

**WEST VIRGINIA  
SECRETARY OF STATE**

**KEN HECHLER**

**ADMINISTRATIVE LAW DIVISION**

rm #3

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JUL 1 4 24 PM '98

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

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

CITE AUTHORITY West Virginia Code §36-8-28

AMENDMENT TO AN EXISTING RULE: YES \_\_\_ NO X \_\_\_

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: Series 5

TITLE OF RULE BEING PROPOSED: Rule for Enforcement of the Uniform  
Unclaimed Property Act

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

*John D. Perdue*

Authorized Signature

\$9.00

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No, but a similar emergency rule was previously filed and withdrawn.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

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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 RULE**

**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.

**STATEMENT OF CIRCUMSTANCES REQUIRING RULE**

**TITLE 112**

**LEGISLATIVE RULE**

**STATE TREASURER'S OFFICE**

**SERIES 5**

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

This rule is required to comply with provisions of the Code of W. Va. Code §36-8-1 et seq. And the provisions of §29-9-a. Specifically, §36-8-28 requires the Administrator to propose legislative rules. Furthermore, the public interest may be substantially harmed if no formal procedures for handling unclaimed property were available.

**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) 341-0731  
Fax (304) 558-4177  
E-Mail dstout@wvtreasury.com

**1. Effect of Proposed Rule**

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$	\$	\$ -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.

**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

FILED

JUL 1 4 24 PM '98

TITLE 112  
LEGISLATIVE RULE  
STATE TREASURER'S OFFICE

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

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 rule.

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. However, if the holder has in its records an address for the apparent owner that its records disclose as inaccurate or if the claim is barred by the statute of limitations, the holder is not required to make the due diligence mailing. The due diligence 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.~~ In the event a holder pays a claim to an owner for property previously paid or delivered to the administrator and interest is payable by the administrator, the holder shall pay the owner interest in the amount required to be paid by the administrator.

#### **§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.~~

**§112-5-1615. Disposition/Reporting Of Property Held By Law Enforcement Agencies.**

~~16.1. 15.1.~~ 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. 15.1.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. 15.1.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. 15.2.~~ 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. 15.3.~~ 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.~~ 15.4. 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.~~ 15.5. 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.~~ 15.6. 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.~~ 15.6.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.~~ 15.6.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.~~ 15.6.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.~~ 15.7. 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.~~ 15.8. 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~~ 112-5-16. 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.

A:\GENERAL\112CSR52

## COMMENTS AND RESPONSES TO COMMENTS

### 112 CSR 5

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

1. COMMENT: §112-5-7.2 needs clarification as to the dollar limitation. The rule currently reads, “has an aggregate value of less than \$50 or more” and the West Virginia Code §36-8-7(e)(3) states the value should be \$50 or more.

RESPONSE: Thank you for catching our error—it certainly cannot be both less than and more than \$50. In §112-5-7.2, line 4, we will strike the words, “less than”.
2. COMMENT: §112-5-7.2 should limit required mailing to those which the holder’s records do not disclose the address to be inaccurate, as specified in West Virginia Code §36-8-7(e)(1) to ensure consistency.

RESPONSE: We have modified §112-5-7.2 to reflect all of the requirements of West Virginia Code §36-8-7(e) by adding a new sentence after the first two sentences, to read: “However, if the holder has in its records an address for the apparent owner that its records disclose as inaccurate and if the claim of the apparent owner is barred by the statute of limitations, the holder does not have to make the due diligence mailing.”
3. COMMENT: §112-5-15 does not require the holder to retain the back-up documentation. Is examination pursuant to §112-5-14 and West Virginia Code §36-8-20 limited to the listing in the rule or will the examination include the supporting documentation? If the supporting documentation will be examined, the rules should specify the type of supporting documentation to retain and have available for review based on Property Type Codes. Given the administrator’s ability to, “require a holder to report and pay unclaimed property that the administrator reasonably estimates is due based upon the examination of the records,” the rules and the Code are too vague and do not provide sufficient information regarding records.

RESPONSE: We agree that this section of the rule is misleading. Therefore, we will delete it.
4. COMMENT: §112-5-10.3 requires the holder to add interest when paying a claim to an owner. Should the holder be the administrator?

RESPONSE: We are sorry that this subsection proved misleading. We have rewritten the subsection to read, "In the event the holder pays a claim to an owner for property previously paid or delivered to the administrator and interest is payable by the administrator, the holder shall pay the owner interest in the amount required to be paid by the administrator."

5. COMMENT: The most bothersome provision is §112-5-3, Presumption of Abandonment. To the contrary, there should be a presumption that property is not abandoned with the State having the burden of overcoming the presumption that the owner did not intend to abandon his/her property.

RESPONSE: While we appreciate your position, the rule merely reflects the provisions of West Virginia Code and we are unable to modify the rule to coincide with your position. The issue you raise goes to the heart of the unclaimed property policy.

6. COMMENT: Finally, I would like to see a section added dealing with the assets of minors. In those instances, the abandonment period should not start to run until the minor has reached majority.

RESPONSE: We are unable to add any new sections dealing solely with the assets of minors or incompetents as the current law makes no exceptions for their property. Please keep in mind that an owner or his or her representative may file a claim at any time for property that has been transferred to the State, and that the claim will be processed without charge.



West Virginia University  
Controller's Office

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June 24, 1998

Diana Stout  
West Virginia State Treasurer's Office  
Building 1 Room E-122  
Capitol Complex  
Charleston, West Virginia 25305

Dear Sir or Madam:

I have reviewed emergency and legislative rule, Title 112 Series 5 Rule for Enforcement of the Uniform Unclaimed Property Act. Comments are addressed by code section and are based on the copy of Title 112 Section 5 attached to a memo from the Office of the State Treasurer dated May 26, 1998.

§112-5-7.2 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:

This section, "...has an aggregate value of less than \$50 or more", seems to indicate that all owners should receive the due diligence mailing. W. Va. Code §36-8-7 (e)(3) clearly indicates that the due diligence mailing is required only for owners whose property assumed abandoned has a value of \$50 dollars or more. If the due diligence mailing has a \$50 per owner level limitation, W. Va. Code §112-5-7.2 needs clarification.

W. Va. Code §36-8-7 (e)(1) requires the mailing if, "the holder has in its records an address for the apparent owner which the holder's records do not disclose to be inaccurate." W. Va. Code §112-5-7.2 indicates that the first class mailing is required for due diligence without discussion of address limitation. Since W. Va. Code §112-5-7.2 is defining steps involved in due diligence, the address limitation needs indicated explicitly in W. Va. Code §112-5-7.2. By not explicitly integrating the address limitation, as was attempted with the dollar limitation, the code leaves room for debate regarding due diligence compliance. For example, records have an address on an apparent owner of property assumed abandoned worth \$100 that has been disclosed as inaccurate. W. Va. Code §36-8-7 (e)(1) indicates no due diligence letter is required; however, W. Va. Code §112-5-7.2 appears to indicate that the due diligence letter is required. This internal inconsistency needs to be resolved.

§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

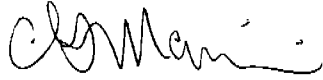
15.1.c the balance of each account, if appropriate.

June 24, 1998

W. Va. Code §112-5-15 requires that a listing of the apparent owner and property information be retained. It does not require the holder to retain the back-up documentation. W. Va. Code §112-5-14 and §36-8-20 allows the administrator or the administrator's agent to examine our records. Is the examination limited to the listing required by W. Va. Code §112-5-5 or will the examination include the supporting documentation? If the supporting documentation will be examined, the rules should specify the type of supporting documentation to retain and have available for review based on Property Type Codes. Given the administrator's ability to, "require a holder to report and pay unclaimed property that the administrator reasonably estimates is due based upon the examination of the records," W. Va. Code §112-5-14.3, the code and rules are too vague and do not provide sufficient information regarding records.

If I can be of further assistance, please contact me at (304) 293-4002 ext. 2398 or by e-mail at [cmancini@wvu.edu](mailto:cmancini@wvu.edu).

Sincerely,



C. G. Mancini

Controller  
West Virginia University

Attachments: (2)

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.

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.



The Huntington National Bank  
Retail Operations  
P.O. Box 853  
Morgantown, West Virginia 26507-0853

304.291.7155  
304.291.7715  
Facsimile 304.291.7773

June 23, 1998

West Virginia State Treasurer's Office  
Attention: Diana Stout  
Building 1 Room E-122  
Capitol Complex  
Charleston, WV 25305

RE: Unclaimed Property Rules Revision

Dear Ms. Stout:

On behalf of Douglas J. Leech, President, Huntington National Bank, please find enclosed the response for the Unclaimed Property Rules Revision Proposal Dated May 22, 1998.

Thank you.

Sincerely,

A handwritten signature in cursive script that reads 'Kimberly D. Parker' with a small 'HB' monogram to the right.

Kimberly D. Parker  
Assistant Vice President  
Retail Operations

enclosure

Take control of your money.™

UNCLAIMED PROPERTY RULES REVISION  
PROPOSAL DATED MAY 22, 1998

112.53 - Presumption Of Abandonment

3.1 - Dropped - Activities which do not prevent the presumption of abandonment will no longer include automated clearing house transfers or activities not requiring a direct owners response.

3.2 - Dropped - An owners knowledge of some of his property held by a holder does not imply knowledge of all of his property held by a holder.

3.4 - Dropped - Property is presumed abandoned and reportable notwithstanding the apparent owner's failure to present evidence of ownership to the holder or to make demand for payment.

3.5 - Dropped -The distribution and acceptance of interest income on certificates of deposit shall be evidence of an owner's interest in an automatically renewing certificate of deposit. Acceptance of the interest income may be evidenced by the fact that the owner cashed a check for interest or, if the interest is directly deposited in another account, that account is one which is not inactive or dormant, or is one in which other evidence of an owner's interest exist. The acceptance of interest shall not be indicated by the mere crediting of interest to the certificate of deposit.

\*\*\*\*\*I could think of no valid reason for any of the above not to be excluded from the rulings due to the volumes of correspondence that the Bank releases to our customers. The regular notices and letters that we send would rarely allow for an account holder not to be aware of funds or properties within our institution.

---

112-5-4 - Safe Deposit Boxes

4.2 - Dropped - Pursuant to Section 8 (a) of the Act, property held in a safe deposit box or other safekeeping depository may not be delivered to the administrator until one hundred twenty days after filing the report required by Section 7 of the Act.

\*\*\*\*\*This was a very wise move for the State - it seemed ludicrous to have to maintain the contents for an additional 120 days after the report was remitted to the State of WV. How much responsibility and time should the Bank have to endure from the hands of delinquent customers.

---

## 112-5-6 - Dormancy Charges and Other Deductions

6.1 - Dropped - A copy of the contract authorizing such charges

6.3 - Dropped - Other information or documentation as the administrator may require to substantiate the deduction of charges. This may include correspondence, signature cards, regulations, previously existing contracts between the holder and the owner, by-laws or any other documentation concerning any agreement between the holder and the owner.

\*\*\*\*\*Basically reads the same as before the revision as to being allowed to access a dormant service charge if there is a valid and enforceable written contract between the holder and the owner of the account. The service charge cannot be of an unreasonable or excessive amount and occurrence.

---

## 112-5-7 - Reporting/Due Diligence

7.1.c - Dropped part of the paragraph - will not have to identify where the items were being held in case the customer wanted to inspect the contents. Will not have to include a copy of the safe deposit box contract with the contents when they are sent to the State Treasurer's office.

7.1.d - Dropped the reference to a detailed inventory list for items worth fifty dollars or more in the aggregate. The Bank must still include an inventory list describing the contents. \*\*\*I feel the deletion of the inventory list for items valued at fifty dollars or more was justified - (after all most bankers are not appraisers also, how would we know without seeking outside assistance of an expert what some items are valued at).

7.1.f - Dropped the paragraph indicating that the total dormancy charges withheld and a copy of the written contract authorizing the imposition of the dormancy charges must be included with the report.

7.1.h - Dropped the paragraph requiring a verification of the performance of due diligence in accordance with Section 7 (e) of the Act. \*\*\*I keep a copy of all customer notices and letters, should the State desire to review them at a future date.

7.2.a - f - No major changes, only some grammar changes.

7.3.a - d - No significant changes other than in grammar.

7.4.a - b - No changes

7.5 - Only changes is in grammar.

7.6.a - d - Only changes is in grammar.

---

112-5-8 - Payment Or Delivery

8.1 - Dropped - Property held in a safe deposit box or other safekeeping depository may not be delivered to the administrator until one hundred twenty days after filing the report required by Section 8 of the Act. \*\*\*This was a positive deletion as I do not believe the Bank should have to handle the items for an additional 120 days in anticipation that the owner might show up and claim the contents after it has been dormant for the past five years anyway.

8.2 - No change

8.3 - No change

8.4 - No change

8.5 - No change

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112-5-9 - Advertising - No change

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112-5-10 - Custody By State

10.1 - No change

10.1.a - No change

10.1.b - No change

10.2 - No change

10.3 - Changed the word must to shall, the paragraph now reads:

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. \*\*\*I still take the stand that it is not the Banks responsibility to pay the funds back to the customer. I prefer assisting the customer in completing the (Holder Claim Form - Claim and Affidavit for Recovery of Property) form that is provided to the owner by the State Treasure's Office. Once the form has been filed the State can then reimburse directly to the Customer. Why should the Bank have to pay the customer up-front with interest if it was an interest bearing account and place the amount in a suspense account of some sort until we are reimbursed by the State at a later date? To what degree are we truly responsible for the customer neglecting to maintain their current addresses with us?

---

112-5-11 - Claims

- 11.1 - No change
- 11.2 - No change
- 11.2.a - No change
- 11.2.b - No change
- 11.2.c - No change
- 11.2.d - No change
- 11.2.e - No change

---

112-5-12 - Action to Establish Claims - This paragraph was deleted and now 112-5-12 is entitled - Destruction or Disposition of Property. The paragraph that was deleted under the title of Action to Establish Claims read as:

A person aggrieved by a decision of the administrator or whose claim has not been acted upon within ninety days after its filing may maintain an original action to establish the claim in the circuit court of Kanawha County, naming the administrator as a defendant. \*\*\*I assume the State removed this paragraph to alieve itself of possible lawsuits due to being in noncompliance to their own rules and regulations. :))

The new 112-5-12 entitled Destruction or Disposition of Property had no changes in the States authority to dispose of property of no value in any reasonable manner selected by the Administrator.

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112-5-13 - Election to Take Payment or Delivery - Paragraphs 13.1 and 13.2 were deleted and now 112-5-13 is entitled - Periods of Limitation. The paragraphs that was deleted under the title of Election to Take Payment or Delivery read as:

13.1 - The administrator may decline to receive any property which the administrator considers to have a value less than the expenses of notice and sale. \*\*\*I believe this was correct in being removed, because again we are bankers not appraisers and how are we to know the value of various pieces of jewelry or old coins without seeking expert assistance outside of the bank.

13.2 - A holder, upon prior written approval of the administrator, may report and deliver property before the property is presumed abandoned. Property so delivered must be held by the administrator until the abandonment period runs and then the property will be subject to the other visions of the Act. \*\*\*I feel deleting this paragraph was a good idea - when would the bank have any need to deliver property before it is even considered abandoned. I do not feel that would be looked upon favorably by our customers and other community leaders.

The new 112-5-13- entitled Periods of Limitation had no changes in the States ruling on being able to commence an action against a holder within ten years after the time the property was first reported or specifically placed in issue. There was no change in the stated limitation protection laws for a holder who conceals property willfully under W.Va. Code 36-8-19.

---

112-5-14 - Request For Reports and Examination of Records

No changes for this section.

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112-5-15 - Retention of Records

The only change on this is they dropped the paragraph that read:

The record must be kept for 10 years from the date on which the report is filed, regardless of whether the property is reported in the aggregate under W.Va. Code 36-8-7 (b)(3). \*\*\*However, the Act still makes reference to ten years under the Periods of Limitation 13.2. It reads as: 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. THEREFORE, I would recommend that we continue to keep the records for a period of ten years.

---

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

Kim, I did not take time to even review this section as it does not apply to the Bank.

---

112-5-17 - Descent and Distribution

No notable changes in this section.

---

112-5-18 - Enforcement

This paragraph was completely deleted in the May 22, 1998 revision of the Code and I agree with that decision. The paragraph was not needed as it simply stated the States right to enforce the Abandoned Property Act.

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112-5-19 - Interstate Agreements

This entire section was deleted and I agree with that decision. It places the responsibility back with the State Treasurer's Office to deal with other States requesting property that was part of WV's Abandoned Property Act.

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115-5-20 - Interest and Penalties.

This paragraph was deleted in the May 22, 1998 revision of the Code. It was not needed due to it is already covered as part of 112-5-7 - Reporting/Due Diligence, 7.3.d. It reads as: 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.

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115-5-21 - Disposition/ Reporting of Property Held By Law Enforcement Agencies

This is now number 112-5-16 in the revised rule proposal of May 22, 1998. See 112-5-16 above.

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115-5-22 - Rules

This section was deleted in the May 22, 1998 proposed revision of the rule. It read as: The administrator shall promulgate emergency Legislative Rules as prescribed in W.Va. Code 36-8-28.\*\*\*I believe this section definitely should be deleted. The State has created so much turmoil this past year due to jumping the gun and attempting to enforce rules and regulations that has not even become law. Also, how do they expect us to comply when they can't even get the new rules to the printers and distributed in a timely manner.

---

115-5-23 - Descent and Distribution

This is now number 112-5-17 in the revised rule proposal of May 22, 1998. See 112-5-17 above.

---



# STEEL WORKS COMMUNITY FEDERAL CREDIT UNION

3501 MAIN STREET • P.O. BOX 762 • COVE STATION • WEIRTON, WEST VIRGINIA 26062  
TELEPHONE (304) 748-8600

JUNE 4, 1998

OFFICE OF JOHN D. PERDUE  
STATE TREAS. - WV  
ATTN: UNCLAIMED PROPERTY DIVISION  
STATE CAPITOL BLDG.  
CHARLESTON, WV 25305-0860

RE: PROMULGATION OF LEGISLATIVE RULE, DESIGNATED AS SERIES 5  
(RULE FOR ENFORCEMENT OF THE UNIFORM UNCLAIMED PROP. ACT)

Dear Sirs:

Enclosed is a comment dated June 3, 1998 from our Legal Counsel  
in response to your letter of May 26, 1998. (copy enclosed)

Please take it into consideration and thank you for your  
correspondence regarding this matter.

Sincerely,

James Friebe  
Internal Audit

Copy To: George J. Anetakis, Attorney at Law  
(Frankovitch, Anetakis, Colantonio, and Simon)

**Main Office Annex:** 3539 Main Street, Weirton, West Virginia  
**Chester Branch:** 3rd and Carolina Avenue, Chester, West Virginia  
**Plaza Branch:** 1600 Potomac Avenue, Weirton, West Virginia  
**Steubenville Branch:** 1835 Sunset Blvd., Steubenville, Ohio  
**Wheeling Branch:** 1990 Chapline Street, Wheeling, West Virginia

# FRANKOVITCH, ANETAKIS, COLANTONIO & SIMON

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OF COUNSEL  
CARL FRANKOVITCH  
JOHN H. KAMLOWSKY

June 3, 1998

ADMITTED TO PRACTICE IN  
\* WEST VIRGINIA  
† PENNSYLVANIA  
‡ OHIO

## VIA COURIER

Mr. Jim Friebe  
Internal Auditor  
Steel Works Community  
Federal Credit Union  
P.O. Box 762  
Cove Station  
Weirton, WV 26062

### **RE: Uniform Unclaimed Property Act**

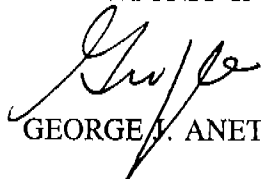
Dear Jim:

I have reviewed the proposed promulgation of Legislative Rules (the "Rules") for enforcement of the Uniform Unclaimed Property Act (the "Act"). The Rules are quite comprehensive and are obviously intended to make it easier for the State to obtain assets it believes are subject to escheatment and to otherwise respond to certain vague provisions of the Act. The most bothersome provision is § 112-5-3, Presumption of Abandonment. To the contrary, there should be a presumption that property is not abandoned with the State having the burden of overcoming the presumption that the owner did not intend to abandon his/her property. Finally, I would like to see a section added dealing with the assets of minors. In those instances, the abandonment period should not start to run until the minor has reached majority.

You may wish to pass these comments on to the State Treasurer. If I can be of further assistance, please advise.

Very truly yours,

FRANKOVITCH, ANETAKIS,  
COLANTONIO & SIMON

  
GEORGE J. ANETAKIS

GJA/km



State of West Virginia  
OFFICE OF THE STATE TREASURER  
CHARLESTON, WV 25305

JOHN D. PERDUE  
STATE TREASURER

JERRY SIMPSON  
ASSISTANT STATE TREASURER

STOP PAYMENT DIVISION  
304-341-0763  
FAX: 304-558-4178

CASH MANAGEMENT  
304-341-0724  
FAX: 304-558-4179

EFT DIVISION  
304-341-0710  
FAX: 304-558-4179

To: West Virginia Banking Institutions

From: Honorable John D. Perdue, State Treasurer *John D. Perdue*

Subject: Promulgation of Legislative Rule, designated as Series 5 (Rule for Enforcement of the Uniform Unclaimed Property Act)

Date: May 26, 1998

The subject rule has been filed with the Secretary of State's Office and the Legislative Rule Making Review Committee. A copy of the rule is attached.

Please note that a public comment period for this rule is scheduled to end Thursday, June 25, 1998, at 4:00 p.m. Comments are welcome.

If you have any questions or need any additional information, please contact Diana Stout of my office or me at (304) 558-5000. Thank you for your consideration in this matter.

112 CSR 5

**AMENDMENTS TO RULE**

**AND**

**REASONS FOR AMENDMENTS**

The following amendments were made to Legislative Rule 112 CSR 5, Rule for Enforcement of the Uniform Unclaimed Property Act, by section:

1. §112-5-2.3. Changing “article” to “rule”, to conform to general usage.
2. §112-5-7.2. Amended to clarify in response to comment.
3. §112-5-10.3. Rewritten to clarify in response to comment.
4. §112-5-15. Entire section struck in response to comment. Remaining sections were renumbered.