subject to this article.

2.4. "Indication of Interest In Property" occurs when the owner takes any action described in §36-8-2(c) or (d) of the Act which prevents a presumption of abandonment.

2.5. "Last Activity Date" means the last verifiable date of owner authorized activity or contact with the property being remitted to the administrator.

2.6. "NCIC" means the National Crime Information Center.

2.7. "Safe Deposit Box" means any safe, vault, safekeeping repository, or collateral deposit box.

2.8. "Security" means any:

- (a) stock;
- (b) treasury stock;
- (c) bond;
- (d) debenture;
- (e) evidence of indebtedness;
- (f) certificate of interest or participation in any profit-sharing agreement or arrangement;
- (g) collateral-trust certificate;
- (h) preorganization certificate or subscription;
- (I) transferable share;
- (j) investment contract;
- (k) investment fund share;
- (l) face amount certificate;
- (m) voting-trust certificate;
- (n) certificate of deposit;
- (o) put, call, straddle, option or privilege entered into on a national securities exchange;

(p) certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing; and

(q) interest or instrument commonly known as a security and any other interest which is a security under state or federal securities laws.

§112-5-3. Presumption Of Abandonment.

3.1. Activities which do not prevent the presumption of abandonment, include, but are not limited to, automatic postings to accounts, computer system conversion dates, and non-return of mail.

3.2. Registered interest paying bonds are presumed abandoned five years after the date of the earliest unrepresented instrument issued to pay interest. Bearer bonds are presumed abandoned five years after the issuer's obligation to pay the principal, either by call or maturity.

§112-5-4. Safe Deposit Boxes.

4.1. Contents of safe deposit boxes, or proceeds resulting from the sale of the property permitted by law, which are unclaimed for more than five years after expiration of the lease or rental period on the boxes are presumed abandoned. The boxes shall be opened and inventoried in the presence of at least two employees of the holder. The property shall then be sealed for safekeeping with a copy of the inventory attached to the outside of each storage box or envelope until delivered to its owner or the administrator.

4.2. The administrator shall offer property recovered from safe deposit boxes for public sale.

4.3. The cost of opening the safe deposit box is reimbursable when there is a valid lien or contract providing for the holder to be reimbursed for unpaid rent or storage charges. The administrator shall reimburse the holder from the proceeds of the sale of the contents of the safe deposit box, after deducting the expense incurred by the administrator in selling the property. The amount of reimbursement to the holder shall not exceed the amount remaining after deduction of the expenses. No other charges are deductible unless otherwise authorized by law or expressly provided by lawful contract with the owner.

§112-5-5. Gift Certificates.

Gift Certificates issued for food, products, goods, or services are exempt from the Act. If a gift certificate issued for cash or credit is unclaimed for three years following December 31 of the year in which it was issued, then 100% of the purchase price or money shall be remitted to the State.

§112-5-6. Dormancy Charges And Other Deductions.

6.1. A holder may deduct a dormancy charge from property presumed abandoned only if there is a valid and enforceable written contract between the holder and the owner under which the holder may impose the charge. The amount of the deduction is limited to an amount that is not unconscionable.

6.2. When dormancy charges are deducted, the holder shall report the value or amount of each item of property prior to deduction of the dormancy charges and the amount of the dormancy charges in the remittance report filed.

§112-5-7. Reporting/due diligence.

7.1. Persons holding property presumed abandoned and subject to the Act shall file a report with the administrator concerning the property. Holders shall file reports before the first day of November of each year for the period of July 1 through June 30, except life insurance companies which shall file their reports before the first day of May of each year for the period of January 1 through December 31. The report shall be verified, notarized and include:

7.1.a. the name and social security or federal employer identification number, if known, and best address, which includes but is not limited to e-mail and computer codes, of each person appearing from the records of the holder to be the apparent owner of any property presumed abandoned under the Act with an aggregate value of fifty dollars or more;

7.1.b. in case of unclaimed funds of life insurance companies, the full name of the insured or annuitant and any beneficiary, if known, according to the life insurance company's records;

7.1.c. in the case of the contents of a safe deposit box or other safekeeping depository or in the case of other personal property, a description of the property and any identifying number for each item of property;

7.1.d. the total of each safe deposit box opening charge and unpaid rent or storage charges for which the holder requests reimbursement;

7.1.e. the date of the owner's last indication of interest in the property according to the records of the holder; and

7.1.f. in the case of an interest-bearing demand, savings or time deposit, the annual interest rate at the time the property was paid to the administrator.

7.2. Performance of due diligence is, but is not limited to, a first class mailing to owners as required by W.Va. Code §36-8-7 (e). A holder is required to make a due diligence mailing to owners whose property, prior to deducting allowable dormancy and service charges, has an aggregate value of less than \$50 or more, or is included in the categories of securities, commodities, safe deposit boxes and tangible property. The letter shall contain:

7.2.a. the steps required by the owner to claim the property;

7.2.b. the steps required by the owner to have the holder reactivate the account and continue to maintain the property for the owner;

7.2.c. a statement that if the owner does not take the steps set forth either in subdivisions 7.2.a or 7.2.b of this subsection, the property will be remitted to the State;

7.2.d. a statement that, the State is only a custodian for property presumed abandoned and remitted to the State, and that the owner or his or her heirs do not lose their rights to the property and may file a claim for the property with the State;

7.2.e. a date, not less than fifteen business days prior to the date the holder will remit the property to the State, by which the owner must contact the holder; and

7.2.f. the name, address, and telephone number of the person to contact at the holder.

7.3. The administrator shall consider a report received and filed when it has been received in a complete, accurate, and correct form including any required remittance to the administrator's Unclaimed Property Division office in Charleston, West Virginia.

7.3.a. Any report or remittance submitted to the administrator may be:

7.3.a.1. incomplete (i.e., reports which do not include vital and pertinent information or appropriate detail; reports which are in an incorrect format; or reports which are accompanied by remittances made out to an improper payee, or account, or which reference an improper or incorrect account or security designee); or

7.3.a.2. inaccurate (i.e., reports that are out of balance and remittances that are less than the property reported or do not include remittable interest, dividends, stock splits or underlying securities).

7.3.a.3. Any report containing incomplete or inaccurate information will be returned to the holder for correction.

7.3.b. If the administrator returns a report or remittance to a holder because it is incomplete or inaccurate, the holder shall submit a corrected report or remittance to the administrator within twenty calendar days after the administrator's return of the original report or remittance to the holder.

7.3.c. Records of a holder failing to submit a corrected, accurate and complete report or remittance within the time set forth in subdivision 7.3.b. of this rule are subject to examination.

7.3.d. The administrator may assess interest and penalties against a holder failing to file a report and remittance on or before the time specified in subdivision 7.3.b. of this rule.

7.4. A holder shall file the report on:

7.4.a. a paper form provided by or approved by the administrator; or

7.4.b. any other form authorized by administrator.

7.5. Holders discovering unreported property shall file a report immediately upon discovery of the omission. The holder shall identify this property as being reported late and the reason for the omission.

7.6. A holder seeking an extension of time in which to report or remit shall file a request with the administrator for receipt by the administrator a minimum of thirty (30) calendar days prior to the due date.

7.6.a. A request by a holder for an extension of time to report or remit must include a reasonable cause for delaying the report or remittance. Reasonable cause includes, but is not limited to, a natural disaster, criminal activity related to the holder's books and records, or a recent change in the form of ownership of the holder through merger, acquisition or reorganization. Reasonable cause does not include the failure of a holder to perform the due diligence required under subsection 7.2. of this rule.

7.6.b. The administrator shall respond to each request for extension within twenty (20) days after receipt of the request.

7.6.c. The holder shall submit a payment of 80% of the estimated amount due upon receipt of the extension.

7.6.d. The administrator may grant the holder an extension of not less than thirty (30) days and no more than ninety (90) days from the date the report and/or remittance are due.

§112-5-8. Payment Or Delivery.

8.1. If the property is an automatically renewable deposit, and a penalty or forfeiture in the payment of interest would result, the delivery shall not be required until a penalty or forfeiture would no longer result.

8.2 If the property reported to the administrator is a security and the holder has legal authority to transfer title or record of ownership of the security, the holder shall transfer ownership of the security to the State of West Virginia or the street name of a financial institution designated by the State of West Virginia prior to delivery of the security to the administrator.

8.3. Whenever the administrator receives a security pursuant to W.Va. Code §36-8-8(b) in the name of the owner, he or she may take appropriate action to transfer the record

of ownership of the securities to the State of West Virginia or the street name of the financial institution designated by the State of West Virginia to handle the security.

8.4. Holders shall deliver all other property subject to the Act to the administrator at the time of filing the report.

§112-5-9. Advertising

In addition to the published notice required in W.Va. Code §36-8-9, the administrator may use other forms of advertising that, in the judgment of the administrator, would be in the best interests of the apparent owners of the unclaimed property.

§112-5-10. Custody by state.

10.1. A holder is relieved of all liability when property presumed abandoned is turned over to the administrator in good faith. Good faith means:

10.1.a. a reasonable attempt was made by the holder for payment or delivery of the property; and

10.1.b. the records meet reasonable standards of practice in the holder's industry.

10.2. A holder may recover payment for property paid to the owner that has been previously turned over to the state. The holder shall submit proof of payment and supporting documentary evidence that the payee was entitled to the property.

10.3. The holder shall add interest when paying a claim to the owner for property previously paid or delivered to the administrator at the rate prescribed in W.Va. Code §36-8-11.

§112-5-11. Claims.

11.1. After property has been paid or delivered to the administrator under W.Va. Code §36-8-8, another state may recover any property subject to W.Va. Code §36-8-4.

11.2. A person, excluding another state, claiming property paid or delivered to the administrator shall file a claim on a form prescribed and provided by the administrator. In addition to the prescribed form, the claimant shall:

11.2.a. provide a photo copy of his or her driver's license, or other acceptable form of identification approved by the administrator;

11.2.b. complete an affidavit prescribed by the administrator on all claims of two hundred fifty dollars or more;

11.2.c. provide the original certificates in the case of securities. If original certificates are not available, the holder shall complete and file an affidavit in the form prescribed by the administrator;

11.2.d. complete a claim form which must be verified by a notary; and

11.2.e. provide any other evidence the administrator may require in order to allow claim.

§112-5-12. Destruction or Disposition of Property.

If the administrator determines that any property delivered under the Act, has no substantial commercial value, the administrator may destroy or otherwise dispose of the property at any time. The administrator may destroy or otherwise dispose of the property in any reasonable manner selected by the administrator.

§112-5-13. Periods of Limitation.

13.1. The expiration of a period of limitation on the owner's right to receive or recover property does not preclude the property from being presumed abandoned or affect a duty of the holder to file a report or to pay or deliver or transfer property to the administrator as required by the Act.

13.2. The administrator shall commence an action against a holder within ten years after the time the property was first reported or specifically placed in issue.

13.3. A holder which conceals property, willfully or otherwise, does not have the protection of the stated limitations period provided in W.Va. Code §36-8-19.

§112-5-14. Requests For Reports and Examination of Records.

14.1. The administrator shall notify the holder in writing ten (10) days prior to an examination of the holder's records, conducted pursuant to §36-8-20 of the Act. The

administrator may waive the ten-day notice, prior to performing an examination, if the administrator determines that the existence of the records may be in jeopardy by use of the advance notice provision.

14.2. The administrator may also assess the cost of the examination of the records at a rate of \$200.00 per day for each examiner or the actual incurred expenses that are reasonable and that do not exceed the value of property found to be reportable.

14.3. The administrator may require a holder to report and pay unclaimed property that the administrator reasonably estimates is due based upon the examination of the records.

§112-5-15. Retention of records.

15.1. A holder required to file a report under §36-8-7 of the Act shall keep a record of:

15.1.a. the name and last known address of each person who, from the records of the holder of the property, appears to be the owner of the property;

15.1.b. a brief description of the property, including the identification number, if any; and

15.1.c. the balance of each account, if appropriate.

§112-5-16. Disposition/Reporting Of Property Held By Law Enforcement Agencies.

16.1. Stolen property, as defined in W. Va. Code §36-8A-1 (e) and (g), includes only those items that would not afterward be subject to W. Va. Code §62-1A-1, et seq.

16.1.a. All stolen property subject to W. Va. Code §36-8A-1 et seq., with any distinguishable serial numbers or other verifiable identification shall be checked and cleared through the NCIC system by the law enforcement agency in possession of the property prior to delivery to the administrator. Any weapon or ammunition not cleared through NCIC shall be immediately returned to the law enforcement agency.

16.1.b. Any damages or injuries caused by failure to clear the stolen property through NCIC is the responsibility and liability of the law enforcement agency failing to clear the property.

16.2. Law enforcement agencies shall tender their report of unclaimed stolen property to the administrator any time after the six (6) month period prescribed in W. Va. Code §36-8A-1(g)(1). The administrator shall prescribe the report form.

16.3. Law enforcement agencies shall deliver all cash, coins and securities held by them that are not subject to the Uniform Controlled Substances Act, W. Va. Code §60A-1-1 et seq., to the administrator. No law enforcement agency or other holder shall deliver a controlled substance to the administrator.

16.4. Within thirty (30) days of the receipt of an unclaimed stolen property report the administrator shall send a written response to the agency submitting the report, either authorizing the requested disposition of each item or requiring the items to be delivered to the administrator, unless impracticable.

16.5. All NCIC cleared weapons and ammunition may be transferred among the different detachments and areas of a law enforcement agency, but only for the purposes set forth in W. Va. Code §36-8A-3 and §36-8A-5, and after delivery to the administrator. However, no weapons and ammunition may be transferred between a law enforcement agency and another law enforcement agency without the written approval of the administrator. The administrator may also authorize a request to transfer NCIC cleared weapons or ammunition to the West Virginia State Police or to the West Virginia Division of Natural Resources for the purposes set forth in W. Va. Code §36-8A-3.

16.6. All NCIC cleared weapons and ammunition delivered to the administrator and not transferred to a law enforcement agency shall be destroyed as soon as practicable.

16.6.a. The administrator shall select a contractor to destroy the NCIC cleared weapons, as the administrator determines appropriate. The destruction shall be performed in the presence of two witnesses, one witness an employee of the administrator's office.

16.6.b. The contractor shall confirm the destruction in writing, listing the description of each item, make, model and serial number, if available. This confirmation must be verified by the two witnesses present during the destruction.

16.6.c. All documents pertaining to the destruction shall be kept in a permanent file in the administrator's office, and available for inspection by all authorized law enforcement officials during regular business hours.

16.7. Within thirty (30) days of any trade-in or appropriation of any NCIC cleared weapons or ammunition, the law enforcement agency shall file a written report with the administrator and the State Department of Tax and Revenue on a form prescribed by the administrator.

16.8. The administrator may authorize disposal of any item prior to delivery to the administrator, if he or she considers the probable cost of the delivery and sale will exceed the proceeds of the sale.

§112-5-17. Descent and Distribution.

If there is no taker under the provisions of W.Va. Code §42-1-3c, the intestate estate passes to the state. Any personal property shall pass to the administrator for disposition by public sale in accordance with W.Va. Code §36-8-12. The proceeds of the sale of the personal property shall be deposited to the credit of the general revenue fund.