

No: 1454

RECEIVED
MAR 29 8 14 PM '83
OFFICE OF THE GOVERNOR

APPROVED AND SIGNED BY THE GOVERNOR

Date 3-29-83

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1983

— ● —

ENROLLED

Com. Sub. for
HOUSE BILL No. 1454

(By Mr. Spencer + Mr. Gilliam)

— ● —

Passed March 12, 1983

In Effect Ninety Days From Passage



ENROLLED
COMMITTEE SUBSTITUTE
FOR

H. B. 1454

(By MRS. SPENCER and MR. GILLIAM)

[Passed March 12, 1983; in effect ninety days from passage.]

AN ACT to amend and reenact sections two, four, five, seven, eight, nine, eleven and seventeen, article eight, chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto two new sections, designated sections twelve-a and twenty-three-a, all relating to establishing a fifteen or seven year period as the time necessary for property to be presumed abandoned; providing for fifteen-year period for interest bearing accounts and travelers checks; prohibiting a holder from charging a fee or ceasing payment of interest on abandoned property without a written contract between the holder and the owner allowing such charges; allowing for a presumption of abandonment of tangible personal property; requiring reports of abandoned property; requiring necessary information in such reports; establishing certain time periods for filing such reports; granting the state treasurer the authority to examine records of persons upon reasonable belief such person has failed to report property that should have been reported; granting the treasurer the authority to charge the person examined for the cost of the examination in certain instances; providing that records of abandoned property are confidential, and exceptions; providing for the sale of abandoned property; granting the treasurer the authority to enter into reciprocal agreements with other states.

Be it enacted by the Legislature of West Virginia:

That sections two, four, five, seven, eight, nine, eleven and seventeen, article eight, chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article eight be further amended by adding thereto two new sections, designated sections twelve-a and twenty-three-a, all to read as follows:

ARTICLE 8. UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT.

§36-8-2. Property held by banking or financial organizations.

1 The following property held or owing by a banking or fi-
2 nancial organization is presumed abandoned:

3 (a) Any noninterest bearing demand, savings or matured
4 time deposit made in this state with a banking organization, or
5 other financial organization, excluding any charges which may
6 lawfully be withheld, if the owner has not within the im-
7 mediately preceding seven years increased or decreased the
8 amount of the deposit: *Provided*, That notwithstanding the
9 fact that there has been no increase or decrease in the amount
10 of the deposit within the seven-year period, there shall be no
11 presumption of abandonment if the owner has within the im-
12 mediately preceding year:

13 (1) Corresponded in writing with the organization con-
14 cerning the deposit; or

15 (2) Otherwise indicated an interest in the deposit as
16 evidenced by a memorandum on file with the organization.

17 In any case where the owner has taken any of the actions
18 specified in (1) or (2) of this subdivision (a) there shall
19 thereafter be no presumption of abandonment unless and
20 until another seven years have passed without any increase
21 or decrease in the amount of the deposit and without any of
22 such actions having been taken in the last year of such
23 further seven-year period.

24 (b) Any interest bearing demand, savings or matured time
25 deposit made in this state with a banking organization or other
26 financial organization, together with any interest or dividend
27 thereon, excluding any charges which may lawfully be with-

28 held, if the owner has not within the immediately preceding
29 fifteen years increased or decreased the amount of the de-
30 posit: *Provided*, That notwithstanding the fact that there
31 has been no increase or decrease in the amount of the deposit
32 within the fifteen-year period, there shall be no presump-
33 tion of abandonment if the owner has within the immediately
34 preceding year:

35 (1) Presented the passbook or other similar evidence of
36 deposit for the crediting of interest; or

37 (2) Corresponded in writing with the organization con-
38 cerning the deposit; or

39 (3) Otherwise indicated an interest in the deposit as
40 evidenced by a memorandum on file with the organiza-
41 tion.

42 In any case where the owner has taken any of the actions
43 specified in (1), (2) or (3) of this subdivision (b) there
44 shall thereafter be no presumption of abandonment unless
45 and until another fifteen years have passed without any
46 increase or decrease in the amount of the deposit and with-
47 out any of such actions having been taken in the last year
48 of such further fifteen-year period.

49 (c) Any noninterest bearing funds paid in this state to-
50 ward the purchase of shares or other interest in a financial
51 organization or any deposit made therewith in this state,
52 excluding any charges that may lawfully be withheld, if the
53 owner has not within the immediately preceding seven years
54 increased or decreased the amount of the funds or deposit:
55 *Provided*, That notwithstanding the fact that there has been no
56 increase or decrease in the amount of the funds or deposit
57 within said seven-year period, there shall be no presumption
58 of abandonment if the owner has within the immediately pre-
59 ceding year:

60 (1) Corresponded in writing with the financial organization
61 concerning the funds or deposit; or

62 (2) Otherwise indicate an interest in the funds or deposit as
63 evidenced by a memorandum on file with the financial or-
64 ganization.

65 In any case where the owner has taken any of the actions
66 specified in (1) or (2) of this subdivision (c), there shall
67 thereafter be no presumption of abandonment unless and un-
68 til another seven years have passed without any increase or de-
69 crease in the amount of the funds or deposit and without any
70 of such actions having been taken in the last year of such
71 further seven-year period.

72 (d) Any interest bearing funds paid in this state toward
73 the purchase of shares or other interest in a financial or-
74 ganization or any deposit made therewith in this state, and any
75 interest or dividends thereon, excluding any charges that may
76 lawfully be withheld, if the owner has not within the im-
77 mediately preceding fifteen years increased or decreased the
78 amount of the funds or deposit: *Provided*, That notwith-
79 standing the fact that there has been no increase or decrease in
80 the amount of the funds or deposit within said fifteen-year
81 period, there shall be no presumption of abandonment if the
82 owner has within the immediately preceding year:

83 (1) Presented an appropriate record for the crediting of
84 interest or dividends; or

85 (2) Corresponded in writing with the financial organization
86 concerning the funds or deposit; or

87 (3) Otherwise indicate an interest in the funds or deposit
88 as evidenced by a memorandum on file with the financial
89 organization.

90 In any case where the owner has taken any of the actions
91 specified in (1), (2) or (3) of this subdivision (d), there
92 shall thereafter be no presumption of abandonment unless and
93 until another fifteen years have passed without any increase or
94 decrease in the amount of the funds or deposit and without
95 any of such actions having been taken in the last year of such
96 further fifteen-year period.

97 (e) Any sum payable on any check certified in this state
98 or on any written instrument issued in this state on which a
99 banking or financial organization is directly liable, including,
100 by way of illustration but not of limitation, a certificate of de-
101 posit and draft, that has been outstanding for more than

102 seven years from the date it was payable, or from the date of
 103 its issuance if payable on demand, unless the owner has within
 104 the preceding year corresponded in writing with the banking
 105 or financial organization concerning it, or otherwise indicated
 106 an interest as evidenced by a memorandum on file with the
 107 banking or financial organization.

108 (f) Any funds or other personal property, tangible or in-
 109 tangible, removed from a safe-deposit box or any other safe-
 110 keeping repository in this state on which the lease or rental
 111 period has expired due to nonpayment of rental charges or
 112 other reason, or any surplus amounts arising from the sale
 113 thereof pursuant to law, that have been unclaimed by the
 114 owner for more than seven years from the date on which the
 115 lease or rental period expired.

116 (g) No holder may impose with respect to property de-
 117 scribed in this section any charges due to dormancy or inac-
 118 tivity or cease payment of interest unless there is an enforc-
 119 able written contract between the holder and the owner of the
 120 property pursuant to which the holder may impose those
 121 charges or cease payment of interest.

122 (h) Any amount held or owing by any organization for the
 123 payment of a travelers check on which such organization is
 124 directly liable shall be presumed abandoned if such amount is
 125 held or owing for payment of a travelers check which shall
 126 have been outstanding for more than fifteen years from the
 127 date of its sale."

§36-8-4. Deposits and refunds held by utilities.

1 The following funds held or owing by any utility are pre-
 2 sumed abandoned:

3 (a) Any deposit made subsequent to one thousand nine
 4 hundred fifty-seven by a subscriber with a utility to secure pay-
 5 ment for, or any sum paid in advance for, utility services to
 6 be furnished in this state, less any lawful deductions, that has
 7 remained unclaimed by the person appearing on the records
 8 of the utility entitled thereto for more than seven years after
 9 the termination of the services for which the deposit or ad-
 10 vance payment was made.

11 (b) Any sum which a utility has been ordered to refund and
12 which was received subsequent to one thousand nine hundred
13 fifty-seven for utility services rendered in this state, together
14 with any interest thereon, less any lawful deductions, that
15 has remained unclaimed by the person appearing on the rec-
16 ords of the utility entitled thereto for more than seven years
17 after the date it became payable in accordance with the final
18 determination or order providing for the refund.

**§36-8-5. Undistributed dividends and distributions of business as-
sociations.**

1 Any stock or other certificate of ownership, or any divi-
2 dend, profit, distribution, interest, payment on principal, or
3 other sum held or owing by a business association for or to
4 a shareholder, certificate holder, member, bondholder, or
5 other security holder, or a participating patron of a coopera-
6 tive, who has not claimed it, or corresponded in writing with
7 the business association concerning it, within seven years after
8 the date prescribed for payment or delivery, is presumed aban-
9 doned if:

10 (a) It is held or owing by a business association organized
11 under the laws of or created in this state; or

12 (b) It is held or owing by a business association doing busi-
13 ness in this state, but not organized under the laws of or
14 created in this state, and the records of the business associa-
15 tion indicate that the last-known address of the person en-
16 titled thereto is in this state.

§36-8-7. Property held by fiduciaries.

1 All intangible personal property and any income or incre-
2 ment thereon, held in a fiduciary capacity for the benefit
3 of another person is presumed abandoned unless the owner
4 has, within seven years after the final date for distribution
5 of such property and the cessation of all active fiduciary
6 duties as required by law or the instrument under which
7 the fiduciary is acting, increased or decreased the principal,
8 accepted payment of principal or income, corresponded in
9 writing with the fiduciary concerning the property, or other-
10 wise indicated an interest as evidenced by a memorandum on
11 file with the fiduciary:

12 (a) If the property is held by a banking organization or
13 a financial organization, or by a business association or-
14 ganized under the laws of or created in this state; or

15 (b) If it is held by a business association, doing busi-
16 ness in this state, but not organized under the laws of or
17 created in this state, and the records of the business association
18 indicate that the last-known address of the person entitled
19 thereto is in this state; or

20 (c) If it is held in this state by any other person.

§36-8-8. Property held by courts and public officers and agencies.

1 (a) All intangible personal property held for the owner
2 by any state or federal court, public corporation, public
3 authority, or public officer in this state, or a political sub-
4 division thereof, that has remained unclaimed by the owner
5 for more than seven years is presumed abandoned: *Pro-*
6 *vided*, That this provision shall in no way affect such property
7 in the custody or control of any state or federal court in any
8 pending action: *Provided, however*, That if any federal statute
9 provides for the distribution of any unclaimed property subject
10 to the jurisdiction of a federal court, this statute shall not apply.

11 (b) Notwithstanding the provisions of subsection (a) of
12 this section, all intangible personal property in the custody
13 or control of a general receiver of a state court of record
14 appointed pursuant to the provisions of article six, chapter
15 fifty-one of this code, that has remained unclaimed by the owner
16 for more than seven years is presumed abandoned: *Provided*,
17 That any such property in the custody or control of any such
18 general receiver in which there is any contingent remainder
19 interest, or any vested remainder interest which is subject to
20 open to let in persons not yet in being or to open to let in
21 members of any class, or any executory interest, or executory
22 devise interest, or any base, qualified, conditional, or limited
23 fee estate or interest, or any other qualified, conditional,
24 limited or determinable estate or interest, shall not be
25 presumed abandoned until such property has remained un-
26 claimed for more than seven years after such estate or in-
27 terest has vested or any such class has closed and the per-
28 sons entitled to such property have been determined.

§36-8-9. Miscellaneous personal property held for another person.

1 All personal property not otherwise covered by this article,
2 including any income or increment thereon and after deduct-
3 ing any lawful charges, that is held or owing in this state
4 in the ordinary course of the holder's business and has re-
5 mained unclaimed by the owner for more than seven years
6 after it became payable or distributable is presumed aban-
7 doned: *Provided*, That this section shall not apply to such
8 property held or owing by a utility prior to one thousand
9 nine hundred fifty-seven: *Provided, however*, That no banking
10 organization or other financial organization shall levy any
11 charge or fee against any citizen of this state who owns
12 any savings account or any interest therein when said account
13 has been without activity for any period of time.

§36-8-11. Report of abandoned property.

1 (a) Every person holding funds or other property, tangible
2 or intangible, presumed abandoned under this article shall
3 report to the state treasurer with respect to the property as
4 hereinafter provided.

5 (b) The report shall be verified and shall include:

6 (1) The name, if known, and last-known address, if any,
7 of each person appearing from the records of the holder to
8 be the owner of any property of the value of fifty dollars or
9 more presumed abandoned under this article;

10 (2) In case of unclaimed funds of life insurance corpora-
11 tions, the full name of the insured or annuitant and his last-
12 known address according to the life insurance corporation's
13 records;

14 (3) The nature and identifying number, if any, or descrip-
15 tion of the property and the amount appearing from the records
16 to be due, except that items of value under fifty dollars
17 each may be reported in aggregate;

18 (4) The date when the property became payable, demand-
19 able, or returnable, and the date of the last transaction with
20 the owner with respect to the property; and

21 (5) Other information which the state treasurer prescribes
22 by rule as necessary for the administration of this article.

23 (c) If the person holding property presumed abandoned is
24 a successor to other persons who previously held the property
25 for the owner, or if the holder has changed his name while
26 holding the property, he shall file with his report all prior
27 known names and addresses of each holder of the property.

28 (d) The report shall be filed before November first of
29 each year as of June thirtieth next preceding, but the report
30 of life insurance corporations shall be filed before May first
31 of each year as of December thirty-first next preceding. The
32 state treasurer may postpone the reporting date upon written
33 request by any person required to file a report.

34 (e) If the holder of property presumed abandoned under
35 this article knows the whereabouts of the owner and if the
36 owner's claim has not been barred by the statute of limita-
37 tions, the holder shall, before filing the annual report, attempt
38 to communicate with the owner so that the owner may take
39 necessary steps to prevent abandonment from being presumed.
40 A notice from the holder to the owner sent to the owner's
41 last-known address by United States mail, postage prepaid,
42 shall satisfy the requirements of this subsection (e).

43 (f) Verification, if made by a partnership, shall be executed
44 by a partner; if made by an unincorporated association or
45 private corporation, by an officer, and if made by a public
46 corporation, by its chief fiscal officer.

47 (g) The initial report filed under this article shall include
48 all items of property which, under the provisions hereof,
49 would have been presumed abandoned on the effective date
50 of this article had this article been in effect on July one, one
51 thousand nine hundred fifty-two.

52 (h) The state treasurer may at reasonable times and upon
53 reasonable notice examine the records of any person if he
54 has reason to believe that the person has failed to report
55 property that should have been reported pursuant to this
56 section.

57 If an examination of the records of a person results in
58 disclosure of property reportable and deliverable under this
59 section, the treasurer may assess the cost of the examination
60 against the holder at a rate established by administrative
61 regulation promulgated pursuant to chapter twenty-nine-a of
62 this code, but in no case may the charges exceed the value
63 of the property found to be reportable and deliverable.

§36-8-12a. Records of abandoned property confidential except as to persons with claim.

1 Records of abandoned property kept by the state treasurer
2 are available for inspection and copying only by an owner of
3 such property as to the particular property he owns, or by his
4 personal representative, next of kin, attorney at law, or such
5 persons entitled to inherit from the owner conducting a legal
6 audit thereof. These records are exempt from the provisions
7 of chapter twenty-nine-b of the code.

§36-8-17. Sale of abandoned property.

1 (a) All abandoned property other than money delivered to
2 the state treasurer under this article shall as soon as practic-
3 able after the delivery be sold by him to the highest bidder at
4 public sale in whatever city in the state affords in his judg-
5 ment the most favorable market for the property involved. The
6 state treasurer may decline the highest bid and reoffer the
7 property for sale if he considers the price bid insufficient. He
8 need not offer any property for sale if, in his opinion, the prob-
9 able cost of sale exceeds the value of the property.

10 (b) Any sale held under this section shall be preceded by
11 a publication of notice thereof as a Class I legal advertisement
12 in compliance with the provisions of article three, chapter
13 fifty-nine of this code, and the publication area for such publi-
14 cation shall be the county where the property is to be sold. The
15 publication shall be at least three weeks in advance of sale.

16 (c) The purchaser at any sale conducted by the state trea-
17 surer pursuant to this article shall receive title to the property
18 purchased, free from all claims of the owner or prior holder
19 thereof and of all persons claiming through or under them.

20 The state treasurer shall execute all documents necessary to
21 complete the transfer of title.

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

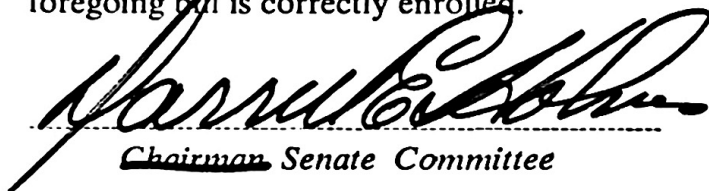
1 (a) The treasurer may enter into agreements with other
2 states to exchange information needed to enable this or another
3 state to audit or otherwise determine unclaimed property
4 that it or another state may be entitled to subject to a claim
5 of custody. The treasurer by rule may require the reporting of
6 information needed to enable compliance with agreements
7 made pursuant to this section and prescribe the form.

8 (b) To avoid conflicts between the treasurer's procedures
9 and the procedures of administrators in other jurisdictions the
10 treasurer shall, so far as is consistent with the purposes, policies
11 and provisions of this article before adopting, amending or
12 repealing rules, advise and consult with administrators in
13 other jurisdictions and take into consideration the rules of
14 those other administrators in other jurisdictions.

15 (c) The treasurer may join with other states to seek en-
16 forcement of this article against any person who is or may be
17 holding property reportable under this article.

Enr. Com. Sub. for H. B. 1454] 12

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.




Chairman Senate Committee

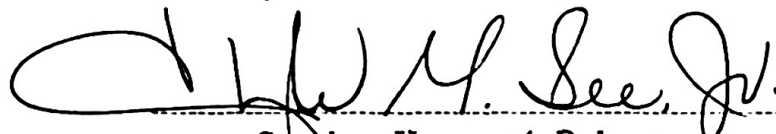

Chairman House Committee

Originating in the House.

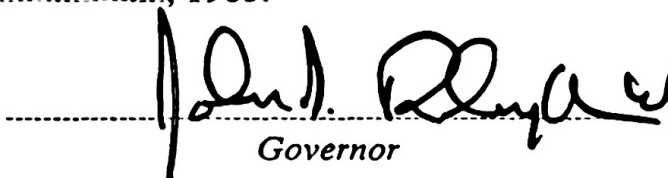
Takes effect ninety days from passage.


Clerk of the Senate


Clerk of the House of Delegates

President of the Senate


Speaker House of Delegates

The within is approved this the 29
day of March, 1983.


Governor

RECEIVED

83 MAR 31 PM 12:39

OFFICE
SECY. OF STATE