

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER

ADMINISTRATIVE LAW DIVISION

rm #4

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Nov 19 11 26 AM '98

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: State Treasurer's Office TITLE NUMBER: 112

CITE AUTHORITY §36-8-28

AMENDMENT TO AN EXISTING RULE: YES ___ NO X

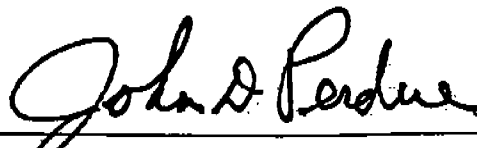
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

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

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

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.



Authorized Signature

\$4.00

TITLE 112
LEGISLATIVE RULE
STATE TREASURER'S OFFICE

SERIES 5
ENFORCEMENT OF THE
UNIFORM UNCLAIMED PROPERTY ACT

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SECRETARY OF STATE

§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 under the Act.

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 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; or
- (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.

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.

§112-5-4. Safe Deposit Boxes.

4.1. The 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. At least two employees of the holder shall open and inventory the boxes. The holder shall seal the property in storage boxes or envelopes for safekeeping and attach a copy of the inventory to each container.

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. Dormancy Charges And Other Deductions.

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 with the administrator.

§112-5-6. Reporting and due diligence.

6.1. A person holding property presumed abandoned and subject to the Act shall file a report with the administrator concerning the property. A holder shall file the report before the first day of November of each year for the period of July 1 through June 30, except a life insurance company which shall file its report 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:

6.1.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;

6.1.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;

6.1.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;

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

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

6.1.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.

6.2. 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 \$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:

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

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

6.2.c. a statement that if the owner does not take the steps set forth either in subdivisions 6.2.a. or 6.2.b. of this subsection, the property will be remitted to the State;

6.2.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;

6.2.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

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

6.3. 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.

6.3.a. The administrator may return any incomplete or inaccurate report or remittance to the holder for correction.

6.3.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.

6.3.c. Records of a holder failing to submit a corrected, accurate and complete report or remittance within the time set forth in subdivision 6.3.b. of this rule are subject to examination.

6.3.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 6.3.b. of this rule.

6.4. A holder shall file the report on:

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

6.4.b. any other form authorized by administrator.

6.5. A holder 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.

6.6. 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.

6.6.a. A request by a holder for an extension of time to report or remit shall 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 6.2. of this rule.

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

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

6.6.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.

§112-5-7. Payment Or Delivery.

7.1. 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.

7.2. 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.

7.3. A holder shall deliver all other property subject to the Act to the administrator at the time of filing the report.

§112-5-8. 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.

§112-5-9. Custody by state.

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.

§112-5-10. Claims.

10.1. 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.

10.2. 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:

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

10.2.b. complete an affidavit prescribed by the administrator on all claims of

two hundred fifty dollars or more;

10.2.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;

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

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

§112-5-11. 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.

§112-5-12. Periods of Limitation.

12.1. 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.

12.2. 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.

§112-5-13. Requests For Reports and Examination of Records.

13.1. 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.

13.2. 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.

§112-5-14. Disposition/Reporting Of Property Held By Law Enforcement Agencies.

14.1. 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.

14.1.a. A law enforcement agency shall check all unclaimed property subject

to W. Va. Code §36-8A-1 seq., with any distinguishable serial numbers or other verifiable identification through the NCIC system prior to delivery of the property to the administrator. The administrator shall immediately return any unclaimed property not cleared through NCIC to the submitting law enforcement agency.

14.1.b. A law enforcement agency failing to clear stolen property through NCIC as required by this rule is responsible and liable for any damages or injuries caused by the failure to clear the property.

14.2. 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.

14.3. 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.

14.4. 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.

14.5. The administrator may transfer any NCIC cleared unclaimed property among the different detachments and areas of law enforcement for the purposes set forth in W. Va. Code §36-8A-3 and §36-8A-5.

14.6. The administrator shall destroy all NCIC cleared weapons and ammunition delivered to him or her as soon as practicable.

14.6.a. The administrator shall select a contractor to destroy the NCIC cleared weapons, as the administrator determines appropriate. Two persons, one of whom is an employee of the administrator, shall witness the destruction.

14.6.b. The contractor shall confirm the destruction in writing, listing the description of each item, make, model and serial number, if available. The two witnesses present during the destruction shall verify the confirmation.

14.6.c. The administrator shall keep all documents pertaining to the destruction in a permanent file in his or her office available for inspection by all authorized law enforcement officials during regular business hours.

14.7. 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.

14.8. 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.

§112-5-15. 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 passes to the administrator for disposition by public sale in accordance with W. Va. Code §36-8-12. The administrator shall deposit the proceeds of the sale of the personal property to the credit of the general revenue fund.

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WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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November 12, 1998

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NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Diana Stout
State Treasurer's Office
Capitol Complex
Building 1, Room E-122

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Rule for the Enforcement of the Uniform Unclaimed Property Act, 112CSR5**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed _____
 - (b) as modified by the agency _____
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. _____
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____

ANALYSIS OF PROPOSED LEGISLATIVE RULES

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Agency: State Treasurer

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Subject: Enforcement of the Uniform Unclaimed Property Act,
112CSR5

PERTINENT DATES

Filed for public comment: May 22, 1998
Public comment period ended: June 25, 1998
Filed following public comment period: July 1, 1998
Filed LRMRC: July 2, 1998
Filed as emergency: May 22, 1998

Fiscal Impact: None

ABSTRACT

The proposed rule repeals and replaces a current legislative rule. The following is a section by section synopsis of the proposed rule.

Section 1 is the standard general section, setting forth the scope, authority, filing date and effective date of the proposed rule.

Section 2 defines terms.

Section 3 relates to the presumption of abandonment. It provides that activities such as automated clearing house transfers and automatic postings to accounts do not prevent the presumption of abandonment. It also provides that registered interest paying bonds are presumed abandoned 5 years after the date of the earliest unrepresented instrument issued to pay interest and bearer bonds 5 years after the issuer's obligation to pay the principal.

Section 4 relates to safe deposit boxes. It requires that abandoned boxes be opened in the presence of at least 2 employees of the holder and that the property be sealed with a copy of the inventory attached to the outside of each storage box.

Section 5 provides that gift certificates for goods or services are exempt from the provisions of the Code and that 100% of the purchase price of gift certificates for cash or credit are to be remitted to the State.

Section 6 allows a holder to deduct a dormancy charge from property presumed abandoned if there is a valid and enforceable contract allowing the charge. It sets forth the information which must be contained in a remittance report.

Section 7 requires a person holding property which is presumed to be abandoned to file a report with the administrator. Deadlines for filing the report and the contents of the report are specified.

Section 8 relates to payment or delivery and provides for the transfer of ownership of securities to the State.

Section 9 allows the Administrator to use other forms of advertisement in addition to the publication required by the statute.

Section 10 provides that a holder who has turned over to the Administrator, property which is presumed abandoned, is relieved of all liability, if the holder made a reasonable attempt of payment or delivery of the reportable property and his or her records meet reasonable standards of practice in the holder's industry.

Section 11 sets forth information which a person claiming property paid or delivered to the Administrator is required to submit with the claims form.

Section 12 provides that the Administrator may destroy or dispose of property having no substantial commercial value in any reasonable manner he or she chooses.

Section 13 contains the provisions of the statute regarding periods of limitation.

Section 14 requires the Administrator to notify a holder ten days in advance of an examination of the holder's records, unless the notice would jeopardize the records.

Section 15 relates to property held by law enforcement agencies. It provides for the disposition of stolen property, including weapons and ammunition.

Section 16 provides that property from an intestate estate passes to the State.

AUTHORITY

Statutory authority: W.Va. Code, §36-8-28, which provides, as follows:

On or before the first day of July, one thousand nine hundred ninety-seven, the administrator shall promulgate emergency legislative rules in accordance with the provisions of section fifteen, article three, chapter twenty-nine-a of this code. The administrator shall propose legislative rules for promulgation in accordance with the requirements of the secretary of state and the provisions of chapter twenty-nine-a of this code to otherwise effectuate the purposes of this article.

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

Possibly. Section 5 of the proposed rule states that gift certificates for food, products, goods or services are exempt from the provisions of the Act. Counsel was unable to find an

exemption and in fact WVC §36-8-2(a)(8) provides that gift certificates redeemable in merchandise only are to be valued at 60% of face value when presumed abandoned.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

Yes. The proposed rule is somewhat confusing in that it selectively repeats random provisions of the statute.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

Counsel has technical modifications to suggest.