



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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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: Treasurer TITLE-SERIES: 112-05
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: 112-05 Enforcement of the Uniform Unclaimed Property Act

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: §36-8-28

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

The legislative rule provides for the implementation and administration of the Uniform Unclaimed Property Act. W.Va. Code §36-8-28 authorizes the Treasurer to propose legislative rules in accordance with §29A-3-1 et. seq. to effectuate the purposes of this article.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? #Error

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/27/2022

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/27/2022

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

N/A

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

The amendments to the legislative rule make numerous technical corrections throughout to comply with updated drafting standards, adds a new section regarding how the Treasurer's Office will handle virtual currency, allows for unclaimed property to be returned to its rightful owner without the requirement to file a claim, clarifies that the Treasurer's Office will not sell a medal or decoration awarded for military service, and adds a sunset provision to comply with the Regulatory Reform Act adopted in 2016.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

The updates to the legislative rule are necessary due to the passage of HB 4511 during the 2022 Regular Session of the Legislature.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

N/A

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

N/A

C. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

N/A

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2022 Increase/Decrease (use "-")	2023 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

N/A

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

James G Fuerhoff -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 112
LEGISLATIVE RULE
STATE TREASURER'S OFFICE

SERIES 5
ENFORCEMENT OF THE
UNIFORM UNCLAIMED PROPERTY ACT

§112-5-1. General.

1.1. Scope. -- This rule implements the provisions of West Virginia Code §36-8-1, et seq., relating to the Uniform Unclaimed Property Act.

1.2. Authority. -- W. Va. Code §36-8-28.

1.3. Filing Date. -- ~~May 17, 2013.~~

1.4. Effective Date. -- ~~May 17, 2013.~~

1.5. Purpose. ~~The purpose of this rule is to aid in the implementation and enforcement of the Uniform Unclaimed Property Act as set forth in W.Va. Code §36-8-1, et seq.~~ Sunset Provision. -- This rule shall terminate and have no further force or effect on August 1, 2028.

§112-5-2. Definitions.

2.1. For the purposes of this rule, the definitions and use of terms contained in W. Va. Code §36-8-1 et seq., have the same use and meaning as prescribed to them by the Code, unless a different meaning is clearly required by the context. Additionally, for purposes of this rule, the following definitions apply:

~~2.1.2.1.1.~~ "Act" means the Uniform Unclaimed Property Act, W. Va. Code §36-8-1, et seq., and the rules promulgated under the Act.

~~2.2.2.1.2.~~ "Dormancy Charge" means any charge deducted by a holder from property subject to the Act, which is imposed solely by virtue of the inactivity of that property.

2.1.3. "Due Diligence" means the notice that a holder must provide to an owner pursuant to § 36-8-7(e).

~~2.3.~~ "Holder" means a person obligated to hold for the account of, or deliver or pay to, the owner property that is subject to this rule.

~~2.4.2.1.4.~~ "Indication of Interest in Property" occurs when the owner takes any action described in §36-8-2(c) or (d) of the Act which prevents a presumption of abandonment.

~~2.5.2.1.5.~~ "Last Activity Date" means the last verifiable date of owner authorized activity or contact with the property being remitted to the administrator.

~~2.6.2.1.6.~~ "NCIC" means the National Crime Information Center.

2.1.7. "Non-freely transferable security" means a security that cannot be delivered to the administrator by the Depository Trust Clearing Corporation or similar custodian of securities providing

post-trade clearing and settlement services to financial markets or cannot be delivered because there is no agent to effect transfer. The term includes a worthless security.

2.7.2.1.8. "Safe Deposit Box" means any safe, vault, safekeeping repository, or collateral deposit box held by a financial institution.

~~2.8. "Security" means any:~~

- ~~(a) stock;~~
- ~~(b) treasury stock;~~
- ~~(c) bond;~~
- ~~(d) mutual fund;~~
- ~~(e) debenture;~~
- ~~(f) evidence of indebtedness;~~
- ~~(g) certificate of interest or participation in any profit-sharing agreement or arrangement;~~
- ~~(h) collateral trust certificate;~~
- ~~(i) preorganization certificate or subscription;~~
- ~~(j) transferable share;~~
- ~~(k) investment contract;~~
- ~~(l) investment fund share;~~
- ~~(m) face amount certificate;~~
- ~~(n) voting trust certificate;~~
- ~~(o) certificate of deposit;~~
- ~~(p) put, call, straddle, option or privilege entered into on a national securities exchange;~~
- ~~(q) certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing; or~~
- ~~(r) interest or instrument commonly known as a security and any other interest which is a security under state or federal securities laws.~~

2.1.9. "Stock or other equity interest in a business association or financial organization" for purposes of the presumptions of abandonment set forth in W. Va. Code §36-8-2(a)(3) means any dividends, interest, unmatured bond principal, shares of stock, unexchanged stock of successor corporation, other certificates of ownership, underlying shares, U.S. government securities, mutual fund shares, matured or redeemed bond principal, and dividend reinvestment plans.

§112-5-3. Presumption of Abandonment.

3.1. Activities which do not prevent the presumption of abandonment, include, but are not limited to, automatic postings to accounts, computer system conversion dates, and non-return of mail, unless otherwise provided in the Act.

§112-5-4. Safe Deposit Boxes.

4.1. The contents of safe deposit boxes, or proceeds resulting from the sale of the property permitted by law, which are unclaimed for more than five years after expiration of the lease or rental period on the boxes are presumed abandoned. At least two employees of the holder shall open and inventory the boxes. The holder shall seal the property in storage boxes or envelopes for safekeeping and attach a copy of the inventory to each container.

4.2. The administrator ~~shall~~ may offer property recovered from safe deposit boxes for public sale.

4.3. When there is a valid lien or a contract between the holder and owner, within one year after the property has been claimed by the owner and the holder can be located, the administrator may reimburse the holder from the Unclaimed Property Fund for an amount not to exceed \$150, inclusive of all charges incurred including opening the safe deposit box, unpaid rent, and storage charges. ~~the administrator may reimburse the holder for the cost of opening the safe deposit box, unpaid rent, and storage charges. The administrator shall reimburse the holder from the proceeds of the sale of the contents of the safe deposit box, after deducting the expense incurred by the administrator in selling the property. The amount of reimbursement to the holder shall not exceed the amount remaining after deduction of the expenses. No other charges are deductible unless otherwise authorized by law or expressly provided by lawful contract with the owner.~~

§112-5-5. Dormancy Charges and Other Deductions.

5.1. When dormancy charges, withheld tax or other amounts are deducted from an owner's entitlements, the holder shall report the value or amount of each item of property prior to deduction ~~of the dormancy charges~~ and the amount of the ~~dormancy charges~~ deduction in the remittance report filed with the administrator.

§112-5-6. Reporting and Due Diligence.

6.1. A person holding property presumed abandoned and subject to the Act shall file a report with the administrator concerning the property. A holder shall file the report before the first day of November of each year for the period of July 1 through June 30, except a life insurance company which shall file its report before the first day of May of each year for the period of January 1 through December 31. The report shall be verified for accuracy and include:

6.1.a1. The name and social security or federal employer identification number, if known, and best address, which includes, but is not limited, to e-mail and computer codes, and date of birth, if known, 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 \$50 or more;

6.1.b2. In case of unclaimed funds of life insurance companies due beneficiaries from a life or endowment insurance policy or annuity held by life insurance companies, the full name, date of birth and date of death of an insured or annuitant and the full name, ~~and~~ address, social security number, and relationship to the owner of each beneficiary, if known, according to the life insurance company's records;

6.1.3. In case of other property subject to transfer upon the death of the owner, including but not limited to an Individual Retirement Account or demand, savings or time deposit that is payable on death,

the date of the owner, where known, and the full name, address, social security number, and relationship to the owner of each beneficiary, if known.

6.1.e4. In the case of the contents of a safe deposit box or other safekeeping depository or in the case of other personal property, a description of the property and any identifying or safekeeping box number for each item of property together with;

6.1.4d.a. An itemized breakdown of each safe deposit box opening charge, unpaid rent and storage charges for which the holder requests reimbursement;

6.1.4e.b. The date of the owner's last indication of interest in the property according to the records of the holder; and

6.1.4f.c. In the case of an interest-bearing demand, savings or time deposit, the annual interest rate at the time the property was paid to the administrator.

6.2. Performance of due diligence is a first class mailing to owners as required by W. Va. Code §36-8-7(e). A holder is required to make a due diligence mailing to owners whose property, prior to deducting allowable dormancy charges, has an aggregate value of \$50 or more, or is included in a safe deposit box. However, if the holder has in its records an address for the apparent owner that its records disclose as inaccurate or if the claim is barred by the statute of limitations, the holder is not required to make the due diligence mailing. The due diligence letter shall contain:

6.2.a1. The steps required by the owner to claim the property;

6.2.b2. The steps required by the owner to have the holder reactivate the account and continue to maintain the property for the owner;

6.2.e3. A statement that if the owner does not take the steps set forth either in subdivisions 6.2.a. or 6.2.b. of this subsection, the property will be remitted to the State;

6.2.44. A statement that, the State is only a custodian for property presumed abandoned and remitted to the State, and that the owner or his or her heirs do not lose their rights to the property and may file a claim for the property with the State;

6.2.e5. A date, not less than fifteen business days prior to the date the holder will remit the property to the State, by which the owner must contact the holder; and

6.2.f6. The name, address, and telephone number of the person to contact at the holder.

6.3. The administrator shall consider a report received and filed when it has been received in a complete, accurate, and correct form including any required remittance to the administrator's Unclaimed Property Division ~~office in Charleston, West Virginia.~~

6.3.a1. The administrator may return any incomplete or inaccurate report or remittance to the holder for correction.

6.3.b2. If the administrator returns a report or remittance to a holder because it is incomplete or inaccurate, the holder shall submit a corrected report or remittance to the administrator within twenty calendar days after the administrator's return of the original report or remittance to the holder.

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

~~6.3.d3.~~ The administrator may assess interest and penalties against a holder failing to file a report and remittance on or before the time specified in ~~subsection~~division 6.3.2**b.** of this rule.

6.4. A holder shall file the report in:

6.4.a1. An electronic format prescribed or provided by the administrator; or

6.4.b2. Any other form authorized by administrator.

6.5. A holder discovering unreported property shall file a report immediately upon discovery of the omission. The holder shall identify this property as being reported late and the reason for the omission.

6.6. A holder seeking an extension of time in which to report or remit shall file a request with the administrator for receipt by the administrator a minimum of thirty (30) calendar days prior to the due date. A request for an extension is required even if the report will be negative.

6.6.a1. A request by a holder for an extension of time to report or remit shall include a reasonable cause for delaying the report or remittance. Reasonable cause includes, but is not limited to, a natural disaster, criminal activity related to the holder's books and records, or a recent change in the form of ownership of the holder through merger, acquisition or reorganization. Reasonable cause does not include the failure of a holder to perform the due diligence required under subsection 6.2. of this rule.

6.6.b2. The administrator shall respond to each request for extension within twenty (20) days after receipt of the request.

~~6.6.c. Unless otherwise authorized by the administrator, the holder shall submit a payment of 80% of the estimated amount due upon receipt of the extension.~~

6.6.d3. The administrator may grant the holder an extension of not less than thirty (30) days and no more than ninety (90) days from the date the report and/or remittance are due.

§112-5-7. Payment or Delivery.

~~7.1. If the property reported to the administrator is a security and the holder has legal authority to transfer title or record of ownership of the security, the holder shall transfer ownership of the security to the State of West Virginia or the street name of a financial institution designated by the State of West Virginia prior to delivery of the security to the administrator.~~

~~7.2. Whenever the administrator receives a security pursuant to W. Va. Code §36-8-8(b) in the name of the owner, he or she may take appropriate action to transfer the record of ownership of the securities to the State of West Virginia or the street name of the financial institution designated by the State of West Virginia to handle the security.~~

~~7.3. Except as otherwise provided, a holder shall deliver all other property subject to the Act to the administrator at the time of filing the report.~~

7.2. If the property reported to the administrator is virtual currency, pursuant to W. Va. Code § 36-8-8(e) the holder shall liquidate the virtual currency anytime within 30 days of filing the report and remit the proceeds to the administrator. The owner shall have no recourse against either the holder, provided that the holder has acted in accordance with reporting requirements or the administrator for any gain in value after liquidation.

7.3. If the property reported to the administrator is a security, the holder shall transfer ownership of the security to the State of West Virginia or the street name of a financial institution or other intermediary designated by the State of West Virginia prior to delivery of the security to the administrator.

7.4. A holder is not required to deliver to the administrator a security identified as a non-freely transferable security.

7.5. A retirement plan administrator or other responsible fiduciary terminating a retirement plan may, following a diligent search for missing participants, report and remit any unclaimed benefits contemporaneous with the termination of the plan, and is neither required to wait for three years to elapse pursuant to W. Va. Code §36-8-2(17), nor obtain written permission from the administrator for premature reporting under W. Va. Code §36-8-17(b).

§112-5-8. Advertising.

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

~~§112-5-9. Custody by State.~~

~~In the event a holder pays a claim to an owner for property previously paid or delivered to the administrator and interest is payable by the administrator, the holder shall pay the owner interest in the amount required to be paid by the administrator.~~

~~§112-5-10.~~§112-5-9. Claims.

~~10.1.9.1. After property has been paid or delivered to the administrator under W. Va. Code §36-8-8, another state may recover any property subject to W. Va. Code §36-8-4.~~

~~10.2.9.2. A person, excluding another state, claiming property paid or delivered to the administrator shall may file a claim form electronically or on a form prescribed and provided by the administrator. In addition to the prescribed form, the claimant shall:~~

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

~~10.2.b. complete an affidavit or an electronic verification prescribed by the administrator on all claims of \$1,000 or more;~~

~~10.2.c. provide the original certificates in the case of securities. If original certificates are not available, the holder shall complete and file an affidavit or lost instrument bond in the form prescribed by the administrator;~~

~~10.2.d. complete a claim form electronically; and~~

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

9.3. The administrator may waive the requirement to file a claim for property that has a value of less than \$5,000. This waiver applies only to single owner properties with an owner claim type, properties that do not require a W-9, and excludes tangible items. Potential owners will be validated through a data match process to obtain reasonable assurance that they are the rightful owners.

~~§112-5-11. Destruction or Disposition of Property.~~

~~If the administrator determines that any property delivered under the Act or under W.Va. Code §36-8A-1, et seq., has no substantial commercial value, the administrator may destroy or otherwise dispose of the property at any time. The administrator may destroy or otherwise dispose of the property in any reasonable manner selected by the administrator.~~

~~§112-5-12~~ §112-5-10. Periods of Limitation.

~~12.1.10.1~~ The administrator shall commence an action against a holder within ten years after the time the property was first reported or specifically placed in issue.

~~12.2.10.2~~ A holder which conceals property, willfully or otherwise, does not have the protection of the stated limitations period provided in W. Va. Code §36-8-19.

10.3. The period of limitation with respect to property specifically identified in a report filed by a holder is limited to those individual properties specifically identified and reported, and does not extend to individual properties which are not disclosed by the holder, even if the individual properties are of the same type of properties specifically identified and reported.

10.4. The initiation of an examination by the administrator constitutes an “action” for purposes of section 10.1, and tolls the running of any statute of limitations for purposes of enforcement.

~~§112-5-13~~ §112-5-11. Requests For Reports and Examination of Records.

~~13.1. The administrator shall notify the holder in writing ten (10) days prior to an examination of the holder's records, conducted pursuant to §36-8-20 of the Act. The administrator may waive the ten-day notice, prior to performing an examination, if the administrator determines that the existence of the records may be in jeopardy by use of the advance notice provision.~~

~~13.2. The administrator may require a holder to report and pay unclaimed property that the administrator reasonably estimates is due based upon the examination of the records or by any other reasonable method of estimation.~~

11.1. The administrator may contract with a vendor to conduct unclaimed property audits pursuant to W.Va. Code § 36-8-20. Audits shall be conducted offsite virtually through electronic means. However, audits may be conducted onsite in-person if technical limitations exist which the audit vendor finds to make an offsite examination impracticable.

~~§112-5-14~~ §112-5-12 Disposition/Reporting of Property Held by Law Enforcement Agencies.

~~14.1.12.1~~ Stolen property, as defined in W. Va. Code §36-8A-1 (e) and (g), includes only those items that would not afterward be subject to W. Va. Code §62-1A-1, et seq.

~~14.1.a.12.1.1~~ A law enforcement agency shall check all unclaimed property subject to W. Va. Code §36-8A-1 seq., with any distinguishable serial numbers or other verifiable identification through the NCIC system prior to delivery of the property to the administrator. The administrator shall immediately return any unclaimed property not cleared through NCIC to the submitting law enforcement agency.

~~14.1.b.12.1.2~~ A law enforcement agency failing to clear stolen property through NCIC as required by this rule is responsible and liable for any damages or injuries caused by the failure to clear the property.

~~14.2.12.2.~~ A law enforcement agency shall tender its report of unclaimed stolen property to the administrator any time after the six (6) month period prescribed in W. Va. Code §36-8A-1(g)(1). The administrator shall prescribe the report form.

~~14.3.12.3.~~ A law enforcement agency or other holder shall not deliver a controlled substance to the administrator.

~~14.4.12.4.~~ Within thirty (30) days of the receipt of an unclaimed stolen property report, the administrator shall send a written response to the law enforcement agency submitting the report, either authorizing the requested disposition of each item or requiring the items to be delivered to the administrator, unless impracticable.

~~14.5.12.5.~~ The administrator may, and shall in the case of firearms and ammunition, authorize disposal of any item prior to delivery to the administrator, if he or she considers the probable cost of the delivery and sale will exceed the proceeds of the sale.

~~14.6.12.6.~~ A political subdivision may submit decommissioned firearms and ammunition to the administrator for sale.

~~§112-5-15.~~ **§112-5-13. Descent and Distribution.**

~~13.1.~~ If there is no taker under the provisions of W. Va. Code §42-1-3c, the intestate estate passes to the state. Any personal property passes to the administrator for disposition by public sale in accordance with W. Va. Code §36-8-12. The administrator shall deposit the proceeds of the sale of the personal property to the credit of the general revenue fund.

§112-5-14. Military Medal or Decoration.

14.1. The administrator may not sell a medal or decoration awarded for military service in the armed forces of the United States.

14.2. The administrator with the consent of the respective organization may deliver a medal or decoration to be held in custody for the owner, to:

14.2.1. a military veterans organization qualified under the Internal Revenue Code [as amended], 26 U.S.C. Section 501(c)(19);

14.2.2. The agency that awarded the medal or decoration; or

14.2.3. The West Virginia Department of Arts, Culture and History or any other government entity.

14.3. Upon delivery pursuant to section 14.2, the administrator is not responsible for safekeeping the medal or decoration.