

CHAPTER 36. ESTATES AND PROPERTY.
ARTICLE 8. UNIFORM UNCLAIMED PROPERTY ACT.

- § 36–8–1. Definitions
- § 36–8–2. Presumptions of Abandonment
- § 36–8–3. Contents of Safe Deposit Box or Other Safekeeping Depository
- § 36–8–4. Rules for Taking Custody
- § 36–8–5. Dormancy Charge
- § 36–8–6. Burden of Proof as to Property Evidenced by Record of Check or Draft
- § 36–8–7. Report of Abandoned Property
- § 36–8–8. Payment or Delivery of Abandoned Property
- § 36–8–9. Notice and Publication of Lists of Abandoned Property
- § 36–8–10. Custody by State; Recovery by Holder; Defense of Holder
- § 36–8–11. Crediting of Dividends, Interest and Increments to Owner's Account
- § 36–8–12. Public Sale of Abandoned Property
- § 36–8–13. Deposit of Funds
- § 36–8–14. Claim of Another State to Recover Property
- § 36–8–15. Filing Claim with Administrator; Handling of Claims by Administrator
- § 36–8–16. Action to Establish Claim
- § 36–8–17. Election to Take Payment or Delivery
- § 36–8–18. Destruction or Disposition of Property Having no Substantial Commercial Value;
Immunity from Liability
- § 36–8–19. Periods of Limitation
- § 36–8–20. Requests for Reports and Examination of Records
- § 36–8–21. Retention of Records
- § 36–8–22. Enforcement
- § 36–8–23. Interstate Agreements and Cooperation; Joint and Reciprocal Actions with Other
States
- § 36–8–24. Interest and Penalties
- § 36–8–25. Records of Abandoned Property
- § 36–8–26. Foreign Transactions

§ 36–8–27. Transitional Provisions

§ 36–8–28. Rules

§ 36–8–29. Uniformity of Application and Construction

§ 36–8–30. Short Title

§ 36–8–31. Severability Clause

§ 36–8–32. Effective Date

§36-8-1. Definitions.

As used in this article:

- (1) "Administrator" means the state treasurer.
- (2) "Apparent owner" means a person whose name appears on the records of a holder as the person entitled to property held, issued or owing by the holder.
- (3) "Business association" means a corporation, joint stock company, investment company, partnership, unincorporated association, joint venture, limited liability company, business trust, trust company, safe deposit company, financial organization, insurance company, mutual fund, utility or other business entity consisting of one or more persons, whether or not for profit.
- (4) "Domicile" means the state of incorporation of a corporation and the state of the principal place of business of a holder other than a corporation.
- (5) "Financial organization" means a savings and loan association, bank, banking organization or credit union.
- (6) "Holder" means a person obligated to hold for the account of, or deliver or pay to, the owner property that is subject to this article.
article.
- (7) "Insurance company" means an association, corporation, or fraternal or mutual benefit organization, whether or not for profit, engaged in the business of providing life endowments, annuities or insurance, including accident, burial, casualty, credit life, contract performance, dental, disability, fidelity, fire, health, hospitalization, illness, life, malpractice, marine, mortgage, surety, wage protection and workers' compensation insurance.
- (8) "Mineral" means gas; oil; coal; other gaseous, liquid and solid hydrocarbons; oil shale; cement material; sand and gravel; road material; building stone; chemical raw material; gemstone; fissionable and non-fissionable ores; colloidal and other clay; steam and other geothermal resource; or any other substance defined as a mineral by the law of this state.
- (9) "Mineral proceeds" means amounts payable for the extraction, production or sale of minerals, or, upon the abandonment of those payments, all payments that become payable thereafter. The term includes amounts payable:
 - (i) For the acquisition and retention of a mineral lease, including bonuses, royalties, compensatory royalties, shut-in royalties, minimum royalties and delay rentals;
 - (ii) For the extraction, production or sale of minerals, including net revenue interests, royalties, overriding royalties, extraction payments and production payments; and

(iii) Under an agreement or option, including a joint operating agreement, unit agreement, pooling agreement and farm-out agreement.

(10) "Money order" includes an express money order and a personal money order, on which the remitter is the purchaser. The term does not include a bank money order or any other instrument sold by a financial organization if the seller has obtained the name and address of the payee.

(11) "Owner" means a person who has a legal or equitable interest in property subject to this article or the person's legal representative. The term includes a depositor in the case of a deposit, a beneficiary in the case of a trust other than a deposit in trust, and a creditor, claimant or payee in the case of other property.

(12) "Person" means an individual, business association, financial organization, estate, trust, government, governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

(13) "Property" means tangible personal property described in section three of this article or a fixed and certain interest in intangible personal property that is held, issued or owed in the course of a holder's business, or by a government, governmental subdivision, agency or instrumentality, and all income or increments therefrom. The term includes property that is referred to as or evidenced by:

(i) Money, a check, draft, warrant for payment issued by the state of West Virginia, deposit, interest or dividend;

(ii) Credit balance, customer's overpayment, gift certificate, security deposit, refund, credit memorandum, unpaid wage, unused ticket, mineral proceeds or unidentified remittance;

(iii) Stock or other evidence of ownership of an interest in a business association or financial organization;

(iv) A bond, debenture, note or other evidence of indebtedness;

(v) Money deposited to redeem stocks, bonds, coupons or other securities or to make distributions;

(vi) An amount due and payable under the terms of an annuity or insurance policy, including policies providing life insurance, property and casualty insurance, workers' compensation insurance, or health and disability insurance; and

(vii) An amount distributable from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance or similar benefits.

(14) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(15) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico or any territory or insular possession subject to the jurisdiction of the United States.

(16) "Utility" means a person who owns or operates for public use any plant, equipment, real property, franchise or license for the transmission of communications or the production, storage, transmission, sale, delivery or furnishing of electricity, water, steam or gas as defined in section two, article one, chapter twenty-four of this code.

§36-8-2. Presumptions of abandonment.

(a) Property is presumed abandoned if it is unclaimed by the apparent owner during the time set forth below for the particular property:

(1) Traveler's check, fifteen years after issuance;

(2) Money order, seven years after issuance;

(3) Stock or other equity interest in a business association or financial organization, including a security entitlement under article eight of the uniform commercial code, five years after the earlier of: (i) The date of the most recent dividend, stock split or other distribution unclaimed by the apparent owner; or (ii) the date of the second mailing of a statement of account or other notification or communication that was returned as undeliverable or after the holder discontinued mailings, notifications or communications to the apparent owner;

(4) Debt of a business association or financial organization, other than a bearer bond or an original issue discount bond, five years after the date of the most recent interest payment unclaimed by the apparent owner;

(5) A noninterest bearing demand, savings or time deposit, including a deposit that is automatically renewable, five years after the earlier of maturity or the date of the last indication by the owner of interest in the property; an interest bearing demand, savings or time deposit including a deposit that is automatically renewable, seven years after the earlier of maturity or the date of the last indication by the owner of interest in the property. A deposit that is automatically renewable is deemed matured for purposes of this section upon its initial date of maturity, unless the owner has consented to a renewal at or about the time of the renewal and the consent is in writing or is evidenced by a memorandum or other record on file with the holder;

(6) Money or credits owed to a customer as a result of a retail business transaction, three years after the obligation accrued;

(7) Gift certificate, three years after the thirty-first day of December of the year in which the certificate was sold, but if redeemable in merchandise only, the amount abandoned is deemed to be sixty percent of the certificate's face value;

(8) Amount owed by an insurer on a life or endowment insurance policy or an annuity that has matured or terminated, three years after the obligation to pay arose or, in the case of a policy or annuity payable upon proof of death, three years after the insured has attained, or would have attained if living, the limiting age under the mortality table on which the reserve is based;

(9) Property distributable by a business association or financial organization in a course of dissolution, one year after the property becomes distributable;

(10) Property received by a court as proceeds of a class action, and not distributed pursuant to the judgment, one year after the distribution date;

(11) Property held by a court, government, governmental subdivision, agency or instrumentality, one year after the property becomes distributable;

(12) Wages or other compensation for personal services, one year after the compensation becomes payable;

(13) Deposit or refund owed to a subscriber by a utility, two years after the deposit or refund becomes payable;

(14) Property in an individual retirement account, defined benefit plan or other account or plan that is qualified for tax deferral under the income tax laws of the United States, three years after the earliest of the date of the distribution or attempted distribution of the property, the date of the required distribution as stated in the plan or trust agreement governing the plan, or the date, if determinable by the holder, specified in the income tax laws of the United States by which distribution of the property must begin in order to avoid a tax penalty;

(15) Warrants for payment issued by the state of West Virginia which have not been presented for payment, within six months of the date of issuance;

(16) All funds held by a fiduciary, including the state municipal bond commission, for the payment of a note, bond, debenture or other evidence or indebtedness, five years after the principal maturity date, or if such note, bond, debenture or evidence of indebtedness is called for redemption on an earlier date, then the redemption date, such premium or redemption date to also be applicable to all interest and premium, if any, attributable to such note, bond, debenture or other evidence of indebtedness; and

(17) All other property, five years after the owner's right to demand the property or after the obligation to pay or distribute the property arises, whichever first occurs.

(b) At the time that an interest is presumed abandoned under subsection (a) of this section, any other property right accrued or accruing to the owner as a result of the interest, and not previously presumed abandoned, is also presumed abandoned.

(c) Property is unclaimed if, for the applicable period set forth in subsection (a) of this section, the apparent owner has not communicated in writing or by other means reflected in a

contemporaneous record prepared by or on behalf of the holder, with the holder concerning the property or the account in which the property is held, and has not otherwise indicated an interest in the property. A communication with an owner by a person other than the holder or its representative who has not in writing identified the property to the owner is not an indication of interest in the property by the owner.

(d) An indication of an owner's interest in property includes:

(1) The presentment of a check or other instrument of payment of a dividend or other distribution made with respect to an account or underlying stock or other interest in a business association or financial organization or, in the case of a distribution made by electronic or similar means, evidence that the distribution has been received;

(2) Owner-directed activity in the account in which the property is held, including a direction by the owner to increase, decrease or change the amount or type of property held in the account;

(3) The making of a deposit to or withdrawal from a bank account; and

(4) The payment of a premium with respect to a property interest in an insurance policy; but the application of an automatic premium loan provision or other non-forfeiture provision contained in an insurance policy does not prevent a policy from maturing or terminating if the insured has died or the insured or the beneficiary of the policy has otherwise become entitled to the proceeds before the depletion of the cash surrender value of a policy by the application of those provisions.

(e) Property is payable or distributable for purposes of this article notwithstanding the owner's failure to make demand or present an instrument or document otherwise required to obtain payment.

§36-8-3. Contents of safe deposit box or other safekeeping depository.

Tangible personal property held in a safe deposit box or other safekeeping depository in this state in the ordinary course of the holder's business and proceeds resulting from the sale of the property permitted by other law, are presumed abandoned if the property remains unclaimed by the owner for more than five years after expiration of the lease or rental period on the box or other depository.

§36-8-4. Rules for taking custody.

Except as otherwise provided in this article or by other statute of this state, property that is presumed abandoned, whether located in this or another state, is subject to the custody of this state if:

(1) The last known address of the apparent owner, as shown on the records of the holder, is in this state;

(2) The records of the holder do not reflect the identity of the person entitled to the property and it is established that the last known address of the person entitled to the property is in this state;

(3) The records of the holder do not reflect the last known address of the apparent owner and it is established that:

(i) The last known address of the person entitled to the property is in this state; or

(ii) The holder is domiciled in this state or is a government or governmental subdivision, agency or instrumentality of this state and has not previously paid or delivered the property to the state of the last known address of the apparent owner or other person entitled to the property;

(4) The last known address of the apparent owner, as shown on the records of the holder, is in a state that does not provide for the escheat or custodial taking of the property and the holder is domiciled in this state or is a government or governmental subdivision, agency or instrumentality of this state;

(5) The last known address of the apparent owner, as shown on the records of the holder, is in a foreign country and the holder is domiciled in this state or is a government or governmental subdivision, agency or instrumentality of this state;

(6) The transaction out of which the property arose occurred in this state, the holder is domiciled in a state that does not provide for the escheat or custodial taking of the property, and the last known address of the apparent owner or other person entitled to the property is unknown or is in a state that does not provide for the escheat or custodial taking of the property; or

(7) The property is a traveler's check or money order purchased in this state, or the issuer of the traveler's check or money order has its principal place of business in this state and the issuer's records show that the instrument was purchased in a state that does not provide for the escheat or custodial taking of the property, or do not show the state in which the instrument was purchased.

§36-8-5. Dormancy charge.

A holder may deduct from property presumed abandoned a charge imposed by reason of the owner's failure to claim the property within a specified time only if there is a valid and enforceable written contract between the holder and the owner under which the holder may impose the charge and the holder regularly imposes the charge, which is not regularly reversed or otherwise canceled. The amount of the deduction is limited to an amount that is not unconscionable.

§36-8-6. Burden of proof as to property evidenced by record of check or draft.

A record of the issuance of a check, draft or similar instrument is prima facie evidence of an obligation. In claiming property from a holder who is also the issuer, the administrator's burden of proof as to the existence and amount of the property and its abandonment is satisfied by showing issuance of the instrument and passage of the requisite period of abandonment. Defenses of payment, satisfaction, discharge and want of consideration are affirmative defenses that must be established by the holder.

§36-8-7. Report of abandoned property.

(a) A holder of property presumed abandoned shall make a report to the administrator concerning the property.

(b) The report must be verified and must contain:

(1) A description of the property;

(2) Except with respect to a traveler's check or money order, the name, if known, and last known address, if any, and the social security number or taxpayer identification number, if readily ascertainable, of the apparent owner of property of the value of fifty dollars or more;

(3) An aggregated amount of items valued under fifty dollars each;

(4) In the case of an amount of fifty dollars or more held or owing under an annuity or a life or endowment insurance policy, the full name and last known address of the annuitant or insured and of the beneficiary;

(5) In the case of property held in a safe deposit box or other safekeeping depository, an indication of the place where it is held and where it may be inspected by the administrator, and any amounts owing to the holder;

(6) The date, if any, on which the property became payable, demandable or returnable, and the date of the last transaction with the apparent owner with respect to the property; and

(7) Other information that the administrator by rule prescribes as necessary for the administration of this article.

(c) If a holder of property presumed abandoned is a successor to another person who previously held the property for the apparent owner or the holder has changed its name while holding the property, the holder shall file with the report its former names, if any, and the known names and addresses of all previous holders of the property.

(d) The report must be filed before the first day of November of each year and cover the twelve months next preceding the first day of July of that year, but a report with respect to a life insurance company must be filed before the first day of May of each year for the calendar year next preceding.

(e) The holder of property presumed abandoned shall send written notice to the apparent owner, not more than one hundred twenty days or less than sixty days before filing the report, stating that the holder is in possession of property subject to this article, if:

(1) The holder has in its records an address for the apparent owner which the holder's records do not disclose to be inaccurate;

(2) The claim of the apparent owner is not barred by a statute of limitations; and

(3) The value of the property is fifty dollars or more.

(f) Before the date for filing the report, the holder of property presumed abandoned may request the administrator to extend the time for filing the report. The administrator may grant the extension for good cause. The holder, upon receipt of the extension, may make an interim payment on the amount the holder estimates will ultimately be due, which terminates the accrual of additional interest on the amount paid.

(g) The holder of property presumed abandoned shall file with the report an affidavit stating that the holder has complied with subsection (e) of this section.

§36-8-8. Payment or delivery of abandoned property.

(a) Except for property held in a safe deposit box or other safekeeping depository, upon filing the report required by section seven of this article, the holder of property presumed abandoned shall pay, deliver or cause to be paid or delivered to the administrator the property described in the report as unclaimed, but if the property is an automatically renewable deposit, and a penalty or forfeiture in the payment of interest would result, the time for compliance is extended until a penalty or forfeiture would no longer result. 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 seven of this article.

(b) If the property reported to the administrator is a security or security entitlement under article eight of the uniform commercial code, the administrator is an appropriate person to make an endorsement, instruction or entitlement order on behalf of the apparent owner to invoke the duty of the issuer or its transfer agent or the securities intermediary to transfer or dispose of the security or the security entitlement in accordance with article eight of the uniform commercial code.

(c) If the holder of property reported to the administrator is the issuer of a certificated security, the administrator has the right to obtain a replacement certificate pursuant to article eight, section four hundred eight of the uniform commercial code, but an indemnity bond is not required.

(d) An issuer, the holder, and any transfer agent or other person acting pursuant to the instructions of and on behalf of the issuer or holder in accordance with this section is not liable to the apparent owner and must be indemnified against claims of any person in accordance with section ten of this article.

§36-8-9. Notice and publication of lists of abandoned property.

(a) The administrator shall publish a notice not later than the thirtieth day of November of the year next following the year in which abandoned property has been paid or delivered to the administrator. The notice must be published in a newspaper of general circulation in the county of this state in which is located the last known address of any person named in the notice. If a holder does not report an address for the apparent owner, or the address is outside this state, the notice must be published in the county in which the holder has its principal place of business within this state or another county that the administrator reasonably selects. The advertisement must be in a form that, in the judgment of the administrator, is likely to attract the attention of the apparent owner of the unclaimed property. The form must contain:

(1) The name of each person appearing to be the owner of the property, as set forth in the report filed by the holder;

(2) The last known address or location of each person appearing to be the owner of the property, if an address or location is set forth in the report filed by the holder;

(3) A statement explaining that property of the owner is presumed to be abandoned and has been taken into the protective custody of the administrator; and

(4) A statement that information about the property and its return to the owner is available to a person having a legal or beneficial interest in the property, upon request to the administrator.

(b) The administrator is not required to advertise the name and address or location of an owner of property having a total value less than fifty dollars or information concerning a traveler's check, money order or similar instrument.

§36-8-10. Custody by state; recovery by holder; defense of holder.

(a) In this section, payment or delivery is made in "good faith" if:

(1) Payment or delivery was made in a reasonable attempt to comply with this article;

(2) The holder was not then in breach of a fiduciary obligation with respect to the property and had a reasonable basis for believing, based on the facts then known, that the property was presumed abandoned: Provided, That no fiduciary shall be deemed to be in breach of a fiduciary obligation for purposes of this section by virtue of paying or delivering property to the administrator prior to the expiration of the period for holding unclaimed or abandoned property contained in the instrument under which such fiduciary is acting; and

(3) There is no showing that the records under which the payment or delivery was made did not meet reasonable commercial standards of practice.

(b) Upon payment or delivery of property to the administrator, the state assumes custody and responsibility for the safekeeping of the property. A holder who pays or delivers property to the administrator in good faith is relieved of all liability arising thereafter with respect to the property.

(c) A holder who has paid money to the administrator pursuant to this article may subsequently make payment to a person reasonably appearing to the holder to be entitled to payment. Upon a filing by the holder of proof of payment and proof that the payee was entitled to the payment, the administrator shall promptly reimburse the holder for the payment without imposing a fee or other charge. If reimbursement is sought for a payment made on a negotiable instrument, including a traveler's check or money order, the holder must be reimbursed upon filing proof that the instrument was duly presented and that payment was made to a person who reasonably appeared to be entitled to payment. The holder must be reimbursed for payment made even if the payment was made to a person whose claim was barred under subsection (a), section nineteen of this article.

(d) A holder who has delivered property other than money to the administrator pursuant to this article may reclaim the property if it is still in the possession of the administrator, without paying any fee or other charge, upon filing proof that the apparent owner has claimed the property from the holder.

(e) The administrator may accept a holder's affidavit as sufficient proof of the holder's right to recover money and property under this section.

(f) If a holder pays or delivers property to the administrator in good faith and thereafter another person claims the property from the holder or another state claims the money or property under its laws relating to escheat or abandoned or unclaimed property, the administrator, upon written notice of the claim, shall defend the holder against the claim and indemnify the holder against any liability on the claim resulting from payment or delivery of the property to the administrator.

(g) Property removed from a safe deposit box or other safekeeping depository is received by the administrator subject to the holder's right to be reimbursed for the cost of the opening and to any 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.

§36-8-11. Crediting of dividends, interest and increments to owner's account.

(a) If property other than money is delivered to the administrator under this article, the owner is entitled to receive from the administrator any income or gain realized or accruing on the property at or before liquidation or conversion of the property into money only as provided in this subsection:

(1) If the property was an interest bearing demand, savings or time deposit, including a deposit that is automatically renewable, the administrator shall pay interest 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.

(2) If the property is any property other than an interest bearing demand, savings or time deposit, 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 time the property was delivered to the administrator to the time the owner established a claim to the property.

(3) In no event shall the administrator be required to pay the owner any income or gain realized or accruing on the property after the third anniversary of the delivery of the property to the administrator.

(b) Nothing in this section shall be construed to entitle an owner to interest on property which did not realize or accrue income or gain at the time it was delivered to the administrator.

§36-8-12. Public sale of abandoned property.

(a) Except as otherwise provided in this section, the administrator, within three years after the receipt of abandoned property, shall sell it to the highest bidder at public sale at a location in the state which in the judgment of the administrator affords the most favorable market for the property. The administrator may decline the highest bid and reoffer the property for sale if the administrator considers the bid to be insufficient. The administrator need not offer the property for sale if the administrator considers that the probable cost of sale will exceed the proceeds of the sale. A sale held under this section must be preceded by a single publication of notice, at least three weeks before sale, in a newspaper of general circulation in the county in which the property is to be sold.

(b) Securities listed on an established stock exchange must be sold at prices prevailing on the exchange at the time of sale. Other securities may be sold over the counter at prices prevailing at the time of sale or by any reasonable method selected by the administrator. If securities are sold by the administrator before the expiration of three years after their delivery to the administrator, a person making a claim under this article before the end of the three-year period is entitled to the proceeds of the sale of the securities less any deduction for expenses of sale. A person making a claim under this article after the expiration of the three-year period is entitled to receive the securities delivered to the administrator by the holder, if they still remain in the custody of

the administrator, or the net proceeds received from sale, and 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.

(c) A purchaser of property at a sale conducted by the administrator pursuant to this article takes the property free of all claims of the owner or previous holder and of all persons claiming through or under them. The administrator shall execute all documents necessary to complete the transfer of ownership.

§36-8-13. Deposit of funds.

(a) The administrator shall record the name and last known address of each person appearing from the holders reports to be entitled to the property and the name and last known address of each insured person or annuitant and beneficiary and with respect to each policy or annuity listed in the report of an insurance company, its number, the name of the company and the amount due.

(b) The Unclaimed Property Fund is continued. The administrator shall deposit all funds received pursuant to this article in the Unclaimed Property Fund, including the proceeds from the sale of abandoned property under section twelve of this article. In addition to paying claims of unclaimed property duly allowed, the administrator may deduct the following expenses from the Unclaimed Property Fund:

(1) Expenses of the sale of abandoned property;

(2) Expenses incurred in returning the property to owners, including without limitation the costs of mailing and publication to locate owners;

(3) Reasonable service charge; and

(4) Expenses incurred in examining records of holders of property and in collecting the property from those holders.

(c) The Unclaimed Property Trust Fund is continued within the State Treasury. The administrator may invest the Unclaimed Property Trust Fund with the West Virginia Board of Treasury Investments and all earnings shall accrue to the fund and are available for expenditure in accordance with this article. After deducting the expenses specified in subsection (b) of this section and maintaining a sum of money from which to pay claims duly allowed, the administrator shall transfer the remaining moneys in the Unclaimed Property Fund to the Unclaimed Property Trust Fund.

(d)(1) On July 1, 2009, the unclaimed property administrator shall transfer the amount of \$8 million from the Unclaimed Property Trust Fund to the Prepaid Tuition Trust Escrow Fund.

(2) On or before December 15 of each year, notwithstanding any provision of this code to the contrary, the administrator shall transfer the sum of \$1 million from the Unclaimed Property Trust Fund to the Prepaid Tuition Trust Escrow Fund, until the actuary certifies there are sufficient funds to pay out all contracts.

(e) On or before June 1, 2007, the unclaimed property administrator shall transfer the amount of \$2 million from the Unclaimed Property Trust Fund to the Deferred Compensation Matching Fund for operation of the deferred compensation matching program for state employees. On or before June 1, 2008, the unclaimed property administrator shall transfer the amount of \$1 million from the Unclaimed Property Trust Fund to the Deferred Compensation Matching Fund for operation of the matching program.

(f) On or before June 1, 2013, the unclaimed property administrator shall transfer the amount of \$3,631,846.55 from the Unclaimed Property Trust Fund to the Municipal Pensions and Protection Fund for the purpose of satisfying any amounts due as of April 27, 2012 to policemen's and firemen's pension and relief funds in accordance with section fourteen-d, article three, chapter thirty-three of this Code.

(g) After transferring any money required by subsections (d) through (f) of this section, the administrator shall transfer moneys remaining in the Unclaimed Property Trust Fund to the General Revenue Fund.

§36-8-14. Claim of another state to recover property.

(a) After property has been paid or delivered to the administrator under this article, another state may recover the property if:

(1) The property was paid or delivered to the custody of this state because the records of the holder did not reflect a last known location of the apparent owner within the borders of the other state and the other state establishes that the apparent owner or other person entitled to the property was last known to be located within the borders of that state and under the laws of that state the property has escheated or become subject to a claim of abandonment by that state;

(2) The property was paid or delivered to the custody of this state because the laws of the other state did not provide for the escheat or custodial taking of the property, and under the laws of that state subsequently enacted the property has escheated or become subject to a claim of abandonment by that state;

(3) The records of the holder were erroneous in that they did not accurately identify the owner of the property and the last known location of the owner within the borders of another state and under the laws of that state the property has escheated or become subject to a claim of abandonment by that state;

(4) The property was subjected to custody by this state under subdivision (6), section four of this article and under the laws of the state of domicile of the holder the property has escheated or become subject to a claim of abandonment by that state; or

(5) The property is a sum payable on a traveler's check, money order or similar instrument that was purchased in the other state and delivered into the custody of this state under subdivision (7), section four of this article, and under the laws of the other state the property has escheated or become subject to a claim of abandonment by that state.

(b) A claim of another state to recover escheated or abandoned property must be presented in a form prescribed by the administrator, who shall decide the claim within ninety days after it is presented. The administrator shall allow the claim upon determining that the other state is entitled to the abandoned property under subsection (a) of this section.

(c) The administrator shall require another state, before recovering property under this section, to agree to indemnify this state and its officers and employees against any liability on a claim to the property.

§36-8-15. Filing claim with administrator; handling of claims by administrator.

(a) A person, excluding another state, claiming property paid or delivered to the administrator may file a claim on a form prescribed by the administrator and verified by the claimant.

(b) Within ninety days after a claim is filed, the administrator shall allow or deny the claim and give written notice of the decision to the claimant. If the claim is denied, the administrator shall inform the claimant of the reasons for the denial and specify what additional evidence is required before the claim will be allowed. The claimant may then file a new claim with the administrator or maintain an action under section sixteen of this article.

(c) Within thirty days after a claim is allowed, the property or the net proceeds of a sale of the property must be delivered or paid by the administrator to the claimant.

§36-8-16. Action to establish claim.

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. If the aggrieved person establishes the claim in an action against the administrator, the court may award the claimant reasonable attorney's fees.

36-8-17. Election to take payment or delivery.

(a) The administrator may decline to receive property reported under this article which the administrator considers to have a value less than the expenses of notice and sale.

(b) A holder, with the written consent of the administrator and upon conditions and terms prescribed by the administrator, may report and deliver property before the property is presumed abandoned. Property so delivered must be held by the administrator and is not presumed abandoned until it otherwise would be presumed abandoned under this article.

§36-8-18. Destruction or disposition of property having no substantial commercial value; immunity from liability.

If the administrator determines after investigation that property delivered under this article has no substantial commercial value, the administrator may destroy or otherwise dispose of the property at any time. An action or proceeding may not be maintained against the state or any officer or against the holder for or on account of an act of the administrator under this section, except for intentional misconduct or malfeasance.

§36-8-19. Periods of limitation.

(a) The expiration, before or after the effective date of this article, of a period of limitation on the owner's right to receive or recover property, whether specified by contract, statute or court order, does not preclude the property from being presumed abandoned or affect a duty to file a report or to pay or deliver or transfer property to the administrator as required by this article.

(b) An action or proceeding may not be maintained by the administrator to enforce this article in regard to the reporting, delivery or payment of property more than ten years after the holder specifically identified the property in a report filed with the administrator or gave express notice to the administrator of a dispute regarding the property. In the absence of such a report or other express notice, the period of limitation is tolled. The period of limitation is also tolled by the filing of a report that is fraudulent.

§36-8-20. Requests for reports and examination of records.

(a) The administrator, or the administrator's designated agent, may require a person who has not filed a report, or a person who the administrator believes has filed an inaccurate, incomplete or false report, to file a verified report in a form specified by the administrator. The report must state whether the person is holding property reportable under this article, describe property not previously reported or as to which the administrator has made inquiry and specifically identify and state the amounts of property that may be in issue.

(b) The administrator, or the administrator's designated agent, at reasonable times and upon reasonable notice, may examine the records of any person to determine whether the person has complied with this article. The administrator may conduct the examination even if the person believes it is not in possession of any property that must be reported, paid or delivered under this article. The administrator may contract with any other person to conduct the examination on behalf of the administrator. However, this subsection shall not be construed to grant the

administrator the right to examine the records of a national banking association to an extent greater than permitted by applicable federal law, nor shall this subsection permit the records of any bank chartered or incorporated under the laws of any state to be subject to examination to an extent greater than the examination permitted of the records of a national banking association under applicable federal law.

(c) The administrator, or the administrator's agent, at reasonable times may examine the records of an agent, including a dividend disbursing agent or transfer agent, of a business association or financial association that is the holder of property presumed abandoned if the administrator, or the administrator's agent, has given the notice required by subsection (b) of this section to both the association or organization and the agent at least ninety days before the examination.

(d) Documents and working papers obtained or compiled by the administrator, or the administrator's agents, employees or designated representatives, in the course of conducting an examination are confidential and are not public records, but the documents and papers may be:

(1) Used by the administrator or the administrator's attorney in the course of an action to collect unclaimed property or otherwise enforce this article;

(2) Used in joint examinations conducted with or pursuant to an agreement with another state, the federal government or any other governmental subdivision, agency or instrumentality;

(3) Produced pursuant to subpoena or court order; or

(4) Disclosed to the abandoned property office of another state for that state's use in circumstances equivalent to those described in this subdivision, if the other state is bound to keep the documents and papers confidential.

(e) If an examination of the records of a person results in the disclosure of property reportable under this article, the administrator may assess the cost of the examination against the holder at the rate of two hundred dollars a day for each examiner, or a greater amount that is reasonable and was incurred, but the assessment may not exceed the value of the property found to be reportable. The cost of an examination made pursuant to subsection (c) of this section may be assessed only against the business association or financial organization.

(f) If, after the effective date of this article, a holder does not maintain the records required by section twenty-one of this article and the records of the holder available for the periods subject to this article are insufficient to permit the preparation of a report, the administrator may require the holder to report and pay to the administrator the amount the administrator reasonably estimates, on the basis of any available records of the holder or by any other reasonable method of estimation, should have been but was not reported.

§36-8-21. Retention of records.

(a) Except as otherwise provided in subsection (b) of this section, a holder required to file a report under section seven of this article shall maintain the records containing the information required to be included in the report for ten years after the holder files the report, unless a shorter period is provided by rule of the administrator.

(b) A business association or financial organization that sells, issues or provides to others for sale or issue in this state, traveler's checks, money orders or similar instruments other than third-party bank checks, on which the business association or financial organization is directly liable, shall maintain a record of the instruments while they remain outstanding, indicating the state and date of issue, for three years after the holder files the report.

§36-8-22. Enforcement.

The administrator may maintain an action in this or another state to enforce this article. The court may award reasonable attorney's fees to the prevailing party.

§36-8-23. Interstate agreements and cooperation; joint and reciprocal actions with other states.

(a) The administrator may enter into an agreement with another state to exchange information relating to abandoned property or its possible existence. The agreement may permit the other state, or another person acting on behalf of a state, to examine records as authorized in section twenty of this article. The administrator by rule may require the reporting of information needed to enable compliance with an agreement made under this section and prescribe the form.

(b) The administrator may join with another state to seek enforcement of this article against any person who is or may be holding property reportable under this article.

(c) At the request of another state, the administrator's attorney may maintain an action on behalf of the other state to enforce, in this state, the unclaimed property laws of the other state against a holder of property subject to escheat or a claim of abandonment by the other state, if the other state has agreed to pay expenses incurred by the attorney general in maintaining the action.

(d) 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. The administrator may retain any other attorney to commence an action in this state on behalf of the administrator. This state shall pay all expenses, including attorney's fees, in maintaining an action under this subsection. With the administrator's approval, the expenses and attorney's fees may be paid from money received under this article. The administrator may agree to pay expenses and attorney's fees based, in whole or in part, on a percentage of the value of any property recovered in the action. Any expenses or attorney's fees paid under this subsection may not be deducted from the amount that is subject to the claim by the owner under this article.

§36-8-24. Interest and penalties.

(a) A holder who fails to report, pay or deliver property within the time prescribed by this article shall pay to the administrator interest at the annual rate of twelve percent on the property or value thereof from the date the property should have been reported, paid or delivered.

(b) Except as otherwise provided in subsection (c) of this section, a holder who fails to report, pay or deliver property within the time prescribed by this article, or fails to perform other duties imposed by this article, shall pay to the administrator, in addition to interest as provided in subsection (a) of this section, a civil penalty of two hundred dollars for each day the report, payment or delivery is withheld, or the duty is not performed, up to a maximum of five thousand dollars.

(c) A holder who willfully fails to report, pay or deliver property within the time prescribed by this article, or willfully fails to perform other duties imposed by this article, shall pay to the administrator, in addition to interest as provided in subsection (a) of this section, a civil penalty of one thousand dollars for each day the report, payment or delivery is withheld, or the duty is not performed, up to a maximum of twenty-five thousand dollars, plus twenty-five percent of the value of any property that should have been but was not reported.

(d) A holder who makes a fraudulent report shall pay to the administrator, in addition to interest as provided in subsection (a) of this section, a civil penalty of one thousand dollars for each day from the date a report under this article was due, up to a maximum of twenty-five thousand dollars, plus twenty-five percent of the value of any property that should have been but was not reported.

(e) The administrator for good cause may waive, in whole or in part, interest under subsection (a) of this section and penalties under subsections (b) and (c) of this section, and shall waive penalties if the holder acted in good faith and without negligence.

§36-8-25. Records of abandoned property.

Records of abandoned property kept by the administrator are available for inspection and copying only by an owner of such property as to the particular property he or she owns, or by his or her personal representative, next of kin, attorney at law or such person entitled to inherit from the owner conducting a legal audit thereof. These records are exempt from the provisions of chapter twenty-nine-b of this code.

§36-8-26. Foreign transactions.

This article does not apply to property held, due and owing in a foreign country and arising out of a foreign transaction.

§36-8-27. Transitional provisions.

(a) An initial report filed under this article for property that was not required to be reported before the effective date of this article but which is subject to this article must include all items of property that would have been presumed abandoned during the ten-year period next preceding the effective date of this article as if this article had been in effect during that period.

(b) This article does not relieve a holder of a duty that arose before the effective date of this article to report, pay or deliver property. Except as otherwise provided in subsection (b), section nineteen of this article, a holder who did not comply with the law in effect before the effective date of this article is subject to the applicable provisions for enforcement and penalties which then existed, which are continued in effect for the purpose of this section.

§36-8-28. Rules.

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

§36-8-29. Uniformity of application and construction.

This article shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this article among states enacting it.

§36-8-30. Short title.

This article may be cited as the "Uniform Unclaimed Property Act".

§36-8-31. Severability clause.

If any provision of this article or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

§36-8-32. Effective date.

This article shall take effect on the first day of July, one thousand nine hundred ninety-seven.

CHAPTER 36. ESTATES AND PROPERTY.
ARTICLE 8a. UNCLAIMED STOLEN PROERTY HELD BY LAW-ENFORCEMENT
AGENCIES.

§ 36-8A-1. Definitions

§ 36-8A-2. Unclaimed Stolen Property Reports

§ 36-8A-3. Treasurer's Response to Unclaimed Stolen Property Report

§ 36-8A-4. Disposition of Unclaimed Stolen Property Other than Firearms and Ammunition

§ 36-8A-5. Regarding the Disposition of Firearms in State Custody

§ 36-8A-6. Deposit of Funds

§ 36-8A-7. Immunity of Law-Enforcement Agencies

§ 36-8A-1. Definitions

For purposes of this article, unless a different meaning clearly appears in the context:

(a) “Chief executive” means the Superintendent of the State Police; the chief natural resources police officer of the Division of Natural Resources; the sheriff of any West Virginia county; or the chief of any West Virginia municipal law-enforcement agency.

(b) “Item” means any item of unclaimed stolen property or any group of similar items considered together for purposes of reporting, donation, sale or destruction under this article.

(c) “Law-enforcement agency” means any duly authorized state, county or municipal organization of the State of West Virginia employing one or more persons whose responsibility is the enforcement of laws of the state or any county or municipality thereof: Provided, That neither the Hatfield-McCoy Regional Recreation Authority nor any state institution of higher education is a law-enforcement agency.

(d) “Nonprofit organization” means: (i) Any nonprofit charitable organization; or (ii) any agency of the State of West Virginia the purpose of which is to provide health, recreational or educational services to citizens of the State of West Virginia.

(e) “Stolen property” means any tangible personal property, including cash and coins, which is confiscated by or otherwise comes into the custody of a law-enforcement agency during the course of a criminal investigation or the performance of any other authorized law-enforcement activity, whether or not the property was or can be proven to have been stolen.

(f) “Treasurer” means the State Treasurer or his or her authorized designee for purposes of the administration of this article.

(g) “Unclaimed stolen property” is stolen property:

(1) Which has been held by a law-enforcement agency for at least six months, during which time the rightful owner has not claimed it;

(2) For which the chief executive determines that there is no reasonable likelihood of its being returned to its rightful owner; and

(3) Which the chief executive determines to have no evidentiary value.

§ 36-8A-2. Unclaimed stolen property reports

(a) On or before September 1, of each year, each law-enforcement agency which has unclaimed stolen property in its possession shall file an unclaimed stolen property report with the Treasurer which identifies all unclaimed stolen property in its possession at the time the report is filed.

(b) An unclaimed stolen property report shall include the following information with respect to all unclaimed stolen property in the possession of the law-enforcement agency filing it:

(1) A description of each item, including a serial number, if applicable;

(2) An estimated value for each item;

(3) Whether any nonprofit organization has requested that any item be donated to it and whether any nonprofit organization might be considered to receive the item as a donation;

(4) Whether the law-enforcement agency could use the item for any legitimate and authorized law enforcement or educational purpose;

(5) The chief executive's recommendation for the disposition of each item; and

(6) If any unclaimed stolen property in the law-enforcement agency's possession consists of firearms or ammunition, a description of the best efforts used by the chief executive to determine if the firearm has been lost by, stolen or otherwise unlawfully obtained from an innocent owner prior to its disposition by public auction or as otherwise required by section five of this article.

§ 36-8A-3. Treasurer's response to unclaimed stolen property report

Within thirty days of the receipt of an unclaimed stolen property report, the Treasurer shall send a response to the law-enforcement agency submitting it. For each item identified in the unclaimed stolen property report, the Treasurer shall either require that it be delivered to the Treasurer, authorize the law-enforcement agency to sell it at a public sale, authorize the law-enforcement agency to donate it to a nonprofit organization, authorize the law-enforcement agency to use it for any legitimate and authorized law enforcement or educational purpose, or authorize the law-enforcement agency either to sell it at a public sale, to donate it to a nonprofit organization, or to use it for any legitimate and authorized law enforcement or educational purpose. However, the treasurer may not authorize the law-enforcement agency to donate any firearms or ammunition. The sale of any firearms or ammunition by the law enforcement agency must be at a public sale to persons licensed as firearms collectors, dealers, importers or manufacturers under the provisions of 18 U. S. C. §§ 921 et seq. and authorized to receive firearms under the terms of their license. If the Treasurer determines that any item identified in an unclaimed stolen property report is of such value that it should be processed by the Treasurer's office, the Treasurer shall have the authority to require that the item be delivered to the treasurer.

§ 36-8A-4. Disposition of unclaimed stolen property other than firearms and ammunition

(a) Within ninety days of receipt of the treasurer's response required by section three of this article, the law-enforcement agency shall dispose of all items identified in the treasurer's response in the manner set forth in this section.

(b) If the treasurer's report requires the law-enforcement agency to deliver any item to the treasurer, the chief executive shall cause the item to be so delivered. Within three years after receiving the item from the law-enforcement agency, the treasurer shall sell it to the highest bidder at public sale at a location in the state which in the judgment of the treasurer affords the most favorable market for the property. The treasurer may decline the highest bid and reoffer the property for sale if the treasurer considers the bid to be insufficient. The treasurer need not offer the property for sale if the treasurer considers that the probable cost of sale will exceed the proceeds of the sale. A sale held under this subsection must be preceded by a single publication of notice, at least three weeks before sale, in a newspaper of general circulation in the county in which the property is to be sold.

(c) If the treasurer's response authorizes the law-enforcement agency to sell any item at a public sale, the chief executive shall retain an auctioneer licensed by the state of West Virginia to conduct the sale. The costs or fees incurred will be paid from a fund generated from revenues gained by the sale of such property. The licensed auctioneer shall sell the item to the highest bidder at a location which in the judgment of the chief executive affords the most favorable market for the items. A sale under this subsection must be preceded by a single publication of notice, at least three weeks before the sale, in a newspaper of general circulation in the county in which the property is to be sold. The chief executive shall retain the proceeds of any public sale under this subsection for the use of the law-enforcement agency.

(d) If the treasurer's response authorizes the law-enforcement agency to donate any item to a nonprofit organization, the chief executive shall cause the item to be so donated.

(e) If the treasurer's report authorizes the law-enforcement agency to use any item for any legitimate and authorized law-enforcement or educational purpose, the chief executive shall cause the item to be used for that purpose. However, if the law-enforcement agency ever discontinues its use of the item, it must again report the item to the treasurer as provided in section two of this article.

(f) If the treasurer's response authorizes the law-enforcement agency either to sell any item at a public sale, to donate it to a nonprofit organization or to use it for any legitimate and authorized law-enforcement or educational purpose, the chief executive may cause the item either to be sold, donated or used as provided in this section. However, the chief executive shall first attempt to donate the item as provided in subsection (d) of this section or to use it as provided in subsection (e) of this section before selling it at a public sale as provided in subsection (c) of this section.

§ 36-8A-5. Regarding the disposition of firearms in state custody

(a) Except as provided in section three of this article, subject to the duty to return firearms to innocent owners pursuant to subsection (b) of this section, all firearms, as defined in section two, article seven, chapter sixty-one of this code, that are forfeited or abandoned to any law-enforcement agency of this state or a political subdivision of this state, including the West Virginia Division of Natural Resources, or that are otherwise acquired by the state or a political subdivision of the state and are no longer needed, shall be transferred to the State Treasurer for disposal as provided in this section.

(b) Except as provided in section three of this article, within thirty days of the receipt of an unclaimed stolen property report, the State Treasurer shall coordinate best efforts with the reporting law-enforcement agency to transfer the firearms and ammunition to the State Treasurer for disposal as provided in subsection (e).

(c) Prior to the disposal of any firearm that has been forfeited or abandoned to the state, the chief executive of each law-enforcement agency shall use best efforts to determine if the firearm has been lost by, stolen or otherwise unlawfully obtained from an innocent owner, and if so, shall return the firearm to its innocent owner, if ascertainable, unless that person is ineligible to receive or possess a firearm under state or federal law.

(d) Upon determination and verification that a lawful owner is unavailable or ineligible to receive or possess a firearm under state or federal law, reporting enforcement agencies may trade the firearms and ammunition to persons licensed as firearms collectors, dealers, importers or manufacturers under the provisions of 18 U. S. C. §§ 921 et seq. and authorized to receive firearms under the terms of their license, in exchange for new weapons or ammunition, or appropriate the firearms and ammunition for law-enforcement agency use.

(e) Except as provided in subsections (c), (d) and (f) of this section, the State Treasurer shall dispose of the firearms that it receives under subsection (a) by sale at public auction to persons licensed as firearms collectors, dealers, importers or manufacturers under the provisions of 18 U. S. C. §§ 921 et seq. and authorized to receive firearms under the terms of their license.

(1) The auctions required by this subsection may occur online on a rolling basis or at live events but in no event may occur less frequently than once every six months.

(2) The State Treasurer shall retain only the net proceeds necessary to cover the costs of administering this section, with any surplus to be transferred to the general fund of the state: Provided, That an agency may be reimbursed for any decommissioned firearms formerly in use by the agency that are sold under this section: Provided however, That an agency may apply to the State Treasurer for payment of the net proceeds generated by the sale of any property by the State Treasurer pursuant to this section.

(3) Employees of the State Police or of the agency from which the firearms are received are not eligible to bid on the firearms at an auction conducted under this section.

(f) The requirements of subsection (d) do not apply to a firearm that the chief executive of the law-enforcement agency or his or her designee certifies is unsafe for use because of wear, damage, age or modification, and any such firearm shall at the discretion of the superintendent be transferred to the State Police forensic laboratory for training or experimental purposes or to a museum or historical society or be destroyed.

(g) The State Treasurer shall keep records of all firearms acquired and disposed of under the provisions of this section, as well as the net proceeds of the sales and the disbursement of such proceeds, and shall maintain these records for not less than ten years from the date on which a firearm is disposed of or on which a disbursement of funds is made, as the case may be.

(h) Any firearm or ammunition subject to forfeiture proceedings which is ordered returned to any law enforcement agency for the purposes of public sale or auction may only be sold or transferred to persons licensed as firearms collectors, dealers, importers or manufacturers under the provisions of 18 U. S. C. §§ 921 et seq.

§ 36-8A-6. Deposit of funds

(a) The treasurer shall promptly deposit in the general revenue fund of this state all proceeds of any public sale of unclaimed stolen property conducted by the treasurer under subsection (b), section four of this article.

(b) Before making a deposit to the credit of the general revenue fund, the treasurer may deduct the expenses of the related public sale conducted by the treasurer.

(c) The treasurer may deduct the accumulated expenses incurred in the destruction of unclaimed stolen firearms and ammunition under this article from any deposit made under subsection (a) of this section.

§ 36-8A-7. Immunity of law-enforcement agencies

If a law-enforcement agency delivers, sells or donates any item of unclaimed stolen property in good faith and in accordance with the provisions of this article, the law-enforcement agency and its chief executive, officers and employees involved in the delivery, sale or donation shall be immune from any subsequent claim of a person who purports to be the true owner of the item and who did not claim the item prior to the delivery, sale or donation.

OTHER WEST VIRGINIA CODE PROVISIONS RELATING TO UNCLAIMED PROPERTY

West Virginia Code Sections

§12-3A-3. Financial electronic commerce.

§12-3A-7. Method of sale or disposal of personal property.

§23-3-4. Deposits and disbursements considered abandoned property; disposition of property.

§34-2-1. Method of recovery of unclaimed residuum and derelict property.

§42-1-3c. No taker.

§44-1-28. Payment of small sums due employees to distributees of decedents upon whose estates there have been no qualifications.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES. ARTICLE 3A. FINANCIAL ELECTRONIC COMMERCE.

§12-3A-3. Financial electronic commerce.

(a) The State Auditor and the State Treasurer shall implement electronic commerce capabilities for each of their offices to facilitate the performance of their duties under this code. The State Treasurer shall competitively bid the selection of vendors needed to provide the necessary banking, investment and related goods and services, and the provisions of article one-b, chapter five, and articles three and seven, chapter five-a of this code shall not apply, unless requested by the State Treasurer.

(b) A document or a signature received, issued or used by the Auditor or the Treasurer shall be considered an original and may not be denied legal effect on the ground that it is in electronic form.

(c) The Auditor or Treasurer may, in his or her discretion, require documents filed with or submitted to his or her respective office be filed or submitted in a prescribed electronic format.

(d) The Auditor or Treasurer, in his or her discretion, may waive:

(1) Any requirements for a document filed or submitted in an electronic format; or

(2) Any requirements for the certification, notarization or verification of a document filed or submitted in an electronic format.

(e) The head of each spending unit is responsible for adopting and implementing security procedures to ensure adequate integrity, security, confidentiality and auditability of the business transactions of his or her spending unit when utilizing electronic commerce.

§12-3A-7. Method of sale or disposal of personal property.

(a) Notwithstanding any other provision in this code to the contrary, the Treasurer, or any other state spending unit that has the authority to sell or dispose of personal property in its possession, may do so by using electronic commerce.

(b) The sale of property by the Treasurer, or other state spending unit, by using electronic commerce is, for all purposes, deemed a sale of personal property within the State of West Virginia.

**CHAPTER 23. WORKERS' COMPENSATION.
ARTICLE 3. WORKERS' COMPENSATION FUND.**

§23-3-4. Deposits and disbursements considered abandoned property; disposition of property.

(a) All disbursements from the Workers' Compensation Fund and the other funds created pursuant to this chapter including the advance deposits by employers where there has been no activity for a period of five years, are presumed abandoned and subject to the custody of the state as unclaimed property under the provisions of article eight, chapter thirty-six of this code. The funds shall be kept in a separate account by the state treasurer, apart from other unclaimed property funds. Ninety days after the state treasurer has advertised the accounts and paid any claims, he or she shall remit the balance of those funds held in the account to the credit of the Workers' Compensation Fund or to other affected funds. Such property shall become the property of, and owned exclusively by, the Workers' Compensation Fund. Effective upon termination of the Commission, said funds otherwise meeting the requirements of this section shall be deposited into the old fund as set forth in article two-c of this chapter.

(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 are credited only to the account of the Workers' Compensation Fund or to such other affected fund.

**CHAPTER 34. ESTRAYS, DRIFT AND DERELICT PROPERTY.
ARTICLE 2. DERELICT PROPERTY.**

§34-2-1. Method of recovery of unclaimed residuum and derelict property.

The residuum of a decedent's estate, belonging to the state, and any property derelict, or having no rightful owner, may be recovered from any person in possession thereof, by a bill in equity in the name of the state.

**CHAPTER 42. DESCENT AND DISTRIBUTION.
ARTICLE 1. DESCENT.**

§42-1-3c. No taker.

If there is no taker under the provisions of this article, the intestate estate passes to the state. Any real property shall pass to the state auditor. Any personal property shall pass to the state treasurer for disposition by public sale in accordance with the provisions of section twelve, article eight, chapter thirty-six of this code. The proceeds of the sale of any such real property shall be deposited to the credit of the general school fund. The proceeds of the sale of any such personal property shall be deposited to the credit of the general revenue fund.

**CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.
ARTICLE 1. PERSONAL REPRESENTATIVES.**

§44-1-28. Payment of small sums due employees to distributees of decedents upon whose estates there have been no qualifications.

(a) When the State of West Virginia, any of its political subdivisions, the United States or any employer owes wages, salary, pension payments or money allowed for burial expenses to a decedent, upon whose estate there has been no qualification, and the amount owed does not exceed \$5,000, the State of West Virginia, any of its political subdivisions, the United States or the decedent's employer, after one hundred and twenty days from the death of the decedent, may pay the amount owed to the decedent's surviving spouse, if any; and if no spouse survived the decedent, then to the distributees of the decedent under the laws of the State of West Virginia.

(b) When the State Treasurer holds property in accordance with article eight, chapter thirty-six of this code on behalf of a decedent upon whose estate there has been no qualification, and the

amount of the property is \$5,000 or less, the Treasurer may remit the property to the surviving spouse of the decedent, if any; and if no spouse survives the decedent, then to the distributees of the decedent under the laws of the State of West Virginia. When the State Treasurer holds property in accordance with article eight, chapter thirty-six of this code on behalf of a decedent whose estate is closed or has no present qualification and a valid will or an affidavit naming the decedent's distributees has been filed with the appropriate probate jurisdiction, the Treasurer may remit the property to the distributees as reflected in the will, or in the absence of a will, as established by the affidavit, in accordance with the laws of descent and distribution.

(c) Payment in accordance with this section is in full discharge and acquittance to all persons whomsoever on account of the property.

**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.

§ 112-5-2. Definitions.

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

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

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

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

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

2.6. "NCIC" means the National Crime Information Center.

2.7. “Safe Deposit Box” means any safe, vault, safekeeping repository, or collateral deposit box.

2.8. “Security” means any:

- (a) stock;
- (b) treasury stock;
- (c) bond;
- (d) 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.

§ 112-5-3. Presumption Of Abandonment.

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

When dormancy charges are deducted, the holder shall report the value or amount of each item of property prior to deduction of the dormancy charges and the amount of the dormancy charges in the remittance report filed with the administrator.

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

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

6.1.a. the name and social security or federal employer identification number, if known, and best address, which includes, but is not limited, to e-mail and computer codes, 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.b. 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 of each beneficiary, if known, according to the life insurance company's records;

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

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

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

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

6.2. Performance of due diligence is 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.a. the steps required by the owner to claim the property;
 - 6.2.b. the steps required by the owner to have the holder reactivate the account and continue to maintain the property for the owner;
 - 6.2.c. a statement that if the owner does not take the steps set forth either in subdivisions 6.2.a. or 6.2.b. of this subsection, the property will be remitted to the State;
 - 6.2.d. a statement that, the State is only a custodian for property presumed abandoned and remitted to the State, and that the owner or his or her heirs do not lose their rights to the property and may file a claim for the property with the State;
 - 6.2.e. a date, not less than fifteen business days prior to the date the holder will remit the property to the State, by which the owner must contact the holder; and
 - 6.2.f. the name, address, and telephone number of the person to contact at the holder.
- 6.3. The administrator shall consider a report received and filed when it has been received in a complete, accurate, and correct form including any required remittance to the administrator's Unclaimed Property Division office in Charleston, West Virginia.
- 6.3.a. The administrator may return any incomplete or inaccurate report or remittance to the holder for correction.
 - 6.3.b. If the administrator returns a report or remittance to a holder because it is incomplete or inaccurate, the holder shall submit a corrected report or remittance to the administrator within twenty calendar days after the administrator's return of the original report or remittance to the holder.
 - 6.3.c. Records of a holder failing to submit a corrected, accurate and complete report or remittance within the time set forth in subdivision 6.3.b. of this rule are subject to examination.
 - 6.3.d. The administrator may assess interest and penalties against a holder failing to file a report and remittance on or before the time specified in subdivision 6.3.b. of this rule.
- 6.4. A holder shall file the report in:
- 6.4.a. an electronic format prescribed or provided by the administrator; or
 - 6.4.b. any other form authorized by administrator.

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

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

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

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

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

§ 112-5-7. Payment Or Delivery.

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

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

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

§ 112-5-8. Advertising.

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

§ 112-5-9. Custody by State.

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

§ 112-5-10. Claims.

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

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

10.2.a. provide a photo copy 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.

§ 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. Periods of Limitation.

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

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

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

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

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

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

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

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

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

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

14.4. Within thirty (30) days of the receipt of an unclaimed stolen property report, the administrator shall send a written response to the 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. 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 A political subdivision may submit decommissioned firearms and ammunition to the administrator for sale.

§ 112-5-15. Descent and Distribution.

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