

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

FILED

SEP 4 3 49 PM '97

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

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

CITE AUTHORITY W.Va. Code Section 36-8-28

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 NEW RULE BEING PROPOSED: Series 5

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

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



Authorized Signature

6.40 (w/out comments)
17.60 (w/comments)

DATE: September 4, 1997

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: State Treasurer's Office

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

1. Authorizing statute(s) citation W.Va. Code Section 38-8-28

2. a. Date filed in State Register with Notice of Hearing

July 1, 1997

b. What other notice, including advertising, did you give
of the hearing?

Mailing of rules and hearing notice sent to all state agencies,
member organizations of the WV Retailers Association, all WV Banking
institutions, member organizations of the WV Chambers of Commerce,
the Governor, Auditor, President of the Senate, Speaker of the House
of Delegates and the Secretary of the Department of Administration.

c. Date of Hearing(s) August 1, 1997

d. Attach list of persons who appeared at hearing,
comments received, amendments, reasons for amendments.

Attached X No comments received

e. Date you filed in State Register the agency approved
proposed Legislative Rule following public hearing:
(be exact)

September 4, 1997

f. Name and phone number(s) of agency person(s) to
contact for additional information:

Mr. Anoop K. Bhasin
State Treasurer's Office
State Capitol, Room E122
Charleston, WV 25305

Phone: 304/558-5000

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation: N/A

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

b. Date of hearing: _____

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

d. Attach findings and determinations and reasons:

Attached _____

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.

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 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.

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 |
| <u>ESTIMATED TOTAL COST</u> | \$ | \$ | \$437,167 | \$500,000 | \$500,000 |
| PERSONAL SERVICES | | | 437,167 | 437,167 | 437,167 |
| CURRENT EXPENSE | | | 0 | 50,000 | 50,000 |
| REPAIRS & ALTERNATIONS | | | 0 | 0 | 0 |
| EQUIPMENT | | | 0 | 12833 | 12833 |
| OTHER | | | 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

FILED

SEP 4 3 49 PM '97

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

TITLE 112
LEGISLATIVE RULE
STATE TREASURER'S OFFICE

SERIES 5
RULES FOR ENFORCEMENT OF THE
UNIFORM UNCLAIMED PROPERTY ACT

§112-5-1. General.

1.1. Scope. -- These rules implement the provisions of the Code of West Virginia, 1931, as amended, §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 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. "Indication of Interest In Property" occurs when the owner takes any action described in Section 2 (c) or (d) 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-authorized activity or contact with the property being remitted to the administrator.

2.4. "Safe Deposit Box" includes any safe, vault, safekeeping repository, 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" for purposes of this Act, includes but is not limited to, 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, 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, and activities not requiring a direct owner response.

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

3.3. In accordance with W.Va. Code §36-8-2(a)(4), registered interest paying bonds will be presumed abandoned five years after the date of the most recent unrepresented instrument issued to pay interest. In accordance with W.Va. Code §36-8-2(a)(16) or §36-

8-2(a)(17), bearer bonds will be presumed abandoned five years after the issuer's obligation to pay the principal, either by call or maturity.

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

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

§112-5-4. Safe Deposit Boxes.

4.1. Pursuant to W.Va. Code §36-8-3, contents of safe deposit boxes which have been unclaimed for more than five years after the expiration of the lease or rental period on the safe deposit boxes shall be presumed abandoned. Safe deposit boxes shall be opened and inventoried in the presence of at least two employees of the holder. The property shall then be sealed for safekeeping with a copy of the inventory attached to the outside of each storage box or envelope until delivered to the owner or the administrator.

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

4.3. Property recovered from safe deposit boxes 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 a gift certificate that is issued for cash or credit is unclaimed for three years following December 31 of the year in which it was issued, then 100% of the purchase price or money shall be remitted to the State.

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

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 deduct a dormancy charge from property presumed abandoned if he does not normally or regularly impose a dormancy charge pursuant to a valid and enforceable contract against owners who claim their property prior to the date on which such property would be presumed abandoned.

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

6.1. A copy of the contract authorizing such charges;

6.2. The value or amount of each item of property prior to deduction of charges as well as the total amount of charges deducted from each item. The holder shall maintain a record of this information in accordance with Section 21 of the Act; 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 the Act shall file a report with the administrator concerning the property as provided in this rule. 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 holders except life insurance companies. 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 presumed abandoned under the Act with an aggregate value of fifty dollars or more;

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

7.1.c. in the case of the contents of a safe deposit box or other safekeeping depository or in the case of other personal property, a description of the property and 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. a description of the property and any identifying number for each item of property, including a brief description of those items worth fifty dollars or more in the aggregate;

7.1.e. the total of any safe deposit box opening charges and unpaid rent or storage charges for which the holder requests reimbursement, along with a copy of the valid lien or contract with the owner allowing for the imposition of the unpaid rent or storage charges;

7.1.f. the total dormancy charges withheld and a copy of the written contract authorizing the imposition of the dormancy charges;

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

7.1.h. a verification of the performance of due diligence in accordance with Section 7(e) of the Act; and

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

7.2. Performance of due diligence is, but not limited to, a first class mailing to owners as required by W.Va. Code §36-8-7 (e). 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, and that 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 fifteen business days prior to the date the holder will remit the property to the State, by which the owner must contact the holder; and

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

7.3. A report, as required by W.Va. Code §36-8-7 is deemed received and filed when it has been received in a complete, accurate, and correct form including any required remittance to the administrator's Unclaimed Property Division office in Charleston, West Virginia.

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

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

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

Any report which contains incomplete or inaccurate information will be returned to the holder for correction.

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

7.3.c. 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 Section 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 W.Va. Code §36-8-24.

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 reported and remitted by a holder by the date specified in W.Va. Code §36-8-7 (d), must be reported immediately upon discovery of the omission. The holder must identify this property as being reported late and the reason.

7.6. A holder seeking an extension of time in which to report or remit, must file a request with the administrator so as to be received by the administrator a minimum of 30 business days prior to the date specified in W.Va. Code §36-8-7 (d).

7.6.a. A request by a holder for an extension of time to report or remit must include a reasonable cause for delaying the report or remittance. Reasonable cause includes, but is not limited to, a natural disaster, criminal activity related to the holder's books and records, or a recent change in the form of ownership of the holder through

merger, acquisition or reorganization. Reasonable cause does not include the failure of a holder to perform the due diligence required under section 7.2. of this rule.

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

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

7.6.d. Should the administrator grant an extension, it may be no less than 30 days and no more than 90 days from the date the report and/or remittance are 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 Section 8 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, as defined in the rules, the administrator shall require the record of ownership of said security be transferred to the State of West Virginia or the street name of a financial institution designated by the State of West Virginia to handle the security, prior to delivery of said security to the administrator.

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

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

§112-5-9. Advertising

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

§112-5-10. Custody by state.

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

10.1.a. a reasonable attempt was made by the holder for payment or delivery of 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 W.Va. Code §36-8-24.

§112-5-11. Claims.

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

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

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

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

11.2.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;

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

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

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

11.3.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.

11.3.b. Within thirty days after a claim is allowed, the property or the net proceeds of a sale of the property, together with any income or gain to which the claimant is entitled, must be delivered or paid by the administrator to the claimant.

11.3.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.

§112-5-12. 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.

§112-5-13. Election to Take Payment or Delivery.

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

13.2. A holder, upon prior written approval of the administrator, may report and deliver property before the property is presumed abandoned. Property so delivered must be held by the administrator until the abandonment period runs and then the property will be subject to the other provisions of the Act.

§112-5-14. 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.

§112-5-15. Periods of Limitation.

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

15.2. 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.

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

§112-5-16. Requests For Reports and Examination of Records.

16.1. 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.

16.2. 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 W.Va. Code §36-8-7.

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

16.4. The administrator may require a holder to report and pay unclaimed property that the administrator reasonably estimates.

16.5. 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.

§112-5-17. Retention of records.

17.1. A holder required to file a report under Section 7 of the Act shall keep a record of :

17.1.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;

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

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

17.2. The record must be kept for 10 years from the date on which the report is filed, regardless of whether the property is reported in the aggregate under W.Va. Code §36-8-7(b)(3).

§112-5-18. Enforcement.

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

§112-5-19. Interstate Agreements.

19.1. The administrator may enter into an agreement with another state to exchange property and information relating to abandoned property or its possible existence.

19.2. The administrator may join with another state to seek enforcement of the Act.

19.3. 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 against a holder in this state of property subject to escheat or a claim of abandonment

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

19.4. 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 such an action. Expenses and attorney's fees in maintaining such an action may be paid from money received under the Act. However, such expenses and attorney's fees may not be deducted from the amount that is subject to a claim by the owner under the Act.

§112-5-20. Interest and Penalties.

The administrator may access interest and penalties as prescribed in W.Va. Code §36-8-24, to any holder who fails to report, pay or deliver property within the time prescribed by the Act.

§112-5-21. Disposition/Reporting Of Property Held By Law Enforcement Agencies.

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

21.2. All law enforcement agencies may tender their report of unclaimed stolen property to the Treasurer at any time after the six month period prescribed in W.Va. Code §36-8A-1(g)(1). The report must be filed on a form prescribed by the Treasurer. Alternative reporting forms may be used with the prior written approval of the Treasurer.

21.3. All cash and coins held by a law enforcement agency and not subject to W.Va. Code §60A-1-1, et seq., (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 the Uniform Controlled Substances Act, shall be delivered to the Treasurer. No controlled substance shall be delivered to the Treasurer pursuant to the Uniform Controlled Substances Act.

21.4. 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.

21.5 All weapons and ammunition may be transferred among the different detachments and areas of a law enforcement agency, for only the purposes set in W. Va. Code §36-8A-3 and §36-8A-5.

21.5.a. No weapons and ammunition may be transferred between a law enforcement agency and another law enforcement agency, for the purposes set in W. Va. Code §36-8A-3 and §36-8A-5, except:

21.5.a.1. a law enforcement agency may transfer weapons and ammunition to the West Virginia State Police Crime Lab for any legitimate and authorized law enforcement or educational purposes as stated in W. Va. Code §36-8A-3,

21.5.a.2. a law enforcement agency may transfer weapons and ammunition to the West Virginia State Division of Natural Resources (DNR) for any legitimate and authorized law enforcement or educational purpose as stated in W. Va. Code §36-8A-3, and pursuant to any statute applicable to the transfer or donation of weapons to the DNR.

21.5.b. Any weapons and ammunition transferred pursuant to rules 21.5a.1. and 21.5a.2 shall first be transferred to the Treasurer's office and at the Treasurer's discretion the weapons and ammunition may be transferred to either the West Virginia State Police or the West Virginia Division of Natural Resources (DNR).

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

21.6.a. The weapons and ammunition shall be delivered to a designated contractor and destroyed as the Treasurer deems appropriate. The destruction shall be performed in the presence of two witnesses. One witness shall be an employee of the State Treasurer's Office.

21.6.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.

21.6.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.

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

21.7. 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.

§112-5-22. Rules.

The administrator shall promulgate emergency Legislative Rules as prescribed in W.Va. Code §36-8-28.

§112-5-23. Descent and Distribution.

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

Transcript of Public Hearing on 8/1/97 re: Rules 112CSR5

**Transcript of
PUBLIC HEARING FOR
UNCLAIMED PROPERTY
RULES AND REGULATIONS
August 1, 1997 at 10:00 am**

Names of those attending from registration document:

Jim McMillon, State Treasurer's Office
Richard Fisher, State Treasurer's Office
Carolyn Legg, State Treasurer's Office
Lori Greathouse, Prosecuting Attorney's Institute
Becky Wright, State Treasurer's Office
Chris Callas, Jackson & Kelly
Samme Gee, Jackson & Kelly
Deborah A. Sink, West Virginia Banker's Association
Paul S. Mollahan, State Auditor's Office
Dwight Smith, State Treasurer's Office
Anoop K. Bhasin, State Treasurer's Office
Ed Staats, West Virginia Worker's Compensation

Jim McMillon: This is August the first, 1997, public hearing on unclaimed property laws.

Jim McMillon: Folks I'd like to welcome you all to this public hearing this morning. This public hearing was published in the Secretary of States office, notice of which was given, July 1, in order to provide at least thirty days notice of the hearing. The purpose of the hearing is to receive both written and oral comments concerning the rules for the enforcement of the Uniform Unclaimed property act, designated as series 5. I think everyone here has received copies of it as well as they already have been filed in the Secretary of States office. Yes sir, if you would sign our little form back here, make sure everyone has signed in on our registration document.

My name is Jim McMillon, with the state treasurer's office. We have some representatives here from the treasurer's office. Just to let you know who those are, Becky Wright is from our treasurer's office, she'll be recording this session, we are doing that as a matter of record so that we can refer back if we need to. Also, on my right is Anoop Bhasin, Anoop is the chief counsel for the treasurer's office and has been the prime contact for receiving written comments on the rules. On my left is Dwight Smith, Deputy Treasurer in charge of unclaimed

Transcript of Public Hearing on 8/1/97 re: Rules 112CSR5

property. We have Carolyn Legg who is also a member of the unclaimed property division and back here is Dick Fisher, who is working with unclaimed property also. In the back part is another state representative, Mr. Paul Mollahan, chief clerk from the state auditor's office and then it looks like we have about 5 members from the public that are not associated with the state. I might just take a moment and go around and let everyone introduce themselves. Would you like to start.

My name is Ed Staats, chief financial officer for the Workers compensation System.

Jim McMillon: Good,. Thank you for being here.

I'm Chris Callas. I'm with Jackson & Kelly. Jenny, with Jackson & Kelly.

Debbie Sink of Bowles, Rice and I am here on behalf of the West Virginia Banker's Association.

I'm Lori Greathouse, I'm from the West Virginia Prosecuting Attorney's Institute

Jim McMillon: I appreciate you being here, we thank you all for coming. Again, I identify our purpose is to receive comments. I'd like to acknowledge first of all the written comments.

We have received some written comments already and I'd like to acknowledge those, I have them here. The game plan here will be to take these written comments and oral comments that we receive at this hearing. We will then review our proposed rules, we will make some determinations as to if we need to make any amendments to those rules as a result of this hearing, at which point we will then create a final draft of the rules and we will then submit those to the Secretary of States office and the Legislative Rule making review committee to get final approval from the legislature on the rules.

So, first of all I have received some written comments from the Deputy Treasurer for unclaimed property. We have about 3 comments here that refer to sections of the rules. I'm not going to go through them all, he's identified reasons as well as what they are, the first one does say "under definition of security delete the words fractional undivided interest in oil, gas or other mineral lease, right or royalty. Section 112-5-2, 2.6 The reason for that is that the definitions of mineral and mineral proceeds are defined already in the code, 36-8-1.8,9 of the act and should not be included in the definition of securities.

The second item that he had refers to the rule section 112-5-4, section 4.1, line 3, beginning with the word "opened", delete the word opened and insert the words "presumed abandoned". The reasoning here is that the language that said shall be in this context, may

Transcript of Public Hearing on 8/1/97 re: Rules 112CSR5

not be consistent with state and federal banking regulations and may not allow at the time, the financial institutions to comply with the due diligence required by Section 36-8-7e of the Act.

The third comment that we had was Section 112-5-25, Section 25.2 The line beginning with the words fee, suggest that we delete the words, "see attached forms on unclaimed property, form 8A-2 through 6. At the back of the rules are sample forms, what we are suggesting here that those be removed and the reasoning is, sample forms should not be filed as a part of these rules due that the fact that the treasurer may periodically need to amend or improve on the forms to make them more "user friendly". So the first thinking was that we would supply sample forms but what we are saying here is that we'll probably remove them. I think everyone here has had a chance to review those.

So that is the first set of written comments that we've had. First I might ask if Dwight, would you like to make any comments concerning these changes?

Dwight Smith: No, not on those right there.

Jim McMillon: OK. The second set of written comments that we received were from Mr. Chris Callus, who sent a memorandum with some documentation attached to it concerning some changes that he has suggested. I complimented him earlier, did a very fine job of reviewing these rules and has submitted the written comments. He's identified each section, what the comment is and what the suggestions are. He also went one step further and obtained a copy of the rules from us on disc and then made the modifications so they can be clearly seen by furnishing us a copy as well as an updated disk showing the items that he wanted to delete as well as the items he wanted to add. So since Chris is here, I'd like to ask you Chris if you'd like to make any comments on the written comments that you have already submitted.

Chris Callas: Right, I wouldn't mind talking about it just briefly. The (The recording tape was inaudible) indications the additions and deletions that are seen on the red like copy are stylistic and for clarity purposes and were to improve grammar or punctuation. So those certainly don't need to be commented on. There are a lot of substantive comments, some of them are rather complicated in nature and I thought I could briefly address what our concerns are, a few of those. The first, Dwight has already touched on, the definition of security which appears in the rules section 112-5-2, 2.6. There securities are defined with a long laundry list of intangible pieces of property. Some of them are almost ideas only, put, calls, survivals, that kind of things. We wonder whether the act actually contemplates security in an expansive way. According to the rule, there are, as I have indicated in my memo, a couple of places in

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the definition of property, the only type of property that the act applies to, two or three places where items that we would call securities are addressed. They come in basically three flavors, one would be stocks, which are equity interests, two would be debt insurance of corporations, and the third would be municipal public debt bonds. Outside of those, I wonder about a lot of other things that are included in the definitions of securities, actually are property and should bear some close scrutiny and the large part of my comments are that we may either want to get rid of the definition of security in the rule, I'm not sure it adds anything especially since in the act itself, security is not a defined term. For better or for worse. If we got rid of it then the notion of security that is in the act, in the places I've indicated in my memo, would probably control.

I think it is also significant to note, the next area I want to discuss that 3.3 talks about registered, interest bearing bonds and the time period is applicable to that. It would, the language is different than the language that appears in the statute, there is also an exclusion in the statute, with respect to bearer bonds and original issue discount bonds that the language in the rule doesn't seem to take account in, so they don't square. A lot of my comments you'll see are made with an eye to making sure that the language does not materially exceed or differ from the language of the statute, what the legislature has already authorized. With respect to rule 3.3 there are some significant concerns here. Also rule 3.3 purports to give a presumptuous time period for registered interest paying bonds without differentiating between corporate obligations, which are considered under Section 2a-4, and municipal public obligations which are considered under 2a-16. And you can see if you look at those presumptive time periods they actually differ somewhat from each other, so a rule that attempts to combine them or can be read to combine them, might well be looked at carefully.

The next rule I wanted to comment was 7.1.c. You have language in it when it's talking about tangible property which suggests that the act applies to tangible property which is found outside of a safe deposit box or rule that is other safe keeping depository. I think, fairly read, the Act lends itself to application of tangible property which is found in safe deposit boxes and no other. I wonder whether the treasurer's office really is attuned to that subtlety of the act, its not really that explicit, takes pretty careful reading of the act to discern. But I think that is a important note to be made.

8.3 of the act talks the effort the holder should make to transfer record ownership of securities to the State before actually giving those securities over to the state in accordance with the reporting parts of the act. First of all, the act does not impose that duty on the holder of the security. Second of all, we're not sure whether in many instances a holder, probably unless it is a bank, could actually do that or do what is necessary to transfer that

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record of ownership over to the state. The act does provide, it does give the authority to the administrator of the treasurer to take such actions that are necessary to accomplish that, (The recording tape was inaudible) to explain, to sell the securities. I think it intended that's how this transfer of record should be done and rule 8.3 may get a little out of bounds with what the legislature intended for that reason.

Finally, this is probably what Debbie has some comments on, in section 19.1, 19.2 we're talking about an examination of holders of unclaimed property and there's a significant list of instances in section 19.2 of the rule where the treasurer would have a reasonable cause to suspect that property is not being property reported by a bank. I have a couple of problems, concerns with that section. First of all, part of the act reads, section 20b of the act reads that the administrators ability to examine a national bank is limited to the ability that is granted and what protection is placed upon by federal law, that is 12-USC-40-4b. Section 20b of the statute also goes on to say that state banks cannot be examined any more to a greater extent than national banks can be under applicable federal law. The federal statute says that a national bank may be examined by a state treasurers office for the purposes of unclaimed property reporting solely to insure compliance with applicable state unclaimed property or escheat laws upon reasonable cause to believe that the bank has failed to comply with those laws. First of all there are several subsections under 19.2 which set forth lots of different instances in which the treasurer might have reasonable cause. I think it is a great idea to set forth what you are going to consider to be reasonable cause, but some of them may be considered to go far afield. For example, one of them says if you haven't been examined for five years that constitutes reasonable cause to come in and examine you. Under federal stature, the thing that you have to show before you go and examine someone is reasonable cause that they have not complied. I'm not sure that it is fair, say the bank has maybe complied perfectly for five years, all of a sudden under your definition is worthy of suspicion, simply because it has not been examined in that long of time. My comments indicated that there are a couple of other of those that, I think, face the same problem. If it's reasonable cause that the standard is then you have to have a reasonable cause, and not that they are changing their computer system or they haven't been examined for a long time, things like that. So that's a concern. Also 19.1 is a section of the rule that states that the treasurer has to give reasonable notice before he conducts an examination unless it looks like records may be absconded with or books gotten rid of, he use that reasonable notice. Again, under the federal statute, National banks, and by extension, state chartered banks, also would have to, they have to have these forms. I'm not sure that our state act can (The recording tape was inaudible) for most banks. Those are the primary concerns that I bring to your attention orally. I thank you for your time.

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Jim McMillon: Thank you for your good work on this , we really appreciate the input, both written form and to take the time to make the oral comments also. Chris, are you representing anyone?

Chris Callas: No, I am not. It is kind of a labor of love for me.

Jim McMillon: Very good job. Very good job. Now lets see, we'd like to receive any other written comments, Lori, did you have something?

Lori Greathouse: I do.

Jim McMillon: OK. Great. Yes, we can take them.

Deborah Sink: These are from Tom Winner. He's president of the West Virginia Banker's Association.

Jim McMillon: OK. Some more Richard, we've got some more to come. Thank you very much. Good.

Jim McMillon: The first set of written comments that we have are from the West Virginia Bankers Association. Thank you for bringing those. And it looks like there are comments about Sections 3.1 presumption, 3.2 on owners knowledge, 3.4 on retirement accounts 3.5 on presumption, 3.6 on automatic renewal and they are all very well identified. Also Sections 4.1, 4.4, 4.3, safe deposit boxes, sections 6.1 and 6.3 on dormancy charges, section 7 on reports, section 11 earnings on property, section 12 public sale, section 13 deposit of funds, 14 claims, 19 provisions applicable to national banks and 24 transitional provisions and it is signed by Tom Winner and these are accepted and we do appreciate it. Would you care to make any comments on the rules?

Debbie Sink: Yes, if I may. My name is Debbie Sink and I'm with (The recording tape was inaudible) Davit Graff. I will not repeat what is in this letter. Some of the comments go to the fact that the act is very detailed and almost contains a lot of traditions which are more typically found in regulations and as Chris pointed out there are a couple of places where actually it appeared that the act may be more complete than the regulation and in those instances the association recommendation was that we just rely on the act. So there is no need to go through those. But there are a couple of mainly operational issues which I would like to highlight by oral comment.

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Probably one of the most important points is the regulatory list of activities or events which do not eliminate a presumption of abandonment. That is found in Section 3.1 of the rule and one of those items is of particular concern and that is automated clearing house transfers, (ACH transfers). It is suggested in the rules, that in fact, if there is an ACH Transfer it will not constitute sufficient activity in the account to eliminate a presumption of abandonment. That is a serious concern to the banking industry and perhaps ought to be as well to the treasurer's office with many of the efforts that you all are taking to eliminate paper. In fact, some of them, some fine tuning in the past session. An ACH transfer has to be customer initiated and we believe, in fact, that type of activity should evidence an owners interest in the property and not have no meaning to an owners interest in the property and we think this will only become increasingly important as more federal government agencies mandate direct deposited accounts. The IRS is doing a lot of refunds, you know I think they have a deadline of the year 2000. Banks are going to be required, as part of their public purpose to maintain accounts for people who don't otherwise use accounts, so that they can receive government funds and so we just believe that ACH transfers do indicate an owners interest in an account and should not be on the list of things which do not indicate an owners interest in an account. That's probably one of our most important comments. There are a lot of operational technicalities which I couldn't presume to explain to you but if you find that kind of input would be useful in your deliberations, the association is prepared to have those types of people available to you. Please talk to Tom Winner if that type of support would be helpful, because this a really important issue to the industry and as I say, probably to some of your accounts as well.

Just staying in the category of major comments, the other major comments of importance to the banks, and thrifts that the association are representative. There is a provision in the statute that says "accounts which automatically renew, the presumption of abandonment period will begin to run from the first renewal date and that automatic renewals will not evidence interest in owners property and that's what the statute says, we would like to see, perhaps in the rules and there is contained in these written submission some proposed language. What happens on automatic renewal CD's is that a check is cut for the interest on the prior period whether it was 90 days or a year or whatever it was, the principal on that CD will be automatically renewed, but the interest will be paid out to a customer obviously, and we are suggesting that, where that is the case, the interest is paid by a check to a customer and the customer cashes the check, that should evidence interest in the owners property. They have received the income and acknowledged it. Similarly, another thing that often happens with interest with automatically renewable CD is that it is deposited in that customer's direct deposit, into that customers active checking account. Again, if that happens, the accounts active, its in use, its not dormant, we believe that the payment of and acceptance of the interest on that CD should constitute evidence of owners interest, and so

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that the presumption of abandonment period does not begin to run as long as that is actively received and we tried to offer some suggestions on how you could tell that something had been received. You know, if the check comes back, owner cant be found, then it hasn't been received and accepted by the customer. This is a very, very common product in banks. Most often taken advantage of by Senior citizens, older folks who you know need to have their money in fairly liquid and very secure assets and its a widespread product and presumption of abandonment now reduced down to the shorter time period, begins to run on first renewal, we see some potential customer issues there, particularly among the older citizens who really use their certificate of deposit product as a way to hold their savings. So that's supposed to be another one of our significant comments.

Jim McMillon: This is on the section you are proposing that is a new section 3.6?

Debbie Sink: Yes.

Jim McMillon: Some suggested language to be added to the rules.

(no answer heard)

Debbie Sink: Another comment that would be important to highlight is the safe deposit revision in the rules. This may just be a misperception on our read, but it almost appeared as though the property would have to remain in the safe deposit box until abandoned and then the rule describes an opening and inventory procedure once you're to that point. Typically, safe deposit property, would not remain in the box until it was presumed abandoned. Banks have contracts, safe deposit rental contracts with their customers that provides for a variety of things, but they most always provide that the box can be drilled and opened if the customer does not pay the rental, after a notice and a period of effort to find the customer. Some of the contracts also provide that the bank have a lien on that property and after efforts to notify the customer, can even sell it, liquidate it, pay off their rentals and cost of drilling and cost of sale. What's left, whether its cash or property, has been stored and held by the bank until its presumed abandoned or otherwise claimed. But its not necessarily in the box. And the rule did not appear to contemplate the variety of things that could happen to a box, although the statute did. And so we just note that in the rules, our written comments rather.

Another issue that we mentioned in the written comments is the record keeping requirements with respect to dormancy charges. And I don't really need to go through all our comments there that are submitted in writing, but that is a point of concern to the banking and thrift industry just because of the time periods involved, the way that the deposit contracts are maintained and how they would supply or how it would be impossible to supply some of the

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information requested under the proposed rules. So we just offered some comments on documenting dormancy charges for your consideration.

I won't repeat Chris's comments on Section 19 we have in here a summary provision, basically similar comment and that is that there's not really a reason under the statute to treat national banks differently, because the statute requires that the banks be treated similarly, state and national banks.

Also, you know we have other institutions that are depository institutions which are neither state or national banks. And again., we question the focus of the rule on national banks, and as Chris has already highlighted, the federal law which governs a national charter. So those concerns were concerns about it as well.

The last comment I would make and it is in our letter, our comment number 8, referring to Section 7, reports. One consideration that we would ask of the treasurers office is the fact that, as I am sure you are aware, banks are set up to monitor a myriad of compliance functions that they have on systems. Most of those systems involve computer software design, because that's the only way they track these accounts, you know everything a bank has exists because its on the computer. If they had to pull out paper on everything they can, for seven years at least, but that's not how they operate. And my tracking,. Everything is on system. Many of the presumption of abandonment periods applicable to property the banks hold, in the form of accounts, were reduced by this recent legislation and so all the bank systems were set up to monitor property under the old rules which in some instances still went up to 15 years. Now they have these new periods, but they still have their old systems. So one thing we've asked your consideration of is a grace period on the first report. And the reason for that is that estimating and identifying between the passage of this act and the promulgation of these regs and November 1 is a very short time period for people in essence to do manual reviews of hundreds of accounts. And so we've asked whether or not it might be appropriate by rule, for the first report really, by some sort of grace period where the estimated payment, good faith estimated turnover may be adjusted and whether or not interest might be abated on the late portion. It would still come in during the state's fiscal year, but there's serious compliance issue for the first reporting period that arises because of the change in the periods of presumed abandonment. A look at the statute indicates that you might have the flexibility in the rules to offer that. So that's not so much in a way of a comment, but in the way of a plea. So if that's something you might consider, it would probably help people get it right the first time if they could have a little more time to get it right. And in conclusion, Id just say that is there's again, any kind of operational input or technical input about how banks manage these systems, I would be glad to bring those resources to bear and we appreciate your consideration of these comments. Thank you.

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Jim McMillon: Thank you very much, I appreciate that Debbie. Any other written comments. Lets see, we have one here from the West Virginia Bureau of Employment Programs and this is addressed to Treasurer Perdue and its fairly short came in just the copy of the Code here and the comment is:

Dear Treasurer Perdue: Please note our concern regarding the enclosed rule, the Workers Compensation division of the Bureau of Employment Programs would register a general objection against the application or the attempted application of the proposed provisions against disbursements from the Workers Compensation Fund. The specific provisions of WV Code 23-3-4 control the treatment of Workers Compensation Funds vis a vis unclaimed property.

Jim McMillon: Now, would you care to make any comments on that.

Ed Staats: Well, first of all our attorney believes there is a statutory conflict. And in 1995 in Senate Bill 350, workers compensation receives it sole source of revenue by the paying of insurance premiums from employers in this state and the earnings on the assets of those so created, impacts substantially the rates that employers are charged. For example, for fiscal year 1998 the rates were reduced by approximately 12 % as a result of anticipated investment earnings, that 12 % represented the balance of 70 million dollars. The shift of any of those assets that creates that investment income effectively results in an additional tax on employers. The provision in Section 250.995 was placed there specifically to preclude that type of action.

Jim McMillon: Anything else? OK

Ed Staats: Well, we've got 2.2 billion in assets and we're very protective of the assets.

Jim McMillon: Appreciate that, thank you very much. We received all the written copies, I don't think we've left any of those out. Any verbal comments or oral comments anybody would like to make, we'd be glad to receive them.

Jim McMillon: Paul did you have any comments that you want to (The recording tape was inaudible for transcription purposes).

Jim McMillon: Almost everybody has had a chance to speak, Oh the prosecuting attorney institute, did you have anything you wanted to (The recording tape was inaudible for transcription purposes)

Transcript of Public Hearing on 8/1/97 re: Rules 112CSR5

Lori Greathouse: Well, I do have a question. My executive director, she understood that any law enforcement agency such as the sheriff's department, police departments, auction off a lot of their unclaimed property to supplement their small budgets and I guess she was wondering if they qualify under 25.3. (The recording tape was inaudible for transcription purposes).

Jim McMillon: OK, so that's all we should look at is what you're saying (The recording tape was inaudible for transcription purposes). Any other suggestions or comments (The recording tape was inaudible for transcription purposes).

Jim McMillon: I believe that's all. Dwight did you have any (The recording tape was inaudible for transcription purposes).

Dwight Smith: I would like to make just one thing a matter of record. Due to the response that we've had from the law enforcement concerning these rules and the new law, we've been asked to consider the possibility of having in our law a provision that would allow them to donate weapons, as long as its in the state of West Virginia, from one agency to another because a lot of the small agencies that are out there. For example, state police may want to donate weapons to a city or a county for the purpose of them using them for a trade-in or appropriating for their agency that has a possible use. And I would like to make that a matter of record so that you will have time to review that and see if that is a possibility and that our law will allow that and that it might be appropriate and give us time to do that and get back with them.

Jim McMillon: Okay, yes sir, Chris.

Chris Callas: This is Chris Callas, I have one question about a couple places in the proposed rules, its mentioned that someone has to complete a report on form proscribed by the administrator. The only forms in it are the ones that apply to law enforcement agencies and I wondered whether those forms are yet to be prepared or what the status was.

Dwight Smith: We are in the process right now of preparing those forms and getting them out, over to you and we'll probably do that similar to the way we do law enforcement get some input from financial institutions before we finalize them.

Jim McMillon: Good question, appreciate that. Anyone else. Any other oral comments (The recording tape was inaudible for transcription purposes).

Transcript of Public Hearing on 8/1/97 re: Rules 112CSR5

Jim McMillon: There being none, we declare the public hearing closed. Thank all of you for coming, we appreciate it, we need this. We appreciate everything you have done.

Cecil H. Underwood
Governor

William F. Vieweg
Commissioner



West Virginia Bureau of Employment Programs

- Job Service/Job Training Programs • Labor Market Information
 - Unemployment Compensation • Workers' Compensation
- an equal opportunity/affirmative action employer*

August 1, 1997

Honorable John D. Perdue
Office of the State Treasurer
Charleston, WV 25305

Re: Comments
112 C.S.R.5,
"Rules for Enforcement of the
Uniform Unclaimed Property Act"

Dear Treasurer Perdue:

Please note our concern regarding the proposed rule. The Workers' Compensation Division of the Bureau of Employment Programs would register a general objection against the application or attempted application of the proposed provisions against disbursements from the Workers' Compensation Fund. The specific provisions of W. Va. Code §23-3-4 control the treatment of Workers' Compensation funds vis a vis unclaimed property.

Very truly yours,

A handwritten signature in cursive script that reads "Randall B. Suter".

Randall B. Suter, Counsel

RBS:ifs

Attachment: W.Va. Code §23-3-4

Legal Services Division

Post Office Box 3922, Charleston, West Virginia 25339-3922 • <http://www.state.wv.us/bep>
Offices located at 4700 MacCorkle Avenue, S.E. • Telephone 304/926-5130 • Facsimile 304/926-5414

issued according to the constitution and the laws of this state, which opinion, if such notes, bonds or securities be purchased, shall be filed with the treasurer with such bonds or securities. (1913, c. 10, § 20; 1915, c. 9, § 20; 1919, c. 131, § 20; Code 1923, c. 15P, § 20; 1933, c. 8; 1939, c. 139; 1975, c. 215; 1991, c. 16.)

§ 23-3-3. Investment of surplus funds required.

Whenever there shall be in the state treasury any funds belonging to the workers' compensation fund not likely, in the opinion of the commissioner, to be required for immediate use, it shall be the duty of the board of investments to invest the same as prescribed in the preceding section [§ 23-3-2]. Whenever it may become necessary or expedient to use any of the funds so invested, the board of investments, at the direction of the commissioner, shall collect, sell or otherwise realize upon any investment to the amount considered necessary or expedient to use. (1913, c. 10, § 51; 1915, c. 9, § 51; 1919, c. 131, § 51; Code 1923, c. 15P, § 51; 1975, c. 215; 1991, c. 16.)

§ 23-3-4. Disbursements not considered as abandoned property; interest to be retained.

(a) All disbursements from the workers' compensation fund and of the other funds created pursuant to this chapter which might otherwise be presumed to be abandoned and subject to the custody of the state as unclaimed property under the provisions of article eight [§ 36-8-1 et seq.], chapter thirty-six of this code shall be deposited by the state treasurer to the credit of the workers' compensation fund or to such other affected fund.

(b) Notwithstanding any provision of law to the contrary, all interest and other earnings accruing to the investments and deposits of the workers' compensation fund and of the other funds created pursuant to this chapter shall be credited only to the account of the workers' compensation fund or to such other affected fund. (1995, c. 253.)

Effective dates. — Acts 1995, c. 253, provided that the act take effect from passage (February 10, 1996).

§ 23-3-5. Authorization to require the electronic invoices and transfers.

(a) The workers' compensation division is authorized to establish a program to require the acceptance of disbursements by electronic transfer from the workers' compensation fund to employers, vendors and all others lawfully entitled to receive such disbursements: Provided, That claimants may not be required to accept such transfers but may elect to do so.

(b) The division is further authorized to establish a program to require payments of deposits, premiums and other funds into the workers' compensation fund by electronic transfer of funds.

Written comments from the WV State Treasurer's Office concerning ~~§112-5-2~~ 112CSR5. Submitted by Dwight Smith.

1. §112-5-2. 2.6, Under definition of security, delete the words "fractional undivided interest in oil, gas or other mineral lease, right or royalty,"

REASON:

Definitions of mineral and mineral proceeds are defined in §36-8-1. 8 and (9) of the Act and should not be included in the definition of security.

2. §112-5-4. 4.1. Line three beginning with the word opened. Delete the word "opened" and insert the words "presumed abandoned".

REASON:

The language "shall be opened" used in this context, may not be consistent with State and Federal banking regulations and may not allow ample time for the financial institutions to comply with the due diligence required by §36-8-7. (e) of the Act.

3. §112-5-025. 25.2, Line three beginning with the word "see". Delete the words (see attached sample forms UP-8A-2 through 6).

REASON:

Sample forms should not be filed as part of the rules and regulations due to the fact that the Treasurer may periodically need to amend or improve on the forms to make them more user friendly.



West Virginia Bankers Association, Inc.

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July 31, 1997

Honorable John D. Perdue
State Treasurer, and
Anoop K. Bhafin
Office of the State Treasurer
Capitol Complex, Room E-122
Charleston, West Virginia 25305

Re: **Legislative Rule, Series 5,
Uniform Unclaimed Property Act**

Dear  Treasurer Perdue:

The West Virginia Bankers Association (the "Association") represents most of the state and national banks and thrift institutions operating in West Virginia. As a part of our service to our members, we regularly review proposed rules of interest to the industry. In that regard, we have reviewed the proposed rule implementing the Uniform Unclaimed Property Act passed during the 1997 Regular Session of the West Virginia Legislature. We appreciate your consideration of the following comments. We will be glad to follow up with any additional information which would be helpful in your efforts to finalize the rules. We have set forth our suggestions and comments in the order they appear in the proposed rule.

1. **Section 3.1 -Presumption** - We would strongly encourage you to delete the inclusion of automated clearing house (ACH) transfers from the list of activities which do not prevent the presumption of abandonment. ACH activity is customer initiated. The entire financial services industry is moving away from a paper based system. Certain ACH transfers are now mandated by the federal government. The State of West Virginia is, appropriately, trying to reduce the thousands of checks it writes each year. A customer may initiate a paper based transaction, only to have it converted to ACH in the clearing process. Many accounts will have little or no paper activity. The ACH transactions must be initiated or authorized by the customer, activity which we believe should prevent the presumption of abandonment.

2. **Section 3.2 - Owner's Knowledge.** We would recommend changing the presumption against knowledge in the case of similar types of property. For example, a customer may believe that he or she has two certificates of deposit, not three.

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Anoop K. Bhafin
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3. Section 3.4 - Retirement Accounts - We believe that this section should be deleted. The language in Section 36-8-2 (a)(14) is more specific than the language in the proposed rule and appears to be sufficient. The language in the proposed rule is slightly different than the language in the statute and is confusing. There are also, we believe, potential ERISA preemption issues with the broad language in the rule.

4. Section 3.5 - Presumption - It appears that language may have been inadvertently deleted as the meaning of this section is unclear.

5. New Section 3.6 - Automatic Renewal - We recommend a new section to clarify the presumption on automatic renewal certificates of deposit:

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

6. Sections 4.1 through 4.4 - Safe Deposit Boxes - A comparison of the statute and the rule with respect to safe deposit boxes reveals some serious and perhaps inadvertent differences. Banks may be permitted, pursuant to their written agreement with their customers, to have a lien on the contents of a safe deposit box to secure the failure to pay the box rental. Agreements may permit the bank to drill open the box and liquidate the contents to pay past due rent and costs associated with collection of the same. This arrangement is contemplated in the statute at Section 36-8-3, which recognizes that at the time of presumed abandonment the bank may be holding either the contents of the box or the proceeds of the sale of the contents. The proposed rule appears to change the existing procedure by dictating the opening and inventory procedures and requires delivery of the contents, which should not be the purview of the Unclaimed Property Act, with the bank to submit a request to the Administrator to recoup based upon its lien. We suggest that if a process more specific than set forth in the statute is viewed as necessary, that it should contemplate, as the statute does, that the contents may have been liquidated prior to the presumption of abandonment. Such revisions would also affect Section 7.1.c, which appears inconsistent with the above section.

7. Sections 6.1 - 6.3 - Dormancy Charges - The record keeping requirements relating to dormancy charges are burdensome. Supplying evidence of the contract is reasonable,

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as that is a requirement for the imposition of such charges, however, supplying the form of the contract or notice should be sufficient. However, keeping a record of the imposition of such charges for 10 years after they are assessed appears unduly long and unnecessary, especially if the charges assessed are included on the remittance report, as required in the rule. Also, the requirements of section 6.3 are very broad and appear unnecessary, given the obligation to supply evidence of the contractual right to assess the charge. We recommend deletion of the 10 year requirement and of Section 6.3.

8. Section 7 - Reports - Given the shortened presumption periods applicable to many types of property or accounts, we would strongly encourage your office to consider, for the first report, upon request, an extension of 90 days without the obligation to estimate and pay 80% of the property and without incurring, for the 90 days, the obligation to pay interest on the amount due. The reason for this one time exception or grace period is to give banks a reasonable amount of time to review their compliance under the new time periods. Systems were not in place to monitor the shorter periods and new information requirements and it may not be possible to implement the new requirements prior to the first report.

9. Section 11 - Earnings on Property - We recommend deletion of this section. It is, in large measure, redundant in that it repeats the statutory language. In some instances, it repeats the statutory language with slight variation which is confusing. For example, Subsection 11.1.b of the rule combines two distinct sections of the statute with the result that the rule implies that the three year limitation on the obligation to pay the interest or other income applies only to "securities," while the statute indicates that the three year limitation applies to all income producing property.

10. Section 12 - Public Sale - Again, this section only loosely repeats the statutory language on the same subject and is, in fact, less detailed. We recommend its deletion in its entirety to avoid confusion.

11. Section 13 - Deposit of Funds - The statutory language is more complete and this section is unnecessary.

12. Section 14 - Claims - If the administrator will implement claims by other states subject to judicially established standards, it might be clearer if these standards, as viewed by West Virginia, are set forth in the rule.

13. Section 19 - Provisions applicable to national banks - We strongly oppose the provisions, beginning in Section 19.2 which, for reasons not expressed in the statute or the rule, sets forth a series of presumptions targeted at one type of bank, a national bank. There is absolutely no

Honorable John D. Perdue, State Treasurer
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justification for this discriminatory treatment and the enforceability of the provision is questionable at best. In Section 36-8-20, the administrator has the right, at reasonable times and upon reasonable notice to "examine the records of any person to determine whether the person has complied with this article." It is completely unnecessary to set forth a series of conditions, for national banks alone, which create "a reason to believe that the National Banking Association has failed to report property in accordance with the Act."

14. Section 24 - Transitional provisions - This topic is more completely and better covered by the statute.

Thank you for your consideration of these comments. We have indicated those of utmost concern to banks and encourage especially your consideration of the comments on the ACH issue, the automatic renewal of certificates of deposit, the safe deposit box issues, the grace period for the first report, and the concern about targeting national banks. I will be glad to assist in any way to supply background or other information which would help in your efforts and in your obligation to implement the new Act.

Very truly yours,


Thomas A. Winner

chs/110740

MEMO

To: Anoop Bhasin, General Counsel
From: Christopher L. Callas *CLC*
Subject: Comments on Proposed UUPA Rules
Date: July 30, 1997

This memo offers substantive comments on the proposed legislative rules for enforcement of the Uniform Unclaimed Property Act ("UUPA"). Attached to this memo is a red-line/strike-through copy of the proposed rules. The red-line copy contains suggestions for substantive change, the rationales for which are explained in this memo. It should be noted, however, that there are several concerns expressed in this memo which are not accompanied by revisions in the red-line copy. (In such instances, the comment in this memo begins with "[n]o substantive changes made.")

It should also be noted that the red-line copy includes many stylistic, grammatical, punctuation and technical changes which appear only in the red-line copy and which are not discussed in this memo.

Finally, the red-line copy also contains very minor changes which do not appear in the red-lining itself (mostly added or deleted commas and periods). I chose not to red-line most of these because they are very difficult to pick up, even when they are red-lined. So that you can pick up these changes, I am also including a disk with this memo and the red-line copy.

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Here are the substantive comments:

Rule 2.2 "Owners interest in property" -- lacks apostrophe and is somewhat confusing from a technical standpoint. Replaced with "indication of interest in property."

Also added specific subsection references.

Rule 2.3 Substituted "owner-initiated" for "owner driven"; "driven" is susceptible to multiple interpretations.

Rule 2.4 Struck "agency," a word which does not describe a physical or depository for valuables as the other four terms do.

Rule 2.6 No substantive changes made. However, we think that the definition of security is overly broad and could lead to confusion in many ways.

First, "security" is not defined in the Act. Instead, there are several places in the Act where various (and differing) items of intangible property commonly known as securities are referenced. For example, the Act's definition of property includes "stocks or other evidence of ownership in a business association or a financial organization" (section 1(a)(13)(iii)) and "a bond, debenture, note or other evidence of indebtedness" (section 1(a)(13)(iv)). One could forcefully argue that no other items of intangible property which are currently listed in Rule 2.6's definition of "security" are subject to the Act.

Further evidence supporting this position is found in the various presumptions of abandonment found in Section 2 of the Act. The Act provides presumptive time periods for stocks and other equity interests (section 2(a)(3)), debt of business associations or financial organizations (section 2(a)(4)), and municipal/public debt obligations (section 2(a)(16)) -- as above, no other items of intangible property currently listed in Rule 2.6's definition of "security" have associated presumptive time periods in the Act.

Moreover, section 8 of the Act makes reference to a "security or security entitlement" under article 8 of the uniform commercial code. W. Va. Code §46-8-102 defines security as a "share, participation, or

July 30, 1997

other interest in property of or an enterprise of the issuer or an obligation of the issuer. . . " (whether certificated or not). Again, it does not include the long list of items currently listed in Rule 2.6's definition of "security."

Further, there are certain listed items in Rule 2.6 which would not fall under the meaning of security as derived from the Act or found in the uniform commercial code. For example, it is unclear whether a "voting trust certificate" would meet these qualifications. Also, a "fractional undivided interest in oil, gas or other mineral lease" would be a real property right to which the Act would not apply. See Section 1(a)(13).

We would suggest either that rule 2.6 be eliminated, relying on the common-sense use of the word "security" found in sections 8(b) and 12(b) of the Act, or that it be drastically scaled back to reflect only those types of securities to which the Act applies on its face, using as a guide sections 1(a)(13)(iii) and (iv) and sections 2(a)(3), (4), and (16) of the Act. Of course, if rule 2.6 is eliminated, the many references to "security as defined by section 2.6 of this rule" could be eliminated.

Rule 3.1 No substantive changes made. Each time the indefinite article "those" appears twice in the last two lines, it has an unclear reference -- it's difficult to tell which of the activities described are referred to. I suspect that "those which are non-owner initiated" modifies the word "activities," and might be preceded by "or any other activities" The meaning of "those not requiring a direct owner response" is unclear.

Rule 3.3 No substantive changes made. However, the language of rule 3.3 is confusing in light of the Act's provisions. Section 2(a)(4) provides the presumptive period for debt of business associations and financial organizations, making them presumed abandoned "five years after the date of the most recent payment unclaimed by the apparent owner." The language of the rule should track this language exactly, especially since the two might arguably be different.

Section 2(a)(4) also excludes bearer bonds and original issue discount bonds. Rule 3.3 includes a presumptive period for bearer bonds which is not authorized by the Act.

Also, rule 3.3 speaks of "registered interest paying bonds" without differentiating between corporate debt obligations under section 2(a)(4) and municipal/public obligations under section 2(a)(16), which have different measurement methods for their presumptive time periods.

Rule 4.2 Struck "or other safe keeping depository," as definition of "safe deposit box" makes the language redundant.

Rule 4.3 Added clarifying language: "the property recovered from a safe deposit box shall be offered . . ."

Rule 4.4 Added clarifying language showing that a "valid lien or contract" is only needed to support a holder's reimbursement for unpaid rent or storage charges (and not for reimbursement of the cost of opening a safe deposit box).

Rule 5 Reworded for clarity.

Rule 6 Should probably be renumbered to redesignate the first three paragraphs of the rule as 6.1, 6.2 and 6.3. The subsections currently identified as 6.1, 6.2 and 6.3 would then be redesignated as 6.1.a, 6.1.b, and 6.1.c.

Made "Dormancy charge" lower case.

Reworded second paragraph.

Inserted "dormancy" before "charges" in third paragraph.

Added "of this information" to current Rule 6.2 and clarified that the records are to be maintained in the same way other records are to be maintained under the Act (pursuant to Section 21).

Rule 7.1 Added several stylistic clarifications.

Also, the November 30 reporting deadline applies to all holders as defined in the Act, and not merely all "business associations." Moreover, the definition of "business association" includes "life

insurance companies” as defined by the Act, so the change was required for that reason as well.

Rule 7.1.a Reworded.

Rule 7.1.b Substituted the defined term “life insurance company” for “insurance corporation.”

Rule 7.1.c Struck “or other safekeeping depository” as redundant. Also struck “or in the case of other tangible property.” Section 1(a)(13) of the Act defines property as “tangible personal property described in section three” or intangible property as further described in that section. Reference to Section 3 of the Act shows that the only tangible property to which the Act applies is tangible property held in a safe deposit box. Therefore, the Act does not apply to tangible property which is not found in a safe deposit box. (It is true, however, that unclaimed stolen property in the hands of a law enforcement agency is reportable. However, it is not reportable under the Uniform Unclaimed Property Act. Instead, it is reportable under W. Va. Code §36-8A-1, *et seq.*, an article of the code which, while enacted along with the UUPA, was not technically a part of it. See proposed Rule 2.1.

I also struck the last clause, moving it to a more logical place in the subdivision discussing dormancy charges.

Rule 7.1.d Reworded and incorporated a requirement for a brief description of the items worth less than \$50 in aggregate. Struck “the amount appearing from the records to be due” as unclear.

Rule 7.1.e Removed entirely. This subdivision seemed to direct the holder to make such a reporting, and did not discuss what the report should contain. Substance moved to 7.1.d.

Rule 7.1.f Renumbered as 7.1.e. New substantive requirement added, requiring the reporting of the total of any safe deposit box opening charges and unpaid rent or storage charges for which the holder requests reimbursement under Section 10(g) of the Act.

New 7.1.f Added new 7.1.f, requesting the total dormancy charges withheld and a copy of the contract authorizing the imposition of them.

Rule 7.1.g Substituted "the owner's last indication of interest in the property," a defined term, for "last transaction."

Rule 7.1.h No substantive change made. It should be noted, however, that Section 7(g) of the Act requires an affidavit verifying the holder's attempts to contact the owner.

Rule 7.1.i Changed to track language of the statute.

Rule 7.2 Removed the phrase "but not limited to" as meaningless.

Second sentence: provides that holder is not required to make a due diligence mailing to owners whose property has an aggregated value of less than \$50.00. This language overlooks the other two exceptions to the mailing requirement found in Sections 7(e)(1) and (2). If this omission was inadvertent, these other exceptions should be added so the rule does not imply that it is attempting to render them ineffective. If this omission was intentional, the rule contravenes the language of the statute.

No substantive change made, but the motivation for and meaning of the last clause of the second sentence of 7.2 is unclear.

Rule 7.3 Reworded for clarity.

Rule 7.3.a.1 Reworded for clarity.

Rule 7.3.a.2 "Shall be returned to the holder for correction" moved to complete the sentence begun in 7.3.a.

Rule 7.3.b Substituted "administrator" for "Department."

Rule 7.4 No substantive changes made, but it should be noted that these reporting forms do not appear in the proposed rules.

Rule 7.5 Struck "first reporting" before date in the second line and "after the property's initial date of presumptive abandonment," both as being superfluous in the context in which they appear.

While these changes have not been made, the following points should be made. First, section 7.5's reference to reporting "upon discovery of the omission" indicates that the section may be applicable to inadvertent omissions only. The section might also logically be read to include omissions which are not inadvertent. Section 7.5 should be clarified either to include or exclude such omissions.

Also, the rule does not explicitly state whether discovered omissions must be immediately reported upon discovery of the omission or whether the holder may wait until the next reporting due date (probably the following November 1) before the holder files a report.

Rule 7.6 Reworded for clarity.

Rule 7.6.a Phrase "a requirement such as" removed from the last sentence for clarity purposes.

Rule 7.6.c Struck "upon filing for an extension" and inserted "upon receipt of the extension." Section 7(f) of the Act requires that the interim payment be made only on receipt of the extension, not on filing for the extension.

Rule 7.6.d Substituted "and" for "or" for clarity purposes. Substituted "the report and remittance are due" for "property is due." This more closely tracks the language of this rule.

Rule 8.3 No substantive changes made. However, it should be noted that the Act does not require a holder of securities to make any effort to assign or transfer the registration of the security to the administrator. The Act only requires that the holder report and deliver the security. Moreover, the statute does not authorize the holder to assign or transfer the registration of the security. Without such an authorization, it is unclear whether a holder would have the authority to do so; if the administrator can envision a process by which this could occur, we suggest that the process be set forth in the rule.

Nonetheless, the Act does empower the administrator to indorse the security "on behalf of the apparent owner" to permit the administrator to transfer or dispose of the security. Under principles of statutory construction, this would appear to be the only method the legislature intended to authorize to accomplish this end.

Finally, section 12(b) of the Act permits an owner to recover a security delivered to the administrator within three years of such delivery if the administrator has not yet sold it under that subsection. If rule 8.3 stands and if it is susceptible to compliance, then the administrator would have to take steps to transfer the security back to the owner.

For these reasons, we suggest that rule 8.3 be eliminated. If it is not, the red-line copy contains stylistic changes.

Rule 8.4 Stylistic changes made.

Rule 10.1 Added the qualification "presumed abandoned" after "property"; substituted "administrator" for "state"; and substituted "good faith" for "which."

Rule 11.1.b Struck language to make clear that the administrator must pay income or gain on securities only from the time the property was delivered to the administrator to the time the owner establishes a claim to the property. As currently stated, the only end point stated for the crediting of income or gain is the third anniversary of the delivery of the property to the administrator. This may be misleading when read in context with Section 11(a)(2) of the Act.

Also, substituted "at the time the owner establishes a claim" for the phrase "at the time a claim is filed" in the second sentence. Again, this more closely tracks the language of Section 11(a)(2), as the statute provides for the crediting of interest through the time the owner establishes a claim to the property, which is necessarily a time after the time the claim is filed.

Rule 11.1.c Reworded for clarity.

Rule 12.3 Revised to make clear that a person claiming securities is only entitled to receive the net proceeds of the sale if the administrator has sold the securities under Section 12(b) of the Act. Struck "net" before "proceeds" in the first sentence as redundant.

Added language to second sentence to make clear that only persons making claims for securities after the expiration of three years from the date the securities were delivered to the administrator are not entitled to receive appreciation in the value of these securities. This comports with the language of Sections 12(b) and 11(a)(2) of the Act.

Rule 12.5 Reworded for clarity.

Rule 14.1 First, the section reference to the Act is incorrect. Second, the reference to property "subject to Texas v. New Jersey, et al." is unnecessary and in any event requires the reader to determine just what property is subject to this decision (if the reader even knows what it is or how to find it).

Third, the three subdivisions of subsection 14.1 essentially rewrite the carefully crafted scenarios presented in Section 14(a) of the Act. Our understanding is that the five subdivisions of Section 14(a) were devised in an effort to comply with the rules set forth in the Texas v. New Jersey ruling. It appears the three subdivisions in the proposed rule attempt to simplify the more complicated language in Section 14(a) of the Act. However, they do not encompass all the scenarios envisioned by Section 14(a). For instance, the scenarios stated in Sections 14(a)(2), 14(a)(3), and 14(a)(5) of the Act are not covered by either of the three limitations stated in the proposed rule. In this respect, the proposed rule does not comply with the statutory language.

Rule 14.1.a Struck reference to "creditor" as being confusing and unexplained in context.

Rule 14.2 No substantive changes made. However, the subsection references a "form prescribed by the administrator" which does not accompany the proposed rules.

Rule 14.2.d No substantive changes made, but two questions arise. First, is this the same claim form which is referred to in rule 14.2? Second, is this verification in addition to the affidavit required for some claims in rule 14.2.b?

Rule 14.3.b Substituted "income or gain" for "dividend, interest or other increment" to better track with the statute.

Rule 18.1 Struck "or transfer" as redundant.

Rule 18.3 As currently stated, a holder who willfully conceals the existence of property which is presumed abandoned would never have the benefit of the limitations period provided in Section 19 of the Act, even after the administrator discovers the existence of the property. The language substituted in 18.3 provides that the limitations period does not commence to run until the administrator has discovered, or by the exercise of reasonable diligence should have discovered the existence of the property. This language more closely resembles the "discovery rule" found in civil case law. The new language also removes the questionable language "willfully or otherwise."

Rule 19.1 For the reasons expressed in the discussion of rule 19.2 below, national banking associations and state-chartered banks may not be examined except "at reasonable times and upon reasonable notice." This limitation is added to the rule, along with some stylistic changes.

Rule 19.2 No substantive changes made. Section 20(b) of the Act limits the administrator's ability to examine both national banks and state-chartered banks to that extent permitted by federal law. First, the rule should apply not only to national banks but to state banks as well.

The federal limitation is found in 12 U.S.C. § 484(b), which permits lawfully authorized state auditors and examiners, at reasonable times and upon reasonable notice, to review a national bank's records "solely to ensure compliance with applicable State unclaimed property or escheat laws upon reasonable cause to believe that the bank has failed to comply with such laws." (Emphasis added.)

However, many of the conditions listed in rules 19.2.a through 19.2.i are not limited by "reasonable cause to believe" that the bank has failed to comply with the Act. In other words, the question becomes whether each of the listed conditions constitutes "reasonable cause." It could be successfully argued that many of them do not. For example, subsection 19.2.e suggests that reasonable cause is created when a bank has not been examined for five years or more. This subsection has no logical connection to the "reasonable cause" requirement, and in fact provides for periodic examinations without cause of even the most compliant banks. This criticism applies equally to subsections 19.2.b, 19.2.c, 19.2.d, 19.2.f and arguably others.

It is a laudable effort to delineate the circumstances which the administrator will consider "reasonable cause." However, unless the subsections quoted above are deleted or modified, they still will be subject to challenge under 12 U.S.C. § 484(b).

- Rule 19.2.i Included "the absence of any of" before "the conditions" for clarity.
- Rule 19.4 Section 20(e) of the Act permits costs to be assessed only against business associations and financial organizations. This qualification is added so that the rule does not exceed the plain meaning of the Act. With this qualification, the rule is rewritten for clarity.
- Rule 19.5 Substituted "on the basis of any available records of the holder" for "from the record available."
- Rule 19.6 No substantive changes made. This rule would be more logically placed at the beginning of rule 19, as it is the first line of Section 20 of the Act.
- Rule 20.2 No substantive changes made. However, it should be noted that Section 21(a) of the Act provides that records must be kept for ten years from the date the report is filed. Section 20.2 of the rule as currently stated requires record retention for ten years from the date on which the property is reportable. Not only does this position contravene the language of the statute, it would impose an additional record keeping burden on holders. For example, an unclaimed property report may contain ten different items of property, each with its own

date on which the property became presumed abandoned and thus reportable under the Act. Under the rule as currently stated, each of these pieces of property would have its own ten-year time period.

It makes much more sense to track the language of the statute. Holders could base their record retention policies on their reporting dates, and the administrator would get longer record retention for certain items of property presumed abandoned before they are actually reported.

- Rule 22.1 Struck "to exchange property subject to the Texas v. New Jersey ruling." First, the Texas v. New Jersey cite is inappropriate for the reasons expressed at 14.1 above. Second, it is unclear why the administrator would want to exchange property with other states. This may be a discussion of the state's delivery of property to another state when a valid claim by that state is made under Section 14 of the Act. Again, the language is unclear.
- Rule 22.3 Language added to clarify the subsection and make it comport more closely with Section 23(c) of the Act.
- Rule 22.4 Clarifies language of subsection. Also adds the qualification appearing in current rule 22.5 to the end of rule 22.4, a more logical place for it.
- Rule 25 Most of the changes in rules 25.1, 25.2, and 25.3 are stylistic in nature. However, it is noted that rule 25.3.e.1.H refers to "disposition codes" but does not state what codes are to be used.
- Rule 25.6.d Added a sentence at the end representing current 25.6.e, as these two ideas logically go together.

NOTE: SAMPLE REPORTS ARE NOT INCLUDED WITH THIS FILE.

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

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

§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, 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 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.~~ ~~W.Va. Code §36-8-1, et seq.~~, and the rules in this part.

NOTE: SAMPLE REPORTS ARE NOT INCLUDED WITH THIS FILE.

2.2. "Owners Indication of Interest In Property" occurs when the owner takes any action described in Section 2 (c) or (d) 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 owner-initiated 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 un-presented 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.

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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~~ ~~Property recovered from safe deposit boxes~~ 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: Section 10(g) of the Act also provides that a holder may be reimbursed for the amount of any unpaid rent or storage charges as long as there is a valid lien or contract authorizing such reimbursement.~~ The administrator shall ~~reimburse the holder~~ ~~make these reimbursements~~ 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 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

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unclaimed for three years following December 31 of the year in which it was issued, then 100% of the purchase price or money shall be remitted to the State.

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

Pursuant to Section 5 of the Act, a holder may deduct from property presumed abandoned a "Dormancy 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. No holder may deduct a dormancy charge from property presumed abandoned if he does not normally or regularly impose a dormancy charge pursuant to a valid and enforceable contract against owners who claim their property prior to the date on which such property would be presumed abandoned.~~

The holder of abandoned property shall provide the following information as part of any remittance report filed pursuant to the Act from which dormancy 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 of this information for ten years from the date on which charges were deducted in accordance with Section 21 of the Act, 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 the Act shall file a report to the department with the administrator concerning the property as provided in this section rule. The report must be

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filed before the first day of November of each year as of the thirtieth day of June, next preceding, for all business associations holders except life insurance companies. 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 presumed abandoned under the Act of the value with an aggregate value of fifty dollars or more presumed abandoned under this chapter;

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

7.1.c. in the case of the contents of a safe deposit box or other safekeeping depository or in the case of other 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 a description of the property and any identifying number for each item of property, including a brief description of those items worth fifty dollars or more in the aggregate;

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

7.1.f. 7.1.e. total charges withheld during period of inactivity or dormancy the total of any safe deposit box opening charges and unpaid rent or storage charges for which the holder requests reimbursement, along with a copy of the valid lien or contract with the owner allowing for the imposition of the unpaid rent or storage charges;

7.1.f. the total dormancy charges withheld and and a copy of the written contract authorizing the imposition of the dormancy charges;

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7.1.g. the date of last transaction from the owner's last indication of interest in the property according to the records of the holder;

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

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

7.2. Performance of Due Diligence due diligence shall be, but not limited to, satisfied by a first class mailing to owners as required by §36-8-7(e) Section 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, and that 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 fifteen business days prior to the date the holder will remit the property to the State, by which the owner must contact the holder; and

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

7.3. A report, required to be filed under the Act is deemed received and filed when it has been delivered received in a complete, accurate, and in correct form, including any required remittance, to by 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

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

Reports which contain incomplete or inaccurate information will be returned to the holder for correction

7.3.b. If the administrator returns a report or remittance to a holder because it is incomplete or inaccurate, The the holder shall submit a corrected report or remittance to the Department administrator within 20 calendar days after the Department's administrator'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 Section 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 Section 24 of this rule the Act.

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 by the first reporting date specified in §36-8-7 (d) Section 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.

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7.6. A request from a holder for seeking an extension of time in which to report or remit must file a request with the administrator so as to be received by the administrator a minimum of 30 business days prior to the date specified in §36-8-7(d) Section 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, 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 a requirement such as the due diligence pursuant to required under 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 upon receipt of the extension.

7.6.d. Should the administrator grant an extension, it may be no less than 30 days or and no more than 90 days from the date property is due the report and/or remittance are 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) Section 7 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" security as defined in section 2.6 of this rule, the administrator shall require the record of ownership of said security be transferred into the title of to 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" receives a security pursuant to §36-8-8b Section 8(b) 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 to

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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~~ ~~Section 7~~ of the Act.

§112-5-9. Advertising

In addition to the published notice required in ~~§36-8-9~~ ~~Section 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 ~~presumed abandoned~~ is turned over to the state ~~administrator~~ in good faith. Which ~~Good faith~~ 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 ~~Section 24 of the Act~~.

§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 ~~Section 8 of the Act~~, 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.

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11.1.a. ~~On~~ If the property is an interest bearing demand, savings or time deposits deposit, 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 the property is "securities" a security 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 from the time the property was delivered to the administrator to the time the owner establishes a claim to the property. Any interest shall be credited to the owners owner's account at the time a claim is filed the owner establishes a claim 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)~~ No owner of property delivered to the administrator under ~~§36-8-11~~ Section 8 of the Act, shall not shall 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 the 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 securities delivered to the administrator 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 if the administrator has already sold the securities under Section 12(b) of the Act. The person making claim a claim for securities after the expiration of three years from the date of delivery of the securities to the administrator 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.

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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 ~~except securities defined in section 2.6 of this rule~~ 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~~ the delivery of the property 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 ~~all amounts received~~ subject to ~~Article 8, Uniform Unclaimed Property~~ under the 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 ~~those~~ 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 ~~the~~ property subject to ~~Texas v. New Jersey et. al.~~ if:

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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 ~~his or her drivers driver's~~ 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 income or gain~~ to which the claimant is entitled, must be delivered or paid by the administrator to the claimant.

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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 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.

§112-5-18. 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 the~~ 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.

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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. If a holder willfully conceals property in its possession which is presumed abandoned under the Act, the period of limitation stated in Section 19 of the Act does not commence to run until the administrator has discovered, or by the exercise of reasonable diligence should have discovered, the existence of the property.~~

§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. ~~For all holders except national banking associations and state-chartered banks, The administrator may waive dispense with giving the ten day notice prior to performing an examination if the administrator determines that the existence of the records or other evidence may be in jeopardy by use of the advance notice provision giving advance notice of the examination.~~

19.2. Pursuant to ~~§36-8-20 Section 20 of the Act,~~ the administrator shall have ~~reason reasonable cause to believe that the National Banking Association a national banking association or state-chartered bank~~ has failed to report property in accordance with the Act and may examine the ~~bank's records of such National Banking Association~~ if one of the following conditions exist:

19.2.a. the Holder ~~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 and unclaimed property examination for five or more years;

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

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19.2.g. the 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 absence of any of the conditions above, the administrator may conduct an examination based on fact facts provided either 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 Sections 7 and 8 of the Act.

19.4. The administrator may also assess the cost of examining in accordance with subsection (c) 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. If the examination of the records of a business association or financial organization results in the disclosure of reportable property, the administrator may assess the cost of the examination against the business association or financial organization at a rate of \$200 per day per examiner or for actual incurred expenses that are reasonable and which do not exceed the value of the reportable property disclosed by the examination.

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 on the basis of any available records of the holder.

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 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;

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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 Section 7(b)(3) of the Act.

§112-5-21. Enforcement.

The administrator may maintain an action in this or another state to enforce Article 8, Uniform Unclaimed Property the 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 the 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 against a holder in this state of property subject to escheat or a claim of abandonment by the other state, in this state, and but 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 such an action under subsection (d) of §36-8-23 of the Act. Expenses and attorney's fees in maintaining such an action may be paid from money received under Article 8, Uniform Unclaimed Property the Act. However, such expenses and attorney's fees may not be deducted from the amount that is subject to a claim by the owner under the 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.~~

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§112-5-23. Interest and Penalties.

The administrator may access interest and penalties as prescribed in ~~§36-8-24, Section 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~~ the Act.

§112-5-24. Transitional Provisions.

~~Article 8, Uniform Unclaimed Property Act~~ The Act does not relieve a holder of a duty that arose before the effective date of this article ~~the Act~~ to report, pay or deliver property. Except as otherwise provided in subsection (b) of ~~§36-8-19 of Section 19(b)~~ 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, the 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 Section 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 ~~an unclaimed stolen property report~~ to the Treasurer at any time after the six months ~~six month~~ period prescribed in ~~W.Va. Code §36-8A-1(g)(1) 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 An Unclaimed Stolen Property Report~~ ~~unclaimed stolen property report~~ may include ~~one or more of forms~~ ~~Forms~~ Up-8A-2 through Up-8A-6. ~~Each of these forms is described below.~~

25.3.a. Property to be delivered to Treasurer ~~(Form UP-8A-2)~~

25.3.a.1. Report ~~This report~~ shall include:

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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 ~~This report~~ shall be notarized.

25.3.b. Property to be sold at Public Sale ~~(Form UP-8A-3)~~

25.3.b.1. ~~To be reportable under Form UP-8A-3. Property the~~ property must first be either

25.3.b.1.A. offered as a donation to a non-profitable organization ~~and refused by that organization, or and~~

25.3.b.2.B. ~~have a use in determined not to be useful to the~~ law enforcement agency for any legitimate and authorized law enforcement or educational purpose.

25.3.b.2. Report ~~This 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 ~~This report~~ shall be notarized.

NOTE: SAMPLE REPORTS ARE NOT INCLUDED WITH THIS FILE.

25.3.c. Property to be appropriated for Agency Use (Form UP-8A-4)

25.3.c.1. To be reportable under Form UP-8A-4, Property the agency must intend to use the 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 This 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 This report shall be notarized.

25.3.d. Property to be donated to Non-Profit Organization (Form UP-8A-5)

25.3.d.1. Report This 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.

NOTE: SAMPLE REPORTS ARE NOT INCLUDED WITH THIS FILE.

25.3.d.1.D. Name and location of the non-profit organization to which the item will be donated, including contact person, address, and phone number.

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

25.3.d.2. Report This report shall be notarized.

25.3.e. Weapons and Ammunition Only (Form 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 This 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 of the item (i.e., 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 of the item (i.e., brand name).

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

25.3.e.1.G. Serial number-identifying number, (or if no number exists, then put unknown insert "unknown").

25.3.e.1.H. Disposition Code

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

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

NOTE: SAMPLE REPORTS ARE NOT INCLUDED WITH THIS FILE.

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

25.3.e.2. Completed form ~~This report~~ 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 W Va Code § 60A-1-1, et seq.~~ (the Uniform Controlled Substances Act) shall be delivered to the Treasurer. All "Securities" ~~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 of whom~~ 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~~ ~~make~~, ~~Model~~ ~~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

NOTE: SAMPLE REPORTS ARE NOT INCLUDED WITH THIS FILE.

and the State Tax Department on the trade-in or appropriation. ~~This report shall be filed on a form prescribed by the Treasurer~~

~~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 Section 12~~ of the Act.

§112-5-27. Descent and Distribution.

If there is no taker under the provisions of ~~W Va Code §42-1-3c~~, the intestate estate passes to the state. Any personal property shall pass to the state treasurer for disposition by public sale in accordance with ~~§36-8-12 Section 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.

Statement Concerning Public Hearing 8/1/97 re: Rules 112CSR5

STATEMENT CONCERNING THE PUBLIC HEARING CONDUCTED AUGUST 1, 1997,
AT 10 A.M. AT THE STATE CAPITOL COMPLEX CONFERENCE CENTER, ROOM B,
CONCERNING PROPOSED LEGISLATIVE RULE
DESIGNATED TITLE 112, SERIES 5
FOR THE STATE TREASURER'S OFFICE

This statement addresses the following topics concerning the above titled public hearing:

1. Hearing times.
2. Attendees.
3. Hearing proceedings.
4. Written comments received and responses to the written comments.
5. Oral comments received and responses to the oral comments.
6. Amendments made/recorded and reasons.

1. Hearing times. The above titled public hearing was opened at 10:03 a.m. after registering all attendees and adjourned at 10:38 a.m.

2. Attendees. The attendees were: from the WV Bankers Association, from the law firm of Bows, Rice, McDavid, Ms. Deborah A. Sink; from the Prosecuting Attorneys Institute, Ms. Lori Greathouse; from the law firm of Jackson and Kelley, Mr. Chris Callas and Samme Gee; from the State Auditor's Office, Mr. Paul Mollohan; from the WV Workers Compensation Division, Mr. Ed Staats; and from the State Treasurer's Office, Mr. Dwight Smith, Mr. Jim McMillon, Mr. Anoop K. Bhasin, Ms. Becky Wright, Ms. Carolyn Legg and Mr. Richard Fisher.

3. Hearing proceedings. Jim McMillon conducted the hearing. He indicated that notice of this public hearing was filed July 1, 1997 with the Secretary of State and the Legislative Rule Making Review Committee concerning the above titled rules. He asked if anyone had any written comments to submit concerning any of the above titled series of rules. The written comments are attached. The written comments (documented below) were received from:

West Virginia State Treasurer's Office, Dwight Smith, Deputy Treasurer of Unclaimed Property

West Virginia Bureau of Employment Programs, Workers' Compensation Division, Mr. Randall B. Suter, Counsel

West Virginia Bankers Association, Inc., Mr. Tom Winner

The Law Firm of Jackson and Kelly, Mr. Christopher Callas

Statement Concerning Public Hearing 8/1/97 re: Rules 112CSR5

McMillon asked if there were any verbal or oral comments concerning the above titled series of rules. The oral comments are summarized below, immediately following the "Written comments received and responses to the written comments."

4. Written comments received and responses to the written comments. This is a summary of the written comments received and responses thereto:

Written Comment No. 1. Refer to letter from Randall Suter dated August 1, 1997, attached. This comment states an objection to application of the proposed provisions against disbursements from the Workers' Compensation Division.

Response to Written Comment No. 1.

Action: No change.

Reason: Per W.Va. Code §23-3-4, Workers Compensation funds and checks that are identifiable are not subject to the provisions of the Uniform Unclaimed Property Act.

Written Comment No. 2. Refer to written comments from the WV State Treasurer's Office attached. There are three comments with reasons listed thereon.

Response to Written Comment No. 2. The proposed language changes will be incorporated into amendments of the rules as noted in *Response to Written Comment No. 2.1* through *Response to Written Comment No. 2.3* below:

Response to Written Comment No. 2.1

See written comments submitted by Dwight Smith of the State Treasurer's Office, Item #1

Action: Amend the rules per the proposed changes.

Reason: Definitions of mineral and mineral proceeds are defined in W.Va. Code §36-8-1(8) and (9) and should not be included in the definition of security.

Response to Written Comment No. 2.2

See written comments submitted by Dwight Smith of the State Treasurer's Office, Item #2

Action: Amend the rules per the proposed changes.

Reason: The language "shall be opened" used in this context may not be consistent with State and Federal banking regulations and may not allow ample time for the financial institutions to comply with the due diligence required by W.Va. Code §36-8-7 (e) See WV Bankers Comment #3, Item #6.

Statement Concerning Public Hearing 8/1/97 re: Rules 112CSR5

Response to Written Comment No. 2.3

See written comments submitted by Dwight Smith of the State Treasurer's Office, Item #3

Action: Amend the rules per the proposed changes. The proposed forms will be deleted from the rules. Delete Section 25.3 of Rules 112-5-25, Disposition /Reporting of Property Held by Law Enforcement Agencies. Also, delete 25.2 (See attached sample forms UPa-2 through 6).

Reason: Sample forms should not be filed as part of the rules and regulations due to the fact that the Treasurer may periodically need to amend or improve on the forms to make them more user friendly. Reporting forms and related instructions will be provided to all holders.

Written Comment No. 3. Refer to written comments from the West Virginia Bankers Association, Inc., attached. There are 14 comments/recommendations.

Response to Written Comment No. 3. The proposed language changes will be incorporated into amendments of the rules as noted in *Response to Written Comment No. 3.1* through *Response to Written Comment No. 3.14* below:

Response to Written Comment No. 3.1

See letter from West Virginia Bankers Association, Inc., Item #1 Section 3.1. Presumption.

Action: No changes result from this comment. However some rewording is done as a result of the comments regarding section 3.1 given by Mr. Callas' written comments.

Reason: Automated clearinghouse transfers (ACH) are owner driven, however an owner also must initiate correspondence to stop ACH transfers. If an account is abandoned, and the owner is unaware of the accounts existence, then he can not stop these automatic transfers in or out of his account. We feel that if an account is abandoned, then an ACH transfer should not relinquish the presumption of abandonment. The performance of due diligence by the Holder will determine if the owner is aware of this property.

Response to Written Comment No. 3.2

See letter from West Virginia Bankers Association, Inc., Item #2 Section 3.2. Owner's Knowledge.

Statement Concerning Public Hearing 8/1/97 re: Rules 112CSR5

Action: Amend Rule/Section 3.2 by rewording for clarity. To read, "An owner's knowledge of some of his property held by a Holder does not imply knowledge of all his property held by a Holder.

Reason: Refer to the National Conference of Commissioners on Uniform State Law, "It was the conclusion of the Commissioners that an owner's knowledge of some property does not necessarily imply knowledge of all his or her property held by the bank, and that the owner is entitled to the protection of this Act as to all the owner's property".

Response to Written Comment No. 3.3

See letter from West Virginia Bankers Association, Inc., Item #3 Section 3.4. Retirement accounts.

Action: Amend Rule/Section 3.4 by deleting this section.

Reason: To conform with WV Code W.Va. Code §36-8-2(a)14.

Response to Written Comment No. 3.4

See letter from West Virginia Bankers Association, Inc., Item #4 Section 3.5. Presumption.

Action: Amend Rule/Section 3.5 by rewording for clarity to read, "Property is presumed abandoned and reportable notwithstanding the apparent owners failure to present evidence of ownership to the holder or to make a demand for payment."

Reason: Refer to National Conference of Commissioners on Uniform State Laws, "This section W.Va. Code §36-8-2(e) is intended to make clear that property is reportable notwithstanding that the owner, who has lost or otherwise forgotten his or her entitlement to property, fails to present to the holder evidence of ownership or to make a demand for payment."

Response to Written Comment No. 3.5

See letter from West Virginia Bankers Association, Inc., Item #5 Section 3.6. Automatic Renewal.

Action: Amend Rule/Section 3.6 by adding this new section inclusive of the following sentence to be the last sentence of the paragraph: "The acceptance of interest shall not be indicated by the mere crediting of interest to the certificate of deposit."

Reason: The distribution of interest to the face amount of the certificate of deposit does not generate any response from the owner.

Statement Concerning Public Hearing 8/1/97 re: Rules 112CSR5

Response to Written Comment No. 3.6

See letter from West Virginia Bankers Association, Inc., Item #6 Sections 4.1. through 4.4 Safe Deposit boxes.

Action: Amend Rule/Section 4.1 through 4.4 by rewording for clarity to read, "4.1. Pursuant to W.Va. Code §36-8-3, contents of safe deposit boxes which have been unclaimed for more than five years after the expiration of the lease or rental period on the safe deposit box shall be presumed abandoned. Safe deposit boxes shall be opened and inventoried in the presence of at least two employees of the holder. The property shall then be sealed for safekeeping with a copy of the inventory attached to the outside of each storage box or envelope until delivered to the owner or the administrator."

Reason: Clarity to WV Code W.Va. Code §36-8-10(g) and W.Va. Code §36-8-3.

Response to Written Comment No. 3.7

See letter from West Virginia Bankers Association, Inc., Item #7 Sections 6.1-6.3. Dormancy charges.

Action: No change.

Reason: Banks must maintain account deposit and withdrawal history. Also, yearly historical service charges are captured automatically and maintained as a permanent record. Historical changes in the banks rules and regulations governing deposit accounts are also maintained. Therefore, we do not feel we are creating an undue burden on the Holder.

Response to Written Comment No. 3.8

See letter from West Virginia Bankers Association, Inc., Item #8 Section 7. Reports.

Action: No change will result from this comment concerning extensions. However some rewording is done for clarity as a result of the comments regarding Section 7 given by Mr. Callas' written comments.

Reason: The rules allow for a holder to file for an extension of time to report and remit. Extensions of time the first year are up to the sole discretion of the Administrator.

Response to Written Comment No. 3.9

See letter from West Virginia Bankers Association, Inc., Item #9 Section 11. Earnings on Property.

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Action: Amend Rule/Section 11 by deleting this section.

Reason: W.Va. Code §36-8-11 sufficiently describes methods of crediting dividends, interest, and increments to an owners account.

Response to Written Comment No. 3.10

See letter from West Virginia Bankers Association, Inc., Item #10 Section 12. Public Sale.

Action: Amend Rule/Section 12 by deleting this section.

Reason: W.Va. Code §36-8-12 sufficiently describes public sale of abandoned property.

Response to Written Comment No. 3.11

See letter from West Virginia Bankers Association, Inc., Item #11 Section 13. Deposit of Funds.

Action: Amend Rule/Section 13 by deleting this section.

Reason: W.Va. Code §36-8-13 sufficiently describes the deposit of funds into the State Treasury.

Response to Written Comment No. 3.12

See letter from West Virginia Bankers Association, Inc., Item #12 Section 14. Claims.

Action: Amend Rule/Section 14 by rewording to read, "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." Delete 1.a, 1.b and 1.c of this section.

Reason: Refer to National Conference of Commissioners on Uniform State Laws, "Judicially established standards enunciate the priority scheme of Texas vs. New Jersey." The same standards apply to any person making a claim for Unclaimed Property.

Response to Written Comment No. 3.13

See letter from West Virginia Bankers Association, Inc., Item #13 Section 19. Provisions applicable to national banks.

Action: Amend Rule/Section 19 by deleting section 19.2. Reword 19.5 to read, "The administrator may require a holder to report and pay unclaimed property that the administrator reasonably estimates." Subsections must be renumbered.

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Reason: W.Va. Code §36-8-20 has sufficient provisions applicable to national banks.

Response to Written Comment No. 3.14

See letter from West Virginia Bankers Association, Inc., Item #14 Section 24. Transitional provisions.

Action: Amend Rule/Section 24 by deleting this section.

Reason: W.Va. Code §36-8-27 has sufficient transitional provisions.

Written Comment No. 4. Refer to written comments from Mr. Christopher L. Callas of the law firm of Jackson and Kelly. He provided a memorandum (memo) identifying substantive changes and a "red-lined draft" showing deletions (line-throughs) and additions (highlighted) resulting from his comments. There are 123 proposed comments/recommendations.

Response to Written Comment No. 4. The proposed comments/recommendations of Mr. Callas are numbered below as **Response to Written Comment No. 4.1** through **Response to Written Comment No. 4.123** below. Each response will identify which of Mr. Callas' documents (annotated copy of the rules and or the memo) represent the comment and what action and associated reason are applicable. The responses are listed in the section number order of the rules.

Response to Written Comment No. 4.1

See Mr. Callas' annotated copy of the rules. We see need to amend Rule/Section 1.1.

Action: Amend Rule/Section 1.1, by deleting "et seq." and inserting "et seq.," after W.Va. Code §36-8-1.

Reason: Proper grammatical use of "et seq."

Response to Written Comment No. 4.2

See Mr. Callas' annotated copy of the rules. We see need to amend Rule/Section 112-5-2.

Action: Amend Rule/Section 1.1, by deleting "et seq." and inserting "et seq" after W.Va. Code §36-8-1.

Reason: Proper grammatical use of "et seq."

Response to Written Comment No. 4.3

See Mr. Callas' annotated copy of the rules. We see need to amend Rule/Section 2.1.

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Action: Amend Rule/Section 2.1, by adding a comma after “[W.Va. Code §36-8-1].”

Reason: Proper punctuation.

Response to Written Comment No. 4.4

See Mr. Callas’ annotated copy of the rules and his memo. We see need to amend Rule/Section 2.2.

Action: Amend Rule/Section 2.2 by replacing the first word “Owners” with the words “Indication of” and inserting “(c) or (d)” after the words “in Section 2.”

Reason: Clarity.

Response to Written Comment No. 4.5

See Mr. Callas’ annotated copy of the rules and his memo. We see need to amend Rule/Section Rule 2.3.

Action: Amend Rule/Section Rule 2.3 by adopting the language “owner-authorized.” Eliminate “owner-initiated” and “owner-driven.”

Reason: The new language better describes the activity or contact required.

Response to Written Comment No. 4.6

See Mr. Callas’ annotated copy of the rules and his memo. We see need to amend Rule/Section 2.4.

Action: Amend Rule/Section 2.4 by striking the word “agency.”

Reason: The word “agency” does not describe a physical or depository for valuables as the other four terms of the definition do.

Response to Written Comment No. 4.7

See Mr. Callas’ memo. We see need to amend Rule/Section Rule 2.6.

Action: Amend Rule/Section Rule 2.6 by adopting the language: “‘Security,’ for purposes of this Act, includes but is not limited to 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, 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,

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temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.”

Reason: This language is added for the purpose of clarity.

Response to Written Comment No. 4.8

See Mr. Callas' memo. We see need to amend Rule/Section Rule 3.1.

Action: Amend Rule/Section Rule 3.1, by rewording for clarity, to read “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, and activities not requiring a direct owner response.”

Reason: Clarity.

Response to Written Comment No. 4.9

See Mr. Callas' memo. We see need to amend Rule/Section Rule 3.3.

Action: Amend Rule/Section Rule 3.3, by rewording for clarity, to read “ In accordance with W.Va. Code §36-8-2(a)(4), registered interest paying bonds will be presumed abandoned five years after the date of the most recent unrepresented instrument issued to pay interest. In accordance with W.Va. Code §36-8-2(a)(16) or W.Va. Code §36-8-2(a)(17), bearer bonds will be presumed abandoned five years after the issuer's obligation to pay the principal, either by call or maturity.”

Reason: Clarity. According to the National Conference of Commissioners on Uniform State Laws, this Act intends to treat underlying bond obligations the same as underlying stock, except for bearer and original issue discount bonds.

Response to Written Comment No. 4.10

See Mr. Callas' annotated copy of the rules and his memo. We do not see need to change our proposed rules pertaining to Rule/Section 4.2.

Action: No change.

Reason: Making the change would result in striking statutory language.

Response to Written Comment No. 4.11

See Mr. Callas' annotated copy of the rules and his memo. We see need to amend Rule/Section 4.3.

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Action: Amend Rule/Section 4.3 by deleting the beginning words "The property" and inserting the words "Property recovered from safe deposit boxes."

Reason: Making the change would result in striking statutory language.

Response to Written Comment No. 4.12

See Mr. Callas' annotated copy of the rules and his memo. We do not see need to change our proposed rules pertaining to Rule/Section Rule 4.4.

Action: No change.

Reason: Result would be to strike statutory language

Response to Written Comment No. 4.13

See Mr. Callas' annotated copy of the rules and his memo. We see need to amend Rule/Section 112-5-5.

Action: Amend Rule/Section 112-5-5 by capitalizing the word "act" in the first sentence and removing from the second sentence the words: "after three years after the thirty-first day of December of the year in which the certificate was sold," After the word "unclaimed," add the phrase "for three years following December 31 of the year in which it was issued"

Reason: Clarity.

Response to Written Comment No. 4.14

See Mr. Callas' annotated copy of the rules and his memo. We see need to amend our proposed rules pertaining to Rule/Section 6.

Action: Amend (according to Mr. Callas' suggested language) Rule/Section 6. Do not renumber the Subsections.

Reason: Clarity.

Response to Written Comment No. 4.15

See Mr. Callas' annotated copy of the rules and his memo. We see need to amend Rule/Section 7.1.

Action: Amend Rule/Section 7.1 by rewording 7.1(c) for clarity, to read, "in the case of contents of a safe deposit box or other safekeeping depository or in the case of other personal 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

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contract with the owner allowing for the sale of contents or use of moneys to cover unpaid rent or storage charges.”

Reason: This better retains statutory language.

Response to Written Comment No. 4.16

See Mr. Callas’ annotated copy of the rules and his memo. We see need to amend Rule/Section 7.1.a.

Action: Amend Rule/Section 7.1.a by adding the words “presumed abandoned under the Act” after the word “property,” deleting the words “of the value,” adding the words “with an aggregate value,” and deleting the words “presumed abandoned under this chapter.”

Reason: Clarity.

Response to Written Comment No. 4.8.17

See Mr. Callas’ annotated copy of the rules and his memo. We see need to amend Rule/Section 7.1.b.

Action: Amend Rule/Section 7.1.b by removing the words “insurance corporations,” adding the words “life insurance companies,” deleting the words “insurance corporation’s” and adding the words “life insurance company’s.”

Reason: Clarity.

Response to Written Comment No. 4.18

See Mr. Callas’ annotated copy of the rules and his memo. We see need to amend Rule/Section 7.1.d.

Action: Amend Rule/Section 7.1.d by replacing it with the words “a description of the property and any identifying number for each item of property, including a brief description of those items worth fifty dollars or more in the aggregate;”.

Reason: Clarity.

Response to Written Comment No. 4.19

See Mr. Callas’ annotated copy of the rules and his memo. We see need to amend our proposed rules pertaining to Rule/Section 7.1.e.

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Action: Amend Rule/Section 7.1.e. by deleting this section.

Reason: Language 7.1(d) and (e) are incorporated into 7.1(d).

Response to Written Comment No. 4.20

See Mr. Callas' annotated copy of the rules and his memo. We see need to amend Rule/Section 7.1.f.

Action: Amend Rule/Section 7.1.f.

Reason: Clarity.

Response to Written Comment No. 4.21

See Mr. Callas' annotated copy of the rules and his memo. We see need to amend Rule/Section 7.1.g.

Action: Amend Rule/Section 7.1.g.

Reason: Clarity.

Response to Written Comment No. 4.22

See Mr. Callas' annotated copy of the rules and his memo. We see need to amend our proposed rules pertaining to Rule/Section 7.1.h.

Action: Amend Rule/Section 7.1.h per Mr. Callas' suggested language.

Reason: Clarity.

Response to Written Comment No. 4.23

See Mr. Callas' annotated copy of the rules and his memo. We see need to amend Rule/Section 7.1.i.

Action: Amend Rule/Section 7.1.i.

Reason: Clarity.

Response to Written Comment No. 4.24

See Mr. Callas' annotated copy of the rules and his memo. We see need to amend Rule/Section 7.2.

Action: Amend Rule/Section 7.2. by rewording for clarity, to read. "Performance of due diligence is, but not limited to, a first class mailing to owners as required in W.Va. Code §36-8-7(e). A holder is not required to make a due diligence mailing to

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owners whose property, prior to deducting allowable service charges, has an aggregate value of less than \$50.00, and is not included in the categories of securities, commodities, safe deposit boxes and tangible property. The letter shall contain.”

Reason: W.Va. Code §36-8-7(e)(1) and (2) are requirements, not exceptions to the performance of due diligence.

Response to Written Comment No. 4.25

See Mr. Callas’ annotated copy of the rules. We see need to amend Rule/Section 7.2.d.

Action: Amend (according to Mr. Callas’ suggested language) Rule/Section 7.2.d.

Reason: Clarity.

Response to Written Comment No. 4.26

See Mr. Callas’ annotated copy of the rules. We see need to amend Rule/Section 7.2.e.

Action: Amend (according to Mr. Callas’ suggested language) Rule/Section 7.2.e.

Reason: Clarity.

Response to Written Comment No. 4.27

See Mr. Callas’ memo. We see need to amend Rule/Section 7.3.

Action: Amend Rule/Section 7.3 by rewording for clarity, to read, “ A report, as required by W.Va. Code §36-8-7 is deemed 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.”

Reason: Clarity.

Response to Written Comment No. 4.28

See Mr. Callas’ annotated copy of the rules. We see need to amend Rule/Section 7.3.a.

Action: Amend Rule/Section 7.3.a by replacing the words “which is” with the words “may be”. Also, amend Rule/Section 7.3.a by adding this sentence as the last sentence to this section “Any report which contains incomplete or inaccurate information will be returned to the holder for correction.

Reason: Clarity.

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Response to Written Comment No. 4.29

See Mr. Callas' memo. We see need to amend Rule/Section 7.3.a.1.

Action: Amend (according to Mr. Callas' suggested language) Rule/Section 7.3.a.1.

Reason: Clarity.

Response to Written Comment No. 4.30

See Mr. Callas' memo. We see need to amend Rule/Section 7.3.a.2.

Action: Amend (according to Mr. Callas' suggested language) Rule/Section 7.3.a.2.

Reason: Clarity.

Response to Written Comment No. 4.31

See Mr. Callas' memo. We see need to amend Rule/Section 7.3.b.

Action: Amend (according to Mr. Callas' suggested language) Rule/Section 7.3.b.

Reason: Clarity.

Response to Written Comment No. 4.32

See Mr. Callas' memo. We see need to amend Rule/Section 7.3.c.

Action: Amend (according to Mr. Callas' suggested language) Rule/Section 7.3.c.

Reason: Clarity.

Response to Written Comment No. 4.33

See Mr. Callas' annotated copy of the rules. We see need to amend Rule/Section 7.3.d.

Action: Amend Rule/Section 7.3.d. by rewording for clarity, to read, "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 W.Va. Code §36-8-24."

Reason: Clarity.

Response to Written Comment No. 4.34

See Mr. Callas' annotated copy of the rules and his memo. We do not see need to change our proposed rules pertaining to Rule/Section 7.4.

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Action: No change.

Reason: Forms will not be included, since they may periodically change.

Response to Written Comment No. 4.35

See Mr. Callas' annotated copy of the rules and his memo. We see need to amend Rule/Section 7.5.

Action: Amend Rule/Section 7.5 by rewording for clarity, to read, "Reportable property that is not reported and remitted by a holder by the date specified in W.Va. Code §36-8-7(d), must be reported immediately upon discovery of the omission. The holder must identify this property as being reported late and the reason."

Reason: Clarity.

Response to Written Comment No. 4.36

See Mr. Callas' annotated copy of the rules and his memo. We see need to amend Rule/Section 7.6

Action: Amend (according to Mr. Callas' suggested language) Rule/Section 7.6 except for the code reference.

Reason: Clarity.

Response to Written Comment No. 4.37

See Mr. Callas' annotated copy of the rules and his memo. We see need to amend Rule/Section 7.6.a.

Action: Amend (according to Mr. Callas' suggested language) Rule/Section 7.6.a.

Reason: Clarity.

Response to Written Comment No. 4.38

See Mr. Callas' annotated copy of the rules and his memo. We see need to amend Rule/Section 7.6.c.

Action: Amend (according to Mr. Callas' suggested language) Rule/Section 7.6.c.

Reason: Clarity.

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Response to Written Comment No. 4.39

See Mr. Callas' annotated copy of the rules and his memo. We see need to amend Rule/Section 7.6.d.

Action: Amend (according to Mr. Callas' suggested language) Rule/Section 7.6.d.

Reason: Clarity.

Response to Written Comment No. 4.40

See Mr. Callas' annotated copy of the rules. We do not see need to change our proposed Rule/Section 8.1.

Action: No change.

Reason: Clarity.

Response to Written Comment No. 4.41

See Mr. Callas' annotated copy of the rules and his memo. We see need to amend Rule/Section 8.3.

Action: Amend Rule/Section 8.3 by rewording for clarity, to read "If the property reported to the administrator is a security, as defined in these rules, the administrator shall require the record of ownership of said security be transferred to the State of West Virginia or the street name of a financial institution designated by the State of West Virginia to handle the security prior to delivery of said security to the administrator."

Reason: Clarity.

Response to Written Comment No. 4.42

See Mr. Callas' annotated copy of the rules and his memo. We see need to amend Rule/Section 8.4.

Action: Amend Rule/Section 8.4. by rewording clarity, to read, "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 said securities to the State of West Virginia or the street name of a financial institution designated by the State of West Virginia to handle the security.

Reason: Clarity.

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Response to Written Comment No. 4.43

See Mr. Callas' annotated copy of the rules. We do not see need to change our proposed Rule/Section 8.5.

Action: No change.

Reason: Clarity is sufficient with current code site.

Response to Written Comment No. 4.44

See Mr. Callas' annotated copy of the rules. We do not see need to change our proposed Rule/Section 112-5-9.

Action: No change.

Reason: Clarity is sufficient with current code site.

Response to Written Comment No. 4.45

See Mr. Callas' annotated copy of the rules and his memo. We see need to amend Rule/Section 10.1.

Action: Amend (according to Mr. Callas' suggested language) Rule/Section 10.1.

Reason: Clarity.

Response to Written Comment No. 4.46

See Mr. Callas' annotated copy of the rules. We see need to amend our proposed Rule/Section 10.3.

Action: Substitute "Code" for "Act."

Reason: Clarity and uniform language.

Response to Written Comment No. 4.47

See Mr. Callas' annotated copy of the rules. We do not see need to change our proposed Rule/Section 11.1.

Action: There is no need to take action on Section 11 or any of its Subsections.

Reason: Section 11 was deleted per *Response to Written (W.V. Bankers Association) Comment No. 3.9.*

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Response to Written Comment No. 4.48

See Mr. Callas' annotated copy of the rules. We do not see need to change our proposed Rule/Section 11.1.a.

Action: There is no need to take action on Section 11 or any of its Subsections.

Reason: Section 11 was deleted per *Response to Written (W.V. Bankers Association) Comment No. 3.9.*

Response to Written Comment No. 4.49

See Mr. Callas' annotated copy of the rules and his memo. We do not see need to change our proposed rules pertaining to Rule/Section 11.1.b.

Action: There is no need to take action on Section 11 or any of its Subsections.

Reason: Section 11 was deleted per *Response to Written (W.V. Bankers Association) Comment No. 3.9.*

Response to Written Comment No. 4.50

See Mr. Callas' annotated copy of the rules and his memo. We do not see need to change our proposed rules pertaining to Rule/Section 11.1.c.

Action: There is no need to take action on Section 11 or any of its Subsections.

Reason: Section 11 was deleted per *Response to Written (W.V. Bankers Association) Comment No. 3.9.*

Response to Written Comment No. 4.51

See Mr. Callas' annotated copy of the rules. We do not see need to change our proposed Rule/Section 11.1.d.

Action: There is no need to take action on Section 11 or any of its Subsections.

Reason: Section 11 was deleted per *Response to Written (W.V. Bankers Association) Comment No. 3.9.*

Response to Written Comment No. 4.52

See Mr. Callas' annotated copy of the rules and his memo. We do not see need to change our proposed rules pertaining to Rule/Section 12.3.

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Action: There is no need to take action on Section 12 or any of its Subsections.

Reason: Section 12 was deleted per *Response to Written (W.V. Bankers Association) Comment No. 3.10.*

Response to Written Comment No. 4.53

See Mr. Callas' annotated copy of the rules and his memo. We do not see need to change our proposed rules pertaining to Rule/Section 12.5.

Action: There is no need to take action on Section 12 or any of its Subsections.

Reason: Section 12 was deleted per *Response to Written (W.V. Bankers Association) Comment No. 3.10.*

Response to Written Comment No. 4.54

See Mr. Callas' annotated copy of the rules. We do not see need to change our proposed Rule/Section 13.1.

Action: There is no need to take action on Section 13 or any of its Subsections.

Reason: Section 13 was deleted per *Response to Written (W.V. Bankers Association) Comment No. 3.11.*

Response to Written Comment No. 4.55

See Mr. Callas' annotated copy of the rules. We do not see need to change our proposed Rule/Section 13.3.d.

Action: There is no need to take action on Section 13 or any of its Subsections.

Reason: Section 13 was deleted per *Response to Written (W.V. Bankers Association) Comment No. 3.11.*

Response to Written Comment No. 4.56

See Mr. Callas' annotated copy of the rules and his memo. We do not see need to change our proposed rules pertaining to Rule/Section 14.1.

Action: No change will result from this comment.

Reason: Section 14.1 was amended per *Response to Written (W.V. Bankers Association) Comment No. 3.12.*

Response to Written Comment No. 4.57

See Mr. Callas' memo. We do not see need to change our Rule/Section 14.1.a.

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Action: There is no need to take action on Section 14.1.a or any of its Subsections.
Reason: Section 14.1.a was deleted per *Response to Written (W.V. Bankers Association) Comment No. 3.12.*

Response to Written Comment No. 4.58

See Mr. Callas' memo. We do not see need to change our Rule/Section 14.2.

Action: No change.
Reason: All forms have been deleted from the rules.

Response to Written Comment No. 4.59

See Mr. Callas' annotated copy of the rules. We see need to amend Rule/Section 14.2.a.

Action: Amend Rule/Section 14.2.a, by deleting the word "drivers" and inserting the words "his or her driver's."
Reason: Clarity.

Response to Written Comment No. 4.60

See Mr. Callas' memo. We do not see need to change our Rule/Section 14.2.d.

Action: No change.
Reason: In answer to the questions posed in Mr. Callas' memo: 1.) this is the same claim form referred to in Section 14.2; and 2.) the claim form has an affidavit and a notary section.

Response to Written Comment No. 4.61

See Mr. Callas' annotated copy of the rules and his memo. We see need to amend Rule/Section 14.3.b.

Action: Amend (according to Mr. Callas' suggested language) Rule/Section 14.3.b.
Reason: Clarity.

Response to Written Comment No. 4.62

See Mr. Callas' annotated copy of the rules. We see need to amend Rule/Section 112-5-17.

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Action: Amend (according to Mr. Callas' suggested language) Rule/Section 17.

Reason: Clarity.

Response to Written Comment No. 4.63

See Mr. Callas' annotated copy of the rules and his memo. We see need to amend Rule/Section 18.1.

Action: Reworded for clarity, strike "Article 8 of the Uniform Unclaimed Property" add "the" before Act.

Reason: Clarity.

Response to Written Comment No. 4.64

See Mr. Callas' annotated copy of the rules and his memo. We do not see need to change our proposed rules pertaining to Rule/Section 18.3.

Action: No change.

Reason: Refer to National Conference of Commissioners on Uniform State Laws, "Since the Unclaimed Property Act is based on a theory of truthful self-reporting, a holder which conceals property, willfully or otherwise, cannot expect the protection of the stated limitations period."

Response to Written Comment No. 4.65

See Mr. Callas' annotated copy of the rules and his memo. We do not see need to change our proposed rules pertaining to Rule/Section 19.1.

Action: No change.

Reason: All holders are subject to the same examination and notification provisions.

Response to Written Comment No. 4.66

See Mr. Callas' memo. We do not see need to change our Rule/Section 19.2.

Action: There is no need to take action on Section 19.2 or any of its Subsections.

Reason: Section 19.2 was deleted per *Response to Written (W.V. Bankers Association) Comment No. 3.13.*

Response to Written Comment No. 4.67

See Mr. Callas' annotated copy of the rules. We do not see need to change our proposed Rule/Section 19.2.a.

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Action: There is no need to take action on Section 19.2.a or any of its Subsections.

Reason: Section 19.2 including 19.2.a was deleted per *Response to Written (W.V. Bankers Association) Comment No. 3.13.*

Response to Written Comment No. 4.68

See Mr. Callas' annotated copy of the rules. We do not see need to change our proposed Rule/Section 19.2.f.

Action: There is no need to take action on Section 19.2.a or any of its Subsections.

Reason: Section 19.2 including 19.2.a was deleted per *Response to Written (W.V. Bankers Association) Comment No. 3.13.*

Response to Written Comment No. 4.69

See Mr. Callas' annotated copy of the rules. We do not see need to change our proposed Rule/Section 19.2.g.

Action: There is no need to take action on Section 19.2.g or any of its Subsections.

Reason: Section 19.2 including 19.2.g was deleted per *Response to Written (W.V. Bankers Association) Comment No. 3.13.*

Response to Written Comment No. 4.70

See Mr. Callas' annotated copy of the rules. We do not see need to change our proposed Rule/Section 19.2.h.

Action: There is no need to take action on Section 19.2.h or any of its Subsections.

Reason: Section 19.2 including 19.2.h was deleted per *Response to Written (W.V. Bankers Association) Comment No. 3.13.*

Response to Written Comment No. 4.71

See Mr. Callas' annotated copy of the rules and his memo. We do not see need to change our proposed rules pertaining to Rule/Section 19.2.i.

Action: There is no need to take action on Section 19.2.i or any of its Subsections.

Reason: Section 19.2 including 19.2.i was deleted per *Response to Written (W.V. Bankers Association) Comment No. 3.13.*

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Response to Written Comment No. 4.72

See Mr. Callas' annotated copy of the rules. We do not see need to change our proposed Rule/Section 19.3.

Action: No change.

Reason: Code site continuity throughout the document.

Response to Written Comment No. 4.73

See Mr. Callas' annotated copy of the rules and his memo. We see need to amend Rule/Section 19.4.

Action: Amend Rule/Section 19.3 by adding the word "that" before the words "do not exceed."

Reason: Clarity.

Response to Written Comment No. 4.74

See Mr. Callas' annotated copy of the rules and his memo. We do not see need to amend Rule/Section 19.5.

Action: There is no need to take action on this comment.

Reason: Section 19.5 was amended per *Response to Written (W.V. Bankers Association) Comment No. 3.13* and, therefore, the proposed change would have no effect.

Response to Written Comment No. 4.75

See Mr. Callas' memo. We do not see need to change our Rule/Section 19.6.

Action: No change.

Reason: There is no reason to move the section.

Response to Written Comment No. 4.76

See Mr. Callas' annotated copy of the rules. We see need to amend Rule/Section 20.1.

Action: Amend (according to Mr. Callas' suggested language) Rule/Section 20.1.

Reason: Clarity

Response to Written Comment No. 4.77

See Mr. Callas' annotated copy of the rules and his memo. We see need to amend Rule/Section 20.2.

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Action: Amend Rule/Section 20.2 by rewording for clarity, to read, "The record must be kept for 10 years from the date on which the report is filed, regardless of whether the property is reported in the aggregate under W.Va. Code §36-8-7(b)(3).

Reason: Clarity.

Response to Written Comment No. 4.78

See Mr. Callas' annotated copy of the rules. We do not see need to change our proposed Rule/Section 112-5-21

Action: No change.

Reason: The rule language is sufficiently clear.

Response to Written Comment No. 4.79

See Mr. Callas' annotated copy of the rules and his memo. We see need to amend Rule/Section 22.1.

Action: Amend Rule/Section 22.1 by rewording for clarity, to read, " The administrator may enter into an agreement with another state to exchange property and information relating to abandoned property or its possible existence."

Reason: Clarity.

Response to Written Comment No. 4.80

See Mr. Callas' annotated copy of the rules. We see need to amend Rule/Section 22.2.

Action: Amend (according to Mr. Callas' suggested language) Rule/Section 22.2.

Reason: Clarity.

Response to Written Comment No. 4.81

See Mr. Callas' annotated copy of the rules and his memo. We see need to amend Rule/Section 22.3.

Action: Amend (according to Mr. Callas' suggested language) Rule/Section 22.3.

Reason: Clarity.

Response to Written Comment No. 4.82

See Mr. Callas' annotated copy of the rules and his memo. We see need to amend Rule/Section 22.4.

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Action: Amend (according to Mr. Callas' suggested language) Rule/Section 22.4.

Reason: Clarity.

Response to Written Comment No. 4.83

See Mr. Callas' annotated copy of the rules. We see need to amend Rule/Section 22.5.

Action: Amend Rule/Section 22.5 by deleting section 22.5.

Reason: The code is sufficient.

Response to Written Comment No. 4.84

See Mr. Callas' annotated copy of the rules. We see need to amend Rule/Section 112-5-23.

Action: Amend section 112-5-23 by rewording for clarity and by striking "Article 8 of the Uniform Unclaimed Property" and adding "the" before Act.

Reason: Clarity.

Response to Written Comment No. 4.85

See Mr. Callas' annotated copy of the rules. We do not see need to amend Rule/Section 112-5-24.

Action: No need to take action on this comment.

Reason: This section was deleted per *Response to Written Comment (of the WV Bankers Association) No. 3.14*.

Response to Written Comment No. 4.86

See Mr. Callas' annotated copy of the rules. We see need to amend Rule/Section 25.2.

Action: No change will be made as a result of this comment.

Reason: Sufficient changes have been made to this section as a result of *Response to Written Comment No. 2.3*.

Response to Written Comment No. 4.87

See Mr. Callas' annotated copy of the rules. We see need to amend Rule/Section 25.3.

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Action: Amend Rule/Section 25.3 by deleting the entire section.

Reason: As a result of *Response to Written Comment No. 2.3*, the sample forms were deleted and Section 25.3 and its Subsections are now deleted since instructions are not needed.

Response to Written Comment No. 4.88

See Mr. Callas' annotated copy of the rules. We do not see need to change our proposed Rule/Section 25.3.a.

Action: No change.

Reason: As a result of *Response to Written Comment No. 2.3*, the sample forms were deleted and Section 25.3 and its Subsections are now deleted since instructions are not needed.

Response to Written Comment No. 4.89

See Mr. Callas' annotated copy of the rules. We do not see need to change our proposed Rule/Section 25.3.a.1.

Action: No change.

Reason: As a result of *Response to Written Comment No. 2.3*, the sample forms were deleted and Section 25.3 and its Subsections are now deleted since instructions are not needed.

Response to Written Comment No. 4.90

See Mr. Callas' annotated copy of the rules. We do not see need to change our proposed Rule/Section 25.3.a.2.

Action: No change.

Reason: As a result of *Response to Written Comment No. 2.3*, the sample forms were deleted and Section 25.3 and its Subsections are now deleted since instructions are not needed.

Response to Written Comment No. 4.91

See Mr. Callas' annotated copy of the rules. We do not see need to change our proposed Rule/Section 25.3.b.

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Action: No change.

Reason: As a result of *Response to Written Comment No. 2.3*, the sample forms were deleted and Section 25.3 and its Subsections are now deleted since instructions are not needed.

Response to Written Comment No. 4.92

See Mr. Callas' annotated copy of the rules. We do not see need to change our proposed Rule/Section 25.3.b.1.

Action: No change.

Reason: As a result of *Response to Written Comment No. 2.3*, the sample forms were deleted and Section 25.3 and its Subsections are now deleted since instructions are not needed.

Response to Written Comment No. 4.93

See Mr. Callas' annotated copy of the rules. We do not see need to change our proposed Rule/Section 25.3.b.1.A.

Action: No change.

Reason: As a result of *Response to Written Comment No. 2.3*, the sample forms were deleted and Section 25.3 and its Subsections are now deleted since instructions are not needed.

Response to Written Comment No. 4.94

See Mr. Callas' annotated copy of the rules. We do not see need to change our proposed Rule/Section 25.3.b.2.B.

Action: No change.

Reason: As a result of *Response to Written Comment No. 2.3*, the sample forms were deleted and Section 25.3 and its Subsections are now deleted since instructions are not needed.

Response to Written Comment No. 4.95

See Mr. Callas' annotated copy of the rules. We do not see need to change our proposed Rule/Section 25.3.b.2.

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Action: No change.

Reason: As a result of *Response to Written Comment No. 2.3*, the sample forms were deleted and Section 25.3 and its Subsections are now deleted since instructions are not needed.

Response to Written Comment No. 4.104

See Mr. Callas' annotated copy of the rules. We do not see need to change our proposed Rule/Section 25.3.d.2.

Action: No change.

Reason: As a result of *Response to Written Comment No. 2.3*, the sample forms were deleted and Section 25.3 and its Subsections are now deleted since instructions are not needed.

Response to Written Comment No. 4.105

See Mr. Callas' annotated copy of the rules. We do not see need to change our proposed Rule/Section 25.3.e.

Action: No change.

Reason: As a result of *Response to Written Comment No. 2.3*, the sample forms were deleted and Section 25.3 and its Subsections are now deleted since instructions are not needed.

Response to Written Comment No. 4.106

See Mr. Callas' annotated copy of the rules. We do not see need to change our proposed Rule/Section 25.3.e.1.

Action: No change.

Reason: As a result of *Response to Written Comment No. 2.3*, the sample forms were deleted and Section 25.3 and its Subsections are now deleted since instructions are not needed.

Response to Written Comment No. 4.107

See Mr. Callas' annotated copy of the rules. We do not see need to change our proposed Rule/Section 25.3.e.1.C.

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Action: No change.

Reason: As a result of *Response to Written Comment No. 2.3*, the sample forms were deleted and Section 25.3 and its Subsections are now deleted since instructions are not needed.

Response to Written Comment No. 4.108

See Mr. Callas' annotated copy of the rules. We do not see need to change our proposed Rule/Section 25.3.e.1.E.

Action: No change.

Reason: As a result of *Response to Written Comment No. 2.3*, the sample forms were deleted and Section 25.3 and its Subsections are now deleted since instructions are not needed.

Response to Written Comment No. 4.109

See Mr. Callas' annotated copy of the rules. We do not see need to change our proposed Rule/Section 25.3.e.F.

Action: No change.

Reason: As a result of *Response to Written Comment No. 2.3*, the sample forms were deleted and Section 25.3 and its Subsections are now deleted since instructions are not needed.

Response to Written Comment No. 4.110

See Mr. Callas' annotated copy of the rules. We do not see need to change our proposed Rule/Section 25.3.e.

Action: No change.

Reason: As a result of *Response to Written Comment No. 2.3*, the sample forms were deleted and Section 25.3 and its Subsections are now deleted since instructions are not needed.

Response to Written Comment No. 4.111

See Mr. Callas' annotated copy of the rules. We do not see need to change our proposed Rule/Section 25.3.e.1.G.

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Action: Amend Rule/Section 25.6.e by deleting this section.

Reason: Clarity.

Response to Written Comment No. 4.122

See Mr. Callas' annotated copy of the rules. We see need to amend Rule/Section 112-5-26.

Action: Amend Rule/Section 112-5-26 by adding the words "W.Va. Code §36-8-28" to complete the sentence after deleting the words "§36-8-12 of the Act."

Reason: Clarity. And to provide the proper code reference.

Response to Written Comment No. 4.123

See Mr. Callas' annotated copy of the rules. We do not see need to amend Rule/Section 112-5-27.

Action: No change.

Reason: The rule is sufficiently clear as written.

5. Oral comments received and responses to the oral comments. This is a summary of the oral comments received and responses thereto:

Oral Comment No. 1. Oral Comment from the Prosecuting Attorney's Institute asked if law enforcement agencies could hold auctions and retain proceeds to supplement their small budgets.

Response to Oral Comment No. 1.

Action: There is no need to amend the rules.

Reason: W.Va. Code §36-8A-4(c) authorizes law enforcement agencies to conduct an auction and retain the proceeds.

Oral Comment No. 2.

An oral comment by Deputy Treasurer of Unclaimed Property indicated that law enforcement agencies had asked for consideration of the possibility of having a provision in our rules to donate weapons between agencies in West Virginia.

Response to Oral Comment No. 2.

Action: Add a new section 25.5 to immediately follow old section 25.5 as presented at the hearing. This section may be renumbered in the final draft. This section will read as follows:

“25.5 All weapons and ammunition may be transferred among the different detachments and areas of a law enforcement agency, for only the purposes set in W.Va. Code §36-8A-3 and W.Va. Code §36-8A-5.

25.5.a. No weapons and ammunition may be transferred between a law enforcement agency and another law enforcement agency, for the purposes set in W.Va. Code §36-8A-3 and W.Va. Code §36-8A-5, except:

25.5.a.1. a law enforcement agency may transfer weapons and ammunition to the West Virginia State Police Crime Lab for any legitimate and authorized law enforcement or educational purposes as state in W.Va. Code §36-8A-3,

25.5.a.2. a law enforcement agency may transfer weapons and ammunition to the West Virginia State Division of Natural Resources (DNR) for any legitimate and authorized law enforcement or educational purpose as stated in W.Va. Code §36-8A-3, and pursuant to any statute applicable to the transfer or donation of weapons to the DNR.

25.5.b. Any weapons and ammunition transferred pursuant to rules 25.6a.1. and 25.6a.2 shall first be transferred to the Treasurer’s office and at the Treasurer’s discretion the weapons and ammunition may be transferred to either the West Virginia State Police or the West Virginia Division of Natural Resources (DNR).”

Reason: This language will provide a method to achieve weapons transfers among law enforcement agencies.

Action: Reword 25.6 to read, “All weapons and ammunition delivered to the Treasurer shall be destroyed as soon as practicable after delivery in the following manner:”

Reason: Clarity.

Action: Reword 25.6(a) to read, “The weapons and ammunition shall be delivered to a designated contractor and destroyed as the Treasurer deems appropriate. The

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destruction shall be performed in the presence of two witnesses, one witness shall be an employee of the State Treasurer's Office." Renumber the section as needed.

Reason: Clarity.

6. Amendments made/recorded and reasons. Amendments to the rules and reasons therefor are identified in the preceding sections: **4. Written comments received and responses to the written comments; and 5. Oral comments received and responses to the oral comments.** Such amendments are incorporated into the proposed rules. Other minor modifications for punctuation and clarity have also been made.