WEST VIRGINIA CODE CHAPTER 36 ARTICLE 8

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§36-8-1. Definitions.

As used in this article:

“Administrator” means the State Treasurer.

“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.

“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.

“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.

“Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

“Electronic mail” means a communication by electronic means which is automatically retained and stored and may be readily accessed or retrieved.

“Financial organization” means a savings and loan association, bank, banking organization, or credit union.

“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.

“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.

“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.

“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:

For the acquisition and retention of a mineral lease, including bonuses, royalties,

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compensatory royalties, shut-in royalties, minimum royalties, and delay rentals;

For the extraction, production, or sale of minerals, including net revenue interests, royalties, overriding royalties, extraction payments, and production payments; and

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

"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.

"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.

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

"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:

Money, virtual currency, check, draft, warrant for payment issued by the State of West Virginia, deposit, interest, or dividend;

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

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

A bond, debenture, note, or other evidence of indebtedness;

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

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

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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.

“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.

“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.

“United States savings bond” means property, tangible or intangible, in the form of a savings bond issued by the United States Treasury whether in paper form, electronic or paperless form, along with the proceeds thereof.

“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 §24-1-2 of this code.

“Virtual currency” means a digital representation of value, including cryptocurrency, used as a medium of exchange, unit of account, or store of value, which does not have legal tender status recognized by the United States. The term does not include:

(A) The software or protocols governing the transfer of the digital representation of value;

(B) Game-related digital content; or

(C) A loyalty card or gift card.

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§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, 15 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, three years after the date of the most recent interest payment unclaimed by the apparent owner;

(5) A demand, savings, or time deposit, including a deposit that is automatically renewable, five years after the maturity of the deposit, except a deposit that is automatically renewable is deemed matured on its initial date of maturity unless the apparent owner consented in a record on file with the holder to renewal at or about the time of the renewal;

(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 December 31, of the year in which the certificate was sold, but if redeemable in merchandise only, the amount abandoned is deemed to be 60 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

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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, one year 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, three 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;

(17) Any virtual currency held or owing by any banking organization, corporation, custodian, exchange, or other entity engaged in virtual currency business activity, three years after the owner's last indication of interest in the property; and

(18) All other property, three 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:

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(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;

(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 nonforfeiture 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; and

(5) For demand, savings and time deposits held by a financial organization, any indication of the owner's interest in any demand, savings and time deposit held by the financial organization for that owner is an indication of the owner's interest in all demand, savings, and time deposits held by that financial organization.

(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.

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§36-8-2a. Escheat of United States savings bonds.

(a) Notwithstanding any other section of this article or any other section of this code to the contrary, United States savings bonds held or owing in this state by any person, or issued, or owed, in the course of a holder's business, by a state or other government, governmental subdivision, agency, or instrumentality, and all proceeds thereof, shall be presumed abandoned in the state if:

(1) The last known address of the owner of the United States savings bond is in this state; and

(2) The United States savings bond has remained unclaimed and unredeemed for a period of five years after final maturity.

(b) United States savings bonds which are presumed abandoned under §36-8-2a(a) of this code, including bonds in the possession of the administrator, and those lost, stolen or destroyed bonds registered to persons with last known addresses in this state, shall, upon satisfaction by the administrator of the requirements of §36-8-2a(c) through (e) of this code, escheat to the State of West Virginia one year after such bonds are presumed abandoned, and all property rights and legal title to, and ownership of, the United States savings bonds or proceeds from the bonds, including all rights, powers and privileges of survivorship of any owner, co-owner, or beneficiary, shall vest solely in the State of West Virginia, subject only to the provisions of §36-8-15 and §36-8-16 of this code.

(c) After the expiration of the one-year period prescribed in §36-8-2a(b) of this code, if no claim has been filed pursuant to the provisions of §36-8-15 and §36-8-16 of this code for such United States savings bonds, but before such savings bonds escheat to the State of West Virginia, a civil action must be commenced by the administrator in the circuit court of Kanawha County, or in any other court of competent jurisdiction, for a determination that such United States savings bonds shall escheat to the State of West Virginia.

(d) The administrator shall make service by publication of the civil action in accordance with Rule 4(e) of the West Virginia Rules of Civil Procedure.

(e) Any person claiming ownership, including all persons claiming rights, powers and privileges of survivorship and any co-owner or beneficiary, or his or her agent, may appear and defend his or her rights to the subject bond or bonds, and if the court is satisfied that the claimant is entitled to the bond or bonds, the court may award judgment in the claimant's favor. If no person files a claim or appears at the hearing to substantiate a claim, or if the court determines that a claimant is not entitled to the property claimed by such claimant, then the court, if satisfied by evidence that the administrator has substantially complied with this section, shall enter a judgment that the subject United States savings bonds have escheated to the State of West Virginia, and all property rights and legal title to and ownership of such United States savings bonds or proceeds from such bonds, including all rights, powers and privileges of survivorship of any owner, co-owner or beneficiary, shall

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vest solely in the State of West Virginia.

(f) Upon being awarded a judgment that the United States savings bond or bonds have escheated to the State of West Virginia, the administrator shall redeem such United States savings bonds. Upon recovery of the proceeds of any United States savings bonds, the administrator shall first pay all costs incident to the collection and recovery of such proceeds from the proceeds of such United States savings bonds and shall thereafter promptly deposit the remaining balance of such proceeds into the Unclaimed Property Fund pursuant to §36-8-13 of this code.

(g) Notwithstanding any other section of this article or any other section of this code to the contrary, any person making a claim for a United States savings bond escheated to the State of West Virginia under this section, or for the proceeds of such bond, may file a claim with the administrator pursuant to §36-8-15 of this code. Upon receipt of sufficient proof of the validity of such person's claim, the administrator may, in his or her sole discretion, pay such claim less any expenses and costs which have been incurred by the state in securing full title and ownership of such property by escheat. If payment has been made to any claimant, no action thereafter may be maintained by any other claimant against the state or any officer thereof, for, or on account of, such funds.

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§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.

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§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.

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§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.

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§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.

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§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 $50 or more;

(3) An aggregated amount of items valued under $50 each;

(4) In the case of an amount of $50 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 November 1, of each year and cover the twelve months next preceding July 1, of that year, but a report with respect to a life insurance company must be filed before May 1 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

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(3) The value of the property is $50 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.

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§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 §36-8-7 of this code, 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 120 days after filing the report required by §36-8-7 of this code.

(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 indorsement, 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 10 of this article.

(e) If the property reported is virtual currency, 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 or the administrator for any gain in value after liquidation.

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

(a) Publication of bulletin. —

(1) The administrator shall publish a bulletin no later than November 30 of each year, listing the names of the apparent owners of up to 15,000 properties recently paid or delivered to the administrator. The bulletin must be published in a newspaper of general circulation in each county of this state. The bulletin 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 bulletin must contain:

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

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

(C) 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

(D) A statement that information about unclaimed 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.

(2) The administrator is not required to include any property in the bulletin described in this subsection that has a total value of less than $50 or any property that is a traveler's check, money order, or similar instrument.

(b) Exception to bulletin requirement. —

(1) The administrator is not required to publish the bulletin described in subsection (a) of this section in a county if the administrator makes a determination that the bulletin is not a cost-effective method of promoting awareness of unclaimed property in that county. The determination shall be based on the cost to publish the bulletin in the county and the following criteria:

(A) The population of the county;

(B) Relevant geographic or demographic characteristics of the county;

(C) Residents' access to Internet within the county;

(D) Available data on the circulation and readership of newspapers within the county;

(E) The existence of alternative media outlets to newspapers in the county, through which

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the administrator may more effectively promote awareness of unclaimed property; and

(F) County-specific data collected by the administrator in previous years concerning the most effective methods of promoting awareness of unclaimed property within the county.

(2) During each year in which the administrator does not publish the bulletin described in subsection (a) of this subsection in a county, pursuant to subdivision (1) of this subsection, the administrator shall publish an advertisement in a newspaper of general circulation in the county by November 30 of that year. 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 and must contain:

(A) A statement notifying the reader that the administrator holds unclaimed property and that the reader might be entitled to claim unclaimed property in the administrator's custody;

(B) A brief description of the types of property that are commonly held by the administrator;

(C) Instructions for accessing the searchable database of unclaimed property on the administrator's website; and

(D) Instructions for requesting information regarding unclaimed property from the administrator by telephone or by mail.

(c) Online database. — The administrator shall maintain a database on the administrator's website that is accessible by the public and electronically searchable which contains the names reported to the administrator of all apparent owners for whom property is being held by the administrator: *Provided*, That the administrator is not required to include in the database the name or location of an owner of property having a total value less than $50 or information concerning a traveler's check, money order, or similar instrument.

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§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 §36-8-19(a) of this code.

(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

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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 in an amount not to exceed $150. The administrator shall reimburse the holder after the property has been claimed and returned to the apparent owner using funds in the Unclaimed Property Fund.

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§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.

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§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.

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§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 §36-8-12 of this code. The administrator may invest the Unclaimed Property Fund with the West Virginia Board of Treasury Investments, or the Investment Management Board, and all earnings shall accrue to the fund and are available for expenditure in accordance with the 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) On or before December 15 of each year, notwithstanding any provision of this code to the contrary, the administrator may transfer the sum of $1 million from the Unclaimed Property Trust Fund to the Jumpstart Savings Trust Fund, until an actuary certifies there are sufficient funds to satisfy all obligations and administrative expenses of the Jumpstart Savings Program.

(e) Subject to a liquidity determination and cash availability, effective July 1, 2022, the unclaimed property administrator may transfer an amount in any fiscal year from the Unclaimed Property Trust Fund to the Military Authority Reimbursable Expenditure Fund: *Provided*, That the aggregate amount that may be transferred under this subsection may not

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exceed $10,000,000.

(f) Subject to cash availability, on or before July 15, 2024, the unclaimed property administrator may transfer up to $8 million from the Unclaimed Property Trust Fund to the West Virginia Veterans' Home Loan Mortgage Fund, as provided in §31-18F-5 of this code.

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

WV Legislature

§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.

WV Legislature

§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 90 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 16 of this article.

(c) Within 30 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.

(d) The administrator may waive the requirement in subsection (a) and may pay or deliver property directly to a person who does not file a claim if:

(1) The person receiving the property or payment is shown to be the apparent owner included on a report filed pursuant to this act;

(2) The administrator reasonably believes the person is entitled to receive the property or payment; and

(3) The property has a value of less than $5,000.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

(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 $200 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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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 $200 for each day the report, payment or delivery is withheld, or the duty is not performed, up to a maximum of $5,000.

(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 $1,000 for each day the report, payment or delivery is withheld, or the duty is not performed, up to a maximum of $25,000, 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 $1,000 for each day from the date a report under this article was due, up to a maximum of $25,000, 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.

WV Legislature

§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 the West Virginia Freedom of Information Act, Chapter 29B of this code: *Provided*, That nothing in this section prevents the administrator from disclosing the monetary value of an unclaimed property or the general nature or type of said property to any person that the administrator reasonably believes to be the apparent owner of said property or a person entitled to claim the property on the apparent owner's behalf.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§36-8-28. Rules.

On or before July 1, 1997, 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.

WV Legislature

§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.

WV Legislature

§36-8-30. Short title.

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

WV Legislature

§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.

WV Legislature

§36-8-32. Effective date.

This article shall take effect on July 1, 1997.

WV Legislature

§36-8-33. Report by administrator.

(a) Not later than six months after the end of the state's fiscal year, the administrator shall compile and publish a report on the West Virginia Treasury website. The report must contain the following information about property deemed unclaimed for the preceding fiscal year for the state:

(1) The total amount and value of all property paid or delivered under this act to the administrator, separated into:

(A) The portion voluntarily paid or delivered; and

(B) The portion delivered as the result of an examination under the act.

(2) The total amount and value of all property paid or delivered by the administrator to persons that made claims for property held by the administrator under this act.

(b) The report required under subsection (a) of this section is a public record and is subject to disclosure pursuant to the West Virginia Freedom of Information Act, Chapter 29B of this code.

WV Legislature