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(Plus all the volunteer
help we can get)

August 5, 1997

FILED
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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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.



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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

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