

**WEST VIRGINIA  
SECRETARY OF STATE  
KEN HECHLER  
ADMINISTRATIVE LAW DIVISION**

Filing Date

**FILED**  
JUL 1 8 31 AM '97

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

Effective Date

August 5, 1997

**NOTICE OF AN EMERGENCY RULE**

AGENCY: State Treasurer's Office TITLE NUMBER: 112CSR5

CITE AUTHORITY: West Virginia Code - Section 38-8-28

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: Rules 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

  
Signature

Use additional sheets if necessary

DATE: July 1, 1997

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: State Treasurer's Office

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

1. Date of Filing 7/1/97

2. Statutory authority for promulgating emergency rule:

West Virginia Code - Section 38-8-28

3. Date of filing of proposed legislative rule: 7/1/97

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

This rule, promulgated via Senate Bill No. 125, adopts new language.

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

N/A

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 rule is required according to legislation passed in Senate

Bill No. 125, effective 7/1/97. Substantial harm to the public

interest could result by operating without this rule. (See

Statement of Circumstances of Proposed Rule).

**SUMMARY OF PROPOSED RULE**

**TITLE 112**

**LEGISLATIVE RULE**

**STATE TREASURER'S OFFICE**

**SERIES 5**

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

This rule implements the provisions of the Code of West Virginia, 1931, as amended, et seq. §36-8-1 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. This rule also incorporates samples with explanations of the forms to be used.

**STATEMENT OF CIRCUMSTANCES OF PROPOSED RULE**

**TITLE 112**

**LEGISLATIVE RULE**

**STATE TREASURER'S OFFICE**

**SERIES 5**

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

This agency approved rule is needed to comply with provisions of W. Va. Code embodied in Senate Bill No. 125, passed during the 1997 Regular Legislative Session on April 12, 1997, effective from passage on July 1, 1997. This bill specifies in §36-8-28 that legislative rules must be filed on an emergency basis and in conformity with the requirements of the secretary of state and the provisions of chapter 29-9-a of the code. Without this rule, the public interest can be substantially harmed, in that no formal procedures of handling abandoned and unclaimed property would be available.

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

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

**FILED**  
JUL 1 8 32 AM '97  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**§112-5-1. General.**

1.1. Scope. -- These rules implement the provisions of the Code of West Virginia, 1931, as amended, et seq. §36-8-1 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 general purpose of these rules is to aid in the implementation and enforcement of the Uniform Unclaimed Property Act as set forth in W.Va. Code §36-8-1.

1.6. Repeal of former rule -- This legislative rule repeals and replaces WV 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 purpose of these rules, the definitions and use of terms contained in the Code of West Virginia, 1931, as amended, §36-8-1. et seq., shall have the same use and meaning as prescribed to them by said Code, unless the context in which the same are used clearly requires a different meaning. Additionally, for the purpose of the rules, the following definitions shall be used:

2.1. "Act" means the Uniform Unclaimed Property Act [§36-8-1] et seq., and the rules in this part.

2.2. "Owners Interest In Property" occurs when the owner takes any action described in Section 2 of the Act which prevents a presumption of abandonment. Non return of mail shall constitute owners interest in property only if the holder sends a notice to the owner, return receipt requested, and has on file the signed receipt.

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

2.4. "Safe Deposit Box" includes any safe, vault, safekeeping repository, agency, or collateral deposit box.

2.5. "Dormancy Charges" constitute any charge deducted by a holder from property subject to the Act, which is imposed solely by virtue of the inactivity of that property; this includes service charges, handling charges, and administrative costs.

2.6. "Security" means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, reorganization certificate or subscription, transferable share, investment contract, investment fund share, face-amount certificate, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas or other mineral lease, right or royalty, any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a "security", or any 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.

### **§112-5-3. Presumption Of Abandonment.**

3.1. Activities which do not prevent the presumption of abandonment, include, but are not limited to, automated clearing house transfers, automatic postings to accounts, computer system conversion dates, non-return of mail, those which are non-owner initiated and those not requiring a direct owner response.

3.2. An owner's knowledge of some property does not imply knowledge of all his property held by the holder.

3.3. Registered interest paying bonds will be presumed abandoned five years after the date of an unrepresented instrument issued to pay interest. Bearer bonds will be

presumed abandoned five years after the issuer's obligation to pay the principal, either by call or maturity.

3.4. Retirement accounts and plans will be presumed abandoned three years from the plan distribution date.

3.5. Property is presumed abandoned and reportable even though the apparent owner fails to present evidence of ownership to the holder or to make demand for payment.

#### **§112-5-4. Safe Deposit Boxes.**

4.1. Pursuant to Section 3 of the Act, safe deposit boxes which have been unclaimed for more than five years after the expiration of the lease or rental period on the box shall be opened. Unless opened by the owner, such 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 box until delivered to the owner or the administrator.

4.2. Pursuant to Section 8 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.

4.3. The property shall be offered by the administrator for public sale pursuant to Section 12 of the Act.

4.4. Pursuant to Section 10 (g) of the Act, the holder may be reimbursed for the cost of opening the safe deposit box. There must be a valid lien or contract providing for the holder to be reimbursed for unpaid rent or storage charges. The administrator shall reimburse the holder out of the proceeds remaining 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 said expenses. No other charges may be deducted unless otherwise authorized by law or expressly provided for by lawful contract with the owner.

#### **§112-5-5. Gift Certificates.**

Gift Certificates that are issued for food, products, goods, or services are exempt from the act. If after three years after the thirty-first day of December of the year in which

the certificate was sold, a gift certificate that is issued for cash or credit is unclaimed, then 100% of the purchase price or money shall be remitted to the State.

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

Pursuant to Section 5 of the Act, a holder may deduct from property presumed abandoned a "Dormancy charge" 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 unreasonable, excessive, or regularly reversed.

No holder may seek to implement the terms of any contract against any abandoned property subject to the Act if he does not implement the terms of such contract against the owners who claim their assets prior to the presumption of abandonment.

The holder of abandoned property shall provide the following information as part of any remittance report filed pursuant to the Act from which charges have been deducted:

6.1. A copy of the contract authorizing such charges;

6.2. The value or amount of each item or property, prior to deduction of charges as well as the total amount of charges deducted from each item. The holder shall maintain a record for ten years from the date on which charges were deducted; and

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

#### **§112-5-7. Reporting/due diligence.**

7.1. A person holding property presumed abandoned and subject to custody as unclaimed property under this chapter shall report to the department concerning the property as provided in this section. The report must be filed before the first day of November of each year as of the thirtieth day of June, next preceding, for all business associations. The report must be filed for all life insurance companies before the first day

of May, of each year as of the thirty-first day of December, next preceding. The report shall be verified, notarized and shall include:

7.1.a. the name and social security or federal 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 of the value of fifty dollars or more presumed abandoned under this chapter;

7.1.b. in case of unclaimed funds of insurance corporations, the full name of the insured or annuitant and any beneficiary, if known, according to the insurance corporation'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 tangible property, a description of the property and the place where it is held and may be inspected by the administrator, along with a written enforceable contract with the owner allowing for the sale of contents or use of monies to cover unpaid rent or storage charges;

7.1.d. the nature and identifying number, if any, and description of the property and the amount appearing from the records to be due;

7.1.e. that items of value under fifty dollars each may be reported in aggregate;

7.1.f. total charges withheld during period of inactivity or dormancy;

7.1.g. date of last transaction from the records of the holder;

7.1.h. a verification of the performance of due diligence in accordance with §36-8-7(e) of the Act;

7.1.i. annual interest rate for interest bearing accounts at the time the property was paid to the administrator;

7.2. Performance of Due Diligence shall be, but not limited to, a first class mailing to owners as required by §36-8-7 (e) of the Act. A holder is not required to make a due diligence mailing to owners whose property, prior to deducting allowable service charges, has an aggregate value of less than \$50, and is not 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 none of the foregoing steps are taken, 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. The owner or 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 15 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. A report, required to be filed under the Act is deemed received and filed when it has been delivered complete, accurate, and in correct form to the administrator's Unclaimed Property Division office in Charleston, West Virginia and includes any required remittance.

7.3.a. Any report or remittance submitted to the administrator which is:

7.3.a.1. incomplete (i.e., reports which do not include vital and pertinent information, appropriate detail, correct format or remittances made out to an improper payee, or 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 remittal interest, dividends, stock splits or underlying securities) shall be returned to the holder for correction.

7.3.b. The holder shall submit a corrected report or remittance to the Department within 20 calendar days after the Department's return of the original report or remittance to the holder.

7.3.c. Failure of the holder to submit a corrected, accurate and complete report or remittance within the time set forth in section 7.3.b. of this rule shall be sufficient grounds for examination of the holder under §36-8-20 of the Act.

7.3.d. Failure of the holder to file a report and remittance on or before the due date shall be sufficient reason for assessment of interest and penalties as described in section 24. of this rule.

7.4. Commencing the first day of July one thousand nine hundred ninety-seven, a holder must 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. Reportable property that is not timely reported and remitted by a holder on the first reporting date specified in §36-8-7 (d) of the Act after the property's initial date of presumptive abandonment, must be reported upon discovery of the omission. The holder must identify this property as being reported late and the reason.

7.6. A request from a holder for extension of time to report or remit, must be received by the administrator a minimum of 30 business days prior to the date specified in §36-8-7 (d) of the Act for the filing of a report.

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, natural disaster, criminal activity related to the holder's books and records, or 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 a requirement such as due diligence pursuant to section 7.2. of this rule.

7.6.b. The administrator shall respond to each request for extension within 20 business days after receipt.

7.6.c. The holder must submit a payment of 80% of the property estimated as due upon filing for an extension.

7.6.d. Should the administrator grant an extension, it may be no less than 30 days or no more than 90 days from the date property is due.

**§112-5-8. Payment Or Delivery.**

8.1. 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 §36-8-7b(5) of the Act.

8.2. 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.

8.3. If the property reported to the administrator is a "security", the administrator shall require the record of ownership of said security be transferred into the title of the State of West Virginia or the street name of a financial institution handling the security, prior to delivery of said security to the administrator.

8.4. Whenever the administrator shall receive "securities" pursuant to §36-8-8b of the Act, in the name of the owner, he or she may take appropriate action to transfer the record of ownership of said securities into the title of the State of West Virginia or the street name of the financial institution handling the security.

8.5. All other property subject to the Act shall be delivered to the administrator at the time of filing the report required by §36-8-7 of the Act.

**§112-5-9. Advertising**

In addition to the published notice required in §36-8-9 of the Act, 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 is turned over to the state in good faith. Which means:

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

10.1.b. the records meet reasonable standards of practice in that 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 must submit the proof of payment and supporting documentary evidence that the payee was entitled to the property.

10.3. The holder must add interest when paying a claim for property previously paid or delivered to the administrator at the rate prescribed in §36-8-24 of the Code.

### **§112-5-11. Crediting of Dividends, Interest and Increments.**

11.1. If property other than money is delivered to the administrator under §36-8-1 et seq., of the Code, the owner is entitled to receive income or gain realized or accruing on the property at or before liquidation or conversion of the property into money only as provided by this subsection.

11.1.a. On interest bearing demand savings or time deposits, including a deposit that is automatically renewable, interest shall be credited at a rate of four percent per year or any lesser rate the property earned at the time the property was delivered to the administrator.

11.1.b. If property is "securities" as defined in section 2.6 of this rule, the administrator shall pay the owner four percent per year on the market value of the property at the time it was delivered to the administrator or any lesser annualized rate of income or gain the property earned from the date of delivery to the administrator. Any interest shall be credited to the owners account at the time a claim is filed with the administrator, and in no event shall the administrator be required to pay any income or gain realized or accruing on the property after the third anniversary of the delivery of the property to the administrator.

11.1.c. The owner(s) of property delivered to the administrator under §36-8-11 of the Act, shall not be entitled to interest on any property which did not realize or accrue income or gain at the time it was delivered to the administrator.

11.1.d. This section shall not apply to any property reported and delivered to the administrator prior to the effective date of Article 8, Uniform Unclaimed Property Act.

**§112-5-12. Public sale of abandoned property.**

12.1. Securities listed on an established stock exchange must be sold at prices prevailing on the exchange at the time of sale.

12.2. All other securities may be sold by any reasonable method selected by the administrator.

12.3. Any person making a claim for property subject to §36-8-12 of the Act, is entitled to receive the securities delivered to the administrator by the holder if they still remain in the custody of the administrator, or to the net proceeds received from sale less any deduction for expenses of sale. The person making claim is not entitled to receive any appreciation in the value of the property occurring after delivery to the administrator, except in a case of intentional misconduct or malfeasance by the administrator.

12.4. The administrator will deliver all property sold at sale to the purchaser free of all claims. In the case of vehicles sold at auction, or any property requiring a registered title, the administrator shall execute all documents necessary to complete the transfer of ownership.

12.5. All property received by the administrator subject to §36-8-12 of the Act, shall be sold to the highest bidder at public sale, and such property shall be sold before the expiration of three years after their delivery to the administrator. This shall not include securities described in §36-8-12b.

**§112-5-13. Deposit of funds.**

13.1. Except as otherwise provided in section 13.3 of this rule of this rule, the administrator shall deposit all funds in the general revenue fund received subject to Article 8, Uniform Unclaimed Property Act.

13.2. The administrator shall retain in a separate trust fund at least one hundred thousand dollars from which the administrator shall pay claims duly allowed.

13.3. Before making a deposit in the general revenue fund, the administrator may deduct:

13.3.a. expenses of sale of property;

13.3.b. costs of mailing and publication;

13.3.c. reasonable service charges; and

13.3.d. expenses incurred in examining records of holders and in collecting the property from these holders.

**§112-5-14. Claims.**

14.1. After property has been paid or delivered to the administrator under §36-8-14 of the Act, another state may recover any property subject to *Texas v. New Jersey et al.* if:

14.1.a. the last known address of the apparent owner, or creditor, as shown by the holder's books and records, is located in the claiming state;

14.1.b. if the last known address is in the claiming state and that state does not provide for escheat of the property; or

14.1.c. if no last known address was shown on the holder's records and the claiming state is the state of corporate domicile of the holder.

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

14.2.a. to provide a photo copy of drivers license, or other acceptable form of identification approved by the administrator;

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

14.2.c. to provide the original certificate(s) in the case of "securities". If original certificates are not available, an affidavit prescribed by the administrator must be completed;

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

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

14.3. Within ninety days after a claim is filed, the administrator shall allow or deny the claim.

14.3.a. If the claim is denied, the administrator shall inform the claimant in writing of the reason(s) for the denial and specify what additional evidence is required before the claim will be allowed.

14.3.b. Within thirty days after a claim is allowed, the property or the net proceeds of a sale of the property, together with any dividend, interest or other increment to which the claimant is entitled, must be delivered or paid by the administrator to the claimant.

14.3.c. A holder may recover payment for property paid to the owner that has been previously delivered to the administrator. The holder may recover from the administrator any dividend, interest or other increment to which the owner is entitled.

#### **§112-5-15. Action to Establish Claims.**

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.

#### **§112-5-16. Election to Take Payment or Delivery.**

16.1. The administrator may decline to receive any property which the administrator considers to have a value less than the expenses of notice and sale.

16.2. 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 provisions of the Act.

**§112-5-17. Destruction or Disposition of Property.**

If the administrator determines that any property delivered under Article 8, Uniform Unclaimed Property 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.

**§112-5-18. Periods of Limitation.**

18.1. 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 Article 8 of the Uniform Unclaimed Property Act.

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

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

**§112-5-19. Requests For Reports and Examination of Records.**

19.1. The administrator shall notify the holder in writing ten days prior to an examination conducted pursuant to Section 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.

19.2. Pursuant to §36-8-20, the administrator shall have reason to believe that the National Banking Association has failed to report property in accordance with the Act and may examine the records of such National Banking Association if one of the following conditions exist:

19.2.a. the Holder has submitted reports for two successive years in which the holder has no unclaimed property;

19.2.b. the holder has not submitted an unclaimed property report for two successive years;

19.2.c. the holder submits unclaimed property that is below the average remittance for other holders in the same industry with assets of similar size;

19.2.d. the holder is a principal or holding company of another holder which has been or is being examined;

19.2.e. the holder has not undergone an unclaimed property examination for five or more years;

19.2.f. the holder has undergone changes in the holder's business practices, including but not limited to, changes in financial status, change in ownership and technological advances;

19.2.g. omission of various classes of property ordinarily held by the holder;

19.2.h. the disclosure of service charges or other deductions in the amount due the owner that are not supported by a valid and enforceable contract;

19.2.i. notwithstanding the conditions above the administrator may conduct an examination based on facts provided in writing or verbally with written confirmation that a holder is not in compliance with the Act.

19.3. If unreported unclaimed property is discovered as a result of an examination the administrator shall order the holder to report and remit the property pursuant to §36-8-7 of the Act.

19.4. The administrator may also assess the cost of examining in accordance with subsection (e) of §36-8-20 of the Act, @ rate of \$200.00 per day for each examiner or actual incurred expenses that are reasonable and do not exceed the value of property found to be reportable.

19.5. The administrator may require a holder to report and pay unclaimed property that the administrator reasonably estimates that should have been reported from the record available.

19.6. The administrator may require a holder who has not filed a report, or has filed an inaccurate, incomplete or false report to file a verified report. The holder may also be required to disclose to the administrator those records used in compiling the verified report.

**§112-5-20. Retention of records.**

20.1. A holder required to file a property report under section 7 of this rule shall keep a record of :

20.1.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;

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

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

20.2. The record must be kept for 10 years from the date on which the property is reportable, regardless of whether the property is reported in the aggregate under section 7 of this rule.

**§112-5-21. Enforcement.**

The administrator may maintain an action in this or another state to enforce Article 8, Uniform Unclaimed Property Act.

**§112-5-22. Interstate Agreements.**

22.1. The administrator may enter into an agreement with another state to exchange property subject to the Texas v. New Jersey, ruling and to exchange information relating to abandoned property of its possible existence.

22.2. The administrator may join with another state to seek enforcement of Article 8, Uniform Unclaimed Property Act.

22.3. At the request of another state, the administrator's attorney may maintain an action on behalf of the other state to enforce the unclaimed property laws of the other

state, in this state, and only if the other state has agreed to pay expenses incurred by the administrator's attorney in maintaining the action.

22.4. The administrator may request that the attorney general of another state or another attorney commence an action in the other state on behalf of the administrator. This state shall pay all expenses, including attorney's fees, in maintaining an action under subsection (d) of §36-8-23 of the Act. Expenses and attorney's fees may be paid from money received under Article 8, Uniform Unclaimed Property Act.

22.5. Any expenses or attorney's fees paid under subsection (d) of §36-8-23 of the Act, may not be deducted from the amount that is subject to the claim by the owner under Article 8, Uniform Unclaimed Property Act.

#### **§112-5-23. Interest and Penalties.**

The administrator may assess interest and penalties as prescribed in §36-8-24, of the Act, to any holder who fails to report, pay or deliver property within the time prescribed by Article 8, Uniform Unclaimed Property Act.

#### **§112-5-24. Transitional Provisions.**

Article 8, Uniform Unclaimed Property Act, does not relieve a holder of a duty that arose before the effective date of this article to report, pay or deliver property. Except as otherwise provided in subsection (b) of §36-8-19 of the Act, a holder who did not comply with the law in effect before the effective date of Article 8, Uniform Unclaimed Property Act, is subject to the applicable provisions for enforcement and penalties which then existed, which are continued in effect for the purpose of §36-8-27 of the Act.

#### **§112-5-25. Disposition/Reporting Of Property Held By Law Enforcement Agencies.**

25.1. "Stolen Property" as defined in W.Va. Code §36-8A-1 (e) and (g) of the Act shall include only those items that would not afterward be subject to state of West Virginia Code §62-1A-1. et seq.

25.2. All law enforcement agencies may tender their report of unclaimed stolen property to the Treasurer at any time after the six months period prescribed in §36-8A-1 (g) (I) of the Act. The report must be filed on a form prescribed by the Treasurer (See

**Attached Sample Forms Up-8A-2 Through 6).** Alternative reporting forms may be used with the prior written approval of the Treasurer.

25.3. The Unclaimed Stolen Property Report may include forms Up-8A-2 through Up-8A-6.

25.3.a. Property to be delivered to Treasurer; UP-8A-2

25.3.a.1. Report shall include:

25.3.a.1.A. Item number - this number is assigned by the law enforcement agency. If no number has been assigned at the agency level, then number each item chronologically.

25.3.a.1.B. Owner's name and address - any information available identifying the apparent owner

25.3.a.1.C. Property Description - any identifying information such as make, model, brand, serial number, etc.

25.3.a.1.D. Estimated value of each item

25.3.a.2. Report shall be notarized.

25.3.b. Property to be sold at Public Sale; UP-8A-3

25.3.b.1. Property must first be either

25.3.b.1.A. offered as a donation to a non-profitable organization, or

25.3.b.2.B. have a use in the law enforcement agency for any legitimate and authorized law enforcement or educational purpose.

25.3.b.2. Report shall include:

25.3.b.2.A. Item number - this number is assigned by the law enforcement agency. If no number has been assigned at the agency level, then number each item chronologically.

25.3.b.2.B. Owner's name and address - any identifying information available identifying the apparent owner.

25.3.b.2.C. Property Description - any identifying information such as make, model, brand, serial number, etc.

25.3.b.2.D. Estimated value of each item

25.3.b.3. Report shall be notarized.

25.3.c. Property to be appropriated for Agency Use; UP-8A-4

25.3.c.1. Property must be used for legitimate and authorized law enforcement or educational purpose.

25.3.c.2. If the agency discontinues use of the property, it must again report the item.

25.3.c.3. Report shall include:

25.3.c.3.A. Item number - this number is assigned by the law enforcement agency. If no number has been assigned at the agency level, then number each item chronologically.

25.3.c.3.B. Owner's name and address - any information available identifying the apparent owner

25.3.c.3.C. Property Description - any identifying information such as make, model, brand, serial number, etc.

25.3.c.3.D. Estimated value of each item

25.3.c.4. Report shall be notarized.

25.3.d. Property to be donated to Non-Profit Organization; UP-8A-5

25.3.d.1. Report shall include:

25.3.d.1.A. Item number - this number is assigned by the law enforcement agency. If no number has been assigned at the agency level, then number each item chronologically.

25.3.d.1.B. Owner's name and address - any information available identifying the apparent owner

25.3.d.1.C. Property Description - any identifying information such as make, model, brand, serial number, etc.

25.3.d.1.D. Name and location of non-profit organization including contact person, address, and phone number.

25.3.d.1.E. Estimated value of each item

25.3.d.2. Report shall be notarized.

25.3.e. Weapons and Ammunition Only UP-8A-6 shall be completed and submitted to the Treasurer requesting disposition of the items listed using the disposition codes defined in 1.8.

25.3.e.1. Report shall include:

25.3.e.1.A. Law enforcement agency information

25.3.e.1.B. Item number - This number is assigned by the law enforcement agency. If no number has been assigned at the agency level, then number each item chronologically.

25.3.e.1.C. Description - shotgun, handgun, rifle, etc.

25.3.e.1.D. Owner's name and address - any information available identifying the apparent owner

25.3.e.1.E. Make - brand name

25.3.e.1.F. Model - identifying number

25.3.e.1.G. Serial number - identifying number, if no number exists, then put unknown.

25.3.e.1.H. Disposition Code

Treasurer 25.3.e.1.H.1. Property to be turned over to

agency use 25.3.e.1.H.2. Property to be appropriated for

weapons 25.3.e.1.H.3. Property to be traded in for new

25.3.e.2. Completed form shall be notarized before delivery of property to Treasurer.

25.4. All cash and coins held by a law enforcement agency and not subject to chapter 60A of the Uniform Controlled Substances Act, shall be delivered to the Treasurer. All "Securities" as defined in section 2.6 of this rule and not subject to chapter 60A of the Uniform Controlled Substances Act, shall be delivered to the Treasurer. No controlled substance shall be delivered to the Treasurer pursuant to chapter 60A of the Uniform Controlled Substances Act.

25.5. Within thirty days of the receipt of an unclaimed stolen property report, the Treasurer shall, whenever possible, 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 Treasurer.

25.6. All firearms and ammunition delivered to the Treasurer shall be destroyed as soon as practicable after delivery in the following manner:

25.6.a. The weapons and ammunition shall be delivered to a designated contractor and cut up, (or in the case of ammunition, in a manner prescribed by the Treasurer) in the presence of two witnesses, one witness must be an employee of the State Treasurer's office.

25.6.b. The destruction of all weapons and ammunition must be confirmed in writing by the contractor, listing the description of each weapon including: the Make, Model and serial number if available. This confirmation must be verified by the two witnesses present during destruction.

25.6.c. All documents pertaining to the destruction of weapons and ammunition shall be kept in a permanent file in the State Treasurer's office and will be available for inspection by all authorized law enforcement officials during regular business hours.

25.6.d. Within thirty days after any trade-in or appropriation of any firearms or ammunition, the law enforcement agency shall file a report with the Treasurer and the State Tax Department on the trade-in or appropriation.

25.6.e. This report shall be filed on a form prescribed by the Treasurer.

25.7. The Treasurer may authorize the disposal of any items, prior to the delivery of such items to the Treasurer, if the Treasurer considers that the probable cost of the delivery and sale will exceed the proceeds of the sale.

#### **§112-5-26. Rules.**

The administrator shall promulgate emergency Legislative Rules as prescribed in §36-8-12 of the Act.

#### **§112-5-27. Descent and Distribution.**

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

**John D. Perdue State Treasurer, West Virginia  
Unclaimed Property Division  
State Capitol Building Charleston WV 25305-0860**

**UNCLAIMED STOLEN PROPERTY REPORT  
FORM UP-8A-2  
Property to be delivered to the Treasurer**

**INSTRUCTIONS:**

1. File at least one report annually, on or before September 1 of each year. Do not submit property with the report.
2. Complete the attached (Form UP-8A-2) with the following information:
  - Item number- this number is assigned by the law enforcement agency. If no number has been assigned at the agency level, then number each item chronologically,
  - Apparent owner's name and address- any information available identifying the apparent owner,
  - Property description- any identifying information such as make, model, brand, serial number, etc.
  - Estimated value of each item.
3. This form is to be used only for intangible and tangible property of obvious commercial value. For example, cash, coins, securities, such as stocks, bonds, and negotiable instruments etc.

**THIS FORM IS NOT TO BE USED FOR WEAPONS OR AMMUNITION.**

**INFORMATION:**

The Uniform Unclaimed Property Act §36-8A-2 of the West Virginia Code in general requires all law enforcement agencies to review their records each year to determine the disposition of all unclaimed stolen property in their possession, at the time of the required filing, and make an annual report to the State Treasurer.

The Unclaimed Stolen Property Report may be filed with the State Treasurer at any time after the property has been held by a law enforcement agency for at least six months, during which time the rightful owner has not claimed it, for which the chief executive determines that there is no reasonable likelihood of its being returned to its rightful owner, and which the chief executive determines to have no evidentiary value.

**Within thirty days of receipt of the attached form, the Treasurer will respond with instructions as to the delivery or disposition of the property.**

If you have questions regarding your reporting obligation, please call the Division of Unclaimed Property (304) 343-4000, toll free: 1-800-422-7498 or write to the address above.

If you need additional forms, you may photocopy the blank forms sent to you and complete your report on those photocopies.

Revised June 9, 1997



John D. Perdue State Treasurer, West Virginia  
Unclaimed Property Division  
State Capitol Building Charleston WV 25305-0860

UNCLAIMED STOLEN PROPERTY REPORT  
FORM UP-8A-3  
Property to be sold at Public Sale

**INSTRUCTIONS:**

1. File at least one report annually, on or before September 1 of each year. Do not submit property with the report.
2. Complete the attached (Form UP-8A-3) with the following information:
  - Item number- this number is assigned by the law enforcement agency. If no number has been assigned at the agency level, then number each item chronologically,
  - Apparent owner's name and address- any information available identifying the apparent owner,
  - Property description- any identifying information such as make, model, brand, serial number, etc.
  - Estimated value of each item.
3. This form is to be used only for tangible property of obvious commercial value which can not be used for legitimate and authorized law enforcement or educational purposes; or will not be accepted by some non-profit organization. For example, scanners, VCR's, four wheelers, TV's, lawn furniture, etc.

**THIS FORM IS NOT TO BE USED FOR WEAPONS OR AMMUNITION.**

**INFORMATION:**

The Uniform Unclaimed Property Act §36-8A-2 of the West Virginia Code in general requires all law enforcement agencies to review their records each year to determine the disposition of all unclaimed stolen property in their possession, at the time of the required filing, and make an annual report to the State Treasurer.

The Unclaimed Stolen Property Report may be filed with the State Treasurer at any time after the property has been held by a law enforcement agency for at least six months, during which time the rightful owner has not claimed it, for which the chief executive determines that there is no reasonable likelihood of its being returned to its rightful owner, and which the chief executive determines to have no evidentiary value.

**Within thirty days of receipt of the attached form, the Treasurer will respond with instructions to submit the property to his office or sell at a public sale.**

If you have questions regarding your reporting obligation, please call the Division of Unclaimed Property (304) 343-4000, toll free: 1-800-422-7498 or write to the address above.

If you need additional forms, you may photocopy the blank forms sent to you and complete your report on those photocopies.

Revised June 9, 1997



**John D. Perdue State Treasurer, West Virginia  
Unclaimed Property Division  
State Capitol Building Charleston WV 25305-0860**

**UNCLAIMED STOLEN PROPERTY REPORT  
FORM UP-8A-4**

**Property Appropriated for Agency Use**

**INSTRUCTIONS:**

1. File at least one report annually, on or before September 1 of each year. Do not submit property with the report.
2. Complete the attached (Form UP-8A-4) with the following information:
  - Item number- this number is assigned by the law enforcement agency. If no number has been assigned at the agency level, then number each item chronologically,
  - Apparent owner's name and address- any information available identifying the apparent owner,
  - Property description- any identifying information such as make, model, brand, serial number, etc.
  - Estimated value of each item.
3. This form is to be used only for tangible property of obvious commercial value which may be used by the agency for legitimate and authorized law enforcement or educational purposes.. For example, scanners, four wheelers, electronic equipment, etc.

**THIS FORM IS NOT TO BE USED FOR WEAPONS OR AMMUNITION.**

**INFORMATION:**

The Uniform Unclaimed Property Act §36-8A-2 of the West Virginia Code in general requires all law enforcement agencies to review their records each year to determine the disposition of all unclaimed stolen property in their possession, at the time of the required filing, and make an annual report to the State Treasurer.

The Unclaimed Stolen Property Report may be filed with the State Treasurer at any time after the property has been held by a law enforcement agency for at least six months, during which time the rightful owner has not claimed it, for which the chief executive determines that there is no reasonable likelihood of its being returned to its rightful owner, and which the chief executive determines to have no evidentiary value.

**Within thirty days of receipt of the attached form, the Treasurer will respond with instructions to submit the property to his office or appropriate for agency use.**

If you have questions regarding your reporting obligation, please call the Division of Unclaimed Property (304) 343-4000, toll free: 1-800-422-7498 or write to the address above.

If you need additional forms, you may photocopy the blank forms sent to you and complete your report on those photocopies.

Revised June 9, 1997



**John D. Perdue State Treasurer, West Virginia  
Unclaimed Property Division  
State Capitol Building Charleston WV 25305-0860**

**UNCLAIMED STOLEN PROPERTY REPORT  
FORM UP-8A-5  
Property to be Donated to Non-Profit Organization**

**INSTRUCTIONS:**

1. File at least one report annually, on or before September 1 of each year. Do not submit property with the report.
2. Complete the attached (Form UP-8A-5) with the following information:
  - Item number- this number is assigned by the law enforcement agency. If no number has been assigned at the agency level, then number each item chronologically,
  - Apparent owner's name and address- any information available identifying the apparent owner,
  - Property description- any identifying information such as make, model, brand, serial number, etc.
  - Name and location of non-profit organization including contact person, address, and phone number.
  - Estimated value of each item.
3. This form is to be used only for tangible property of obvious commercial value. For example, TV's, bicycles, electronic equipment, etc.

**THIS FORM IS NOT TO BE USED FOR WEAPONS OR AMMUNITION.**

**INFORMATION:**

The Uniform Unclaimed Property Act §36-8A-2 of the West Virginia Code in general requires all law enforcement agencies to review their records each year to determine the disposition of all unclaimed stolen property in their possession, at the time of the required filing, and make an annual report to the State Treasurer.

The Unclaimed Stolen Property Report may be filed with the State Treasurer at any time after the property has been held by a law enforcement agency for at least six months, during which time the rightful owner has not claimed it, for which the chief executive determines that there is no reasonable likelihood of its being returned to its rightful owner, and which the chief executive determines to have no evidentiary value.

**Within thirty days of receipt of the attached form, the Treasurer will respond with instructions as to the delivery or disposition of the property.**

If you have questions regarding your reporting obligation, please call the Division of Unclaimed Property (304) 343-4000, toll free: 1-800-422-7498 or write to the address above.

If you need additional forms, you may photocopy the blank forms sent to you and complete your report on those photocopies.

Revised June 9, 1997



**John D. Perdue State Treasurer, West Virginia  
Unclaimed Property Division  
State Capitol Building Charleston WV 25305-0860**

**UNCLAIMED STOLEN PROPERTY REPORT  
FORM UP-8A-6  
Weapons and Ammunition**

**INSTRUCTIONS:**

1. File at least one report annually, on or before September 1 of each year. Do not submit property with the report.
2. Complete the attached (Form UP-8A-6) with the following information:
  - Item number- this number is assigned by the law enforcement agency. If no number has been assigned at the agency level, then number each item chronologically,
  - Apparent owner's name and address- any information available identifying the apparent owner,
  - Property description- shotgun, rifle, handgun, etc.
  - Make- brand name,
  - Model-identifying number
  - Serial number- identifying number, if no number exists, put unknown,
  - Disposition code:
    - property to be turned over to Treasurer
    - property to be appropriated for agency use
    - property to be traded in for new weapons
3. This form must be notarized before delivery of property to Treasurer.

**INFORMATION:**

The Uniform Unclaimed Property Act §36-8A-2 of the West Virginia Code in general requires all law enforcement agencies to review their records each year to determine the disposition of all unclaimed stolen property in their possession, at the time of the required filing, and make an annual report to the State Treasurer.

The Unclaimed Stolen Property Report may be filed with the State Treasurer at any time after the property has been held by a law enforcement agency for at least six months, during which time the rightful owner has not claimed it, for which the chief executive determines that there is no reasonable likelihood of its being returned to its rightful owner, and which the chief executive determines to have no evidentiary value.

**Within thirty days of receipt of the attached form, the Treasurer will respond with instructions as to the delivery or disposition of the property.**

If you have questions regarding your reporting obligation, please call the Division of Unclaimed Property (304) 343-4000, toll free: 1-800-422-7498 or write to the address above.

If you need additional forms, you may photocopy the blank forms sent to you and complete your report on those photocopies.

Revised June 9, 1997

John D. Perdue, State Treasurer, West Virginia  
 Attn: Unclaimed Property Division  
 Charleston, West Virginia 25305-0860

Form UP-8A-6  
 Report of Unclaimed Stolen Property  
 (Weapons and Ammunition Only)

To Be Completed by Law Enforcement Agency:

Agency Name: West Virginia State Police  
 Address 1: 711 Jefferson Road  
 Address 2:  
 City/State/Zip: South Charleston, West Virginia 25309  
 Federal ID #: 556000772  
 Phone Number: 304-555-5555  
 Contact Person: Sergeant John Doe  
 Period Coverage / Report Year: 9/1/96 to 9/1/97 / 1997

Page \_\_\_\_ of \_\_\_\_

- Description Codes  
 1 - Escheat to State Treasurer  
 2 - Appropriate for Law Enforcement Agency Use  
 3 - Trade In

Item Number	Apparent Owner's Last Name, First Name, Street Address, City, State, Zip, County (if known) (List Alphabetically by Last Name)	Description	Make	Model	Serial Number	Disposition Code
31	Unknown	12 ga Shotgun	Remington	670	A 12345678	3

SAMPLE

State of \_\_\_\_\_  
 County of \_\_\_\_\_  
 Being First duly Sworn, on oath I depose and state that I have caused to be prepared and have examined this report consisting of \_\_\_\_\_ pages as to property presumed abandoned under the West Virginia Unclaimed Property Law for the year ending as stated, that I am duly authorized to execute this verification on the holder and by law and that I believe that said report is true, correct and complete as of said date, excepting for such property as has since ceased to be abandoned.  
 Signature \_\_\_\_\_ Title \_\_\_\_\_  
 Subscribed and sworn to before me on this \_\_\_\_\_ day \_\_\_\_\_  
 My Commission Expires \_\_\_\_\_  
 Notary Public State of \_\_\_\_\_

**APPENDIX B**

**FISCAL NOTE FOR PROPOSED RULES**

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

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

**Agency** State Treasurer's Office

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

**Contact Person:** Anoop K. Bhasin - Telephone (304) 341-0704

**1. Effect of Proposed Rule**

	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<b>ESTIMATED TOTAL COST</b>	\$	\$	\$437,167	\$500,000	\$500,000
<b>PERSONAL SERVICES</b>			437,167	437,167	437,167
<b>CURRENT EXPENSE</b>			0	50,000	50,000
<b>REPAIRS &amp; ALTERNATIONS</b>			0	0	0
<b>EQUIPMENT</b>			0	12833	12833
<b>OTHER</b>			0	0	0

**2. Explanation of above estimates:**

For FY98, a general revenue appropriation for the legislature will provide operating costs for personnel. Fees charged on abandoned property recieved will in future years provide funds for both personal services, current expense, and equipment.

**3. Objectives of these rules:**

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

**Rule Title:** Rules 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 these rules will allow the Treasurer's Office to continue relieving and trying to find the rightful owner of said 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.**

When the rightful owners are located, said property or proceeds from such are returned to said owners.

**C. Economic Impact on Citizens/Public at Large.**

N/A

**Date:** July 1, 1997

**Signature of Agency Head or Authorized Representative**

*John D. Kerdue*

KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

JAN CASTO  
Deputy Secretary of State

CATHERINE FREROTTE  
Executive Assistant

Telephone: (304) 558-6000  
Corporations: (304) 558-8000  
FAX: (304) 558-0900



## STATE OF WEST VIRGINIA

### SECRETARY OF STATE

Building 1, Suite 157-K  
1900 Kanawha Blvd., East  
Charleston, WV 25305-0770

WILLIAM H. HARRINGTON  
Chief of Staff

JUDY COOPER  
Director, Administrative Law

PENNEY BARKER  
Supervisor, Corporations

(Plus all the volunteer  
help we can get)

August 5, 1997

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE  
Aug 5 3 51 PM '97  
FILED

### NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: State Treasurer's Office

RULE: Series 5, Repeal & Replace, Rules for Enforcement of the Uniform Unclaimed Property Act

DATE FILED AS AN EMERGENCY RULE: July 1, 1997

### DECISION NO. 7-97

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule is **approved**. A copy of the complete decision with required findings is available from this office.

  
\_\_\_\_\_  
KEN HECHLER  
Secretary of State

KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

JAN CASTO  
Deputy Secretary of State

CATHERINE FREROTTE  
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WILLIAM H. HARRINGTON  
Chief of Staff

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**STATE OF WEST VIRGINIA  
SECRETARY OF STATE**

Building 1, Suite 157-K  
1900 Kanawha Blvd., East  
Charleston, WV 25305-0770

(Plus all the volunteer  
help we can get)

**EMERGENCY RULE DECISION  
(ERD 7-97)**

AGENCY: State Treasurer's Office  
RULE: Series 5, Repeal & Replace, Rules for Enforcement of the Uniform  
Unclaimed Property Act  
FILED AS AN EMERGENCY RULE: July 1, 1997

- par. 1 The State Treasurer's Office (Treasurer) has filed the above rule to repeal and replace an existing rule as an emergency rule.
- par. 2 West Virginia Code 29A-3-15a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [29A-3-15a].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.
- par. 6 The Treasurer filed this emergency rule with supporting documents with the Secretary of State July 1, 1997 and with the LRMRC July 1, 1997.

par. 7 It is the determination of the Secretary of State that the Treasurer has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code §38-8-28 reads:

*On or before the July 1, 1997, the administrator shall promulgate emergency legislative rules in accordance with the provisions of §29A-3-15 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 §29A of this code to otherwise effectuate the purposes of this article.*

par. 9 It is the determination of the Secretary of State that the Treasurer has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency -- WV Code 29A-3-15(f) defines "emergency" as follows:

*(f) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.*

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the Treasurer are as follows:


This rule is required according to legislation passed in SB 125, effective July 1, 1997. Substantial harm to the public interest could result by operating without this rule.

This rule is need to comply with SB 125. This bill specifies in §36-8-28 that legislative rules must be filed on an emergency basis and in conformity with the requirements of the secretary of state and the provisions of §29A of the code. Without this rule, the public interest can be substantially harmed, in that no formal procedures of handling abandoned and unclaimed property would be available.

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(f). . . mandated by the Legislature

par. 14

This decision shall be cited as Emergency Rule Decision 7-97 or ERD 7-97 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the State Treasurer's Office, the Attorney General and the Legislative Rule Making Review Commission.

  
\_\_\_\_\_  
KEN HECHLER  
Secretary of State

Entered \_\_\_\_\_

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

AUG 5 3 52 PM '97

FILED