

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1990



ENROLLED

HOUSE BILL No. 4722

(By Mr. *Del. Farley + Kiss*)



Passed *March 6,* 1990

In Effect *90 Days From* Passage

ENROLLED

H. B. 4722

(By DELEGATES FARLEY AND KISS)

[Passed March 6, 1990; in effect ninety days from passage.]

AN ACT to amend and reenact sections eight, eleven, sixteen and eighteen, 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 eight-a and eight-b, all relating to the uniform disposition of unclaimed property act; property held by courts; providing for recovery of abandoned property; presumption of abandonment by federal government; report of abandoned property; statute of limitations; and deposit to state general fund.

Be it enacted by the Legislature of West Virginia:

That sections eight, eleven, sixteen and eighteen, 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 be further amended by adding thereto two new sections, designated sections eight-a and eight-b, all to read as follows:

ARTICLE 8. UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT.

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

- 1 (a) All intangible personal property held for the
- 2 owner by any state or federal court, public corporation,

3 public authority, or public officer in this state, or a
4 political subdivision thereof, that has remained un-
5 claimed by the owner for more than seven years is
6 presumed abandoned: *Provided*, That this provision
7 shall in no way affect such property in the custody or
8 control of any state or federal court in any pending
9 action.

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

§36-8-8a. Providing for recovery of abandoned property.

1 With respect to property originated or issued by this
2 state, any political subdivision thereof or any entity
3 incorporated, organized or created therein, the following
4 provision shall apply:

5 (a) Unless presumed abandoned and subject to the
6 custody of this state by any other provision of law, all
7 intangible property, including, but not limited to, any
8 interest, dividend, or other earnings thereon, less any
9 lawful charges, that is held by a business association,
10 federal, state or local government or governmental
11 subdivision, agency or entity, or any other person or
12 entity, regardless of where the holder may be found, is

13 presumed abandoned and subject to the custody of this
14 state as unclaimed property if:

15 (1) The address of the owner was never known or the
16 last known address of the owner is unknown; and

17 (2) The entity originating or issuing the intangible
18 property is in this state or any of its political subdivi-
19 sions or is incorporated, organized or created in this
20 state.

21 (b) Subsection (a) shall apply to all property held at
22 the time of enactment, or at anytime thereafter,
23 regardless of when such property became or becomes
24 presumptively abandoned.

**§36-8-8b. Presumption of abandonment of personal
property held by federal government.**

1 (a) All tangible personal property or intangible
2 personal property, including choses in action in amounts
3 certain, and all debts owed, entrusted funds or other
4 property held by any federal, state or local government
5 or governmental subdivision, agency, entity, officer or
6 appointee thereof, shall be presumed abandoned in this
7 state if the last known address of the owner of the
8 property is in this state and the property has remained
9 unclaimed for seven years: *Provided*, That if another
10 provision of law provides for a presumption of abandon-
11 ment and custodial taking of the subject property by this
12 state upon the passage of a longer period of time, such
13 longer period of time shall control.

14 (b) This section shall apply to all abandoned property
15 held by any federal, state or local government or
16 governmental subdivision, agency, entity, officer or
17 appointee thereof, at the time of enactment, or at any
18 time thereafter, regardless of when such property
19 became or becomes presumptively abandoned.

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

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

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

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

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

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

19 (4) The date when the property became payable,
20 demandable or returnable, and the date of the last
21 transaction with the owner with respect to the property;
22 and

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

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

32 (d) The report shall be filed before the thirty-first day
33 of March of each year as of the thirty-first day of
34 December next preceding. The state treasurer may
35 postpone the reporting date upon written request by any
36 person required to file a report.

37 (e) If the holder of property presumed abandoned
38 under this article knows the whereabouts of the owner
39 and if the owner's claim has not been barred by the
40 statute of limitations, the holder shall, before filing the
41 annual report, attempt to communicate with the owner
42 so that the owner may take necessary steps to prevent

43 abandonment from being presumed. A notice from the
44 holder to the owner sent to the owner's last-known
45 address by United States mail, postage prepaid, shall
46 satisfy the requirements of this subsection (e).

47 (f) Verification, if made by a partnership, shall be
48 executed by a partner; if made by an unincorporated
49 association or private corporation, by an officer, and if
50 made by a public corporation, by its chief fiscal officer.

51 (g) The initial report filed under this article shall
52 include all items of property which, under the provisions
53 hereof, would have been presumed abandoned on the
54 effective date of this article had this article been in
55 effect on the first day of July, one thousand nine
56 hundred fifty-two.

57 (h) The state treasurer may at reasonable times and
58 upon reasonable notice examine the records of any
59 person if he has reason to believe that the person has
60 failed to report property that should have been reported
61 pursuant to this section.

62 (i) Every person filing a report shall deliver or pay
63 to the state treasurer all abandoned property specified
64 in the report, at the time of the report.

65 If an examination of the records of a person results
66 in disclosure of property reportable and deliverable
67 under this section, the treasurer may assess the cost of
68 the examination against the holder at a rate established
69 by administrative regulation promulgated pursuant to
70 chapter twenty-nine-a of this code, but in no case may
71 the charges exceed the value of the property found to
72 be reportable and deliverable.

§36-8-16. Periods of limitation not a bar.

1 (1) The expiration of any period of time specified by
2 statute or court order, during which an action or
3 proceeding may be commenced or enforced to obtain
4 payment of a claim for money or recovery of property,
5 shall not prevent the money or property from being
6 presumed abandoned property, nor affect any duty to
7 file a report required by this article or to pay or deliver
8 abandoned property to the state treasurer.

9 (2) Notwithstanding any other provision of law, the
10 expiration of any period of time specified by law during
11 which an action or proceeding may be commenced or
12 enforced to obtain payment of a claim for money or
13 recovery of property shall not serve as a defense in any
14 action or proceeding brought by or on behalf of the state
15 treasurer against any federal, state or local government
16 or governmental subdivision, agency, entity, officer or
17 appointee thereof, for the payment or delivery of any
18 abandoned property to the state treasurer pursuant to
19 this chapter or to enforce or collect any penalty provided
20 by this article.

21 (3) This section shall apply to all abandoned property
22 held by any federal, state or local government or
23 governmental subdivision, agency, entity, officer or
24 appointee thereof, at the time of enactment, or at any
25 time thereafter, regardless of when such property
26 became or becomes presumptively abandoned.

**§36-8-18. Deposits of funds; trust and expense fund;
records of deposits.**

1 (a) All funds received under this article, including the
2 proceeds from the sale of abandoned property under
3 section seventeen, shall forthwith be deposited by the
4 state treasurer in a special fund to be known as the
5 "trust and expense fund". Effective the first day of July,
6 one thousand nine hundred ninety, all funds received
7 under this article, including the proceeds from the sale
8 of abandoned property under section seventeen of this
9 article, shall forthwith be deposited by the state
10 treasurer in the general fund.

11 (b) From said fund the state treasurer shall make
12 prompt payment of claims duly allowed as hereinafter
13 provided, and shall pay the necessary costs of selling
14 abandoned property, of mailing notices, of making
15 publications required by this article and of paying other
16 operating expenses and administrative expenses reason-
17 ably incurred by the treasurer in the administration and
18 enforcement of the provisions of this article. At any time
19 when the balance of said fund shall exceed one hundred
20 fifty thousand dollars, the state treasurer may, and at

21 least once every fiscal year shall, transfer to the general
22 revenue fund the balance of the trust and expense fund
23 which shall exceed one hundred fifty thousand dollars.
24 The treasurer is authorized to draw his requisitions for
25 such sums upon the auditor in the manner provided by
26 law. Effective the first day of July, one thousand nine
27 hundred ninety, all operating expenses and administra-
28 tive expenses incurred by the treasurer in the admin-
29 istration and enforcement of the provisions of this article
30 shall be paid from an appropriation from the general
31 revenue fund. The treasurer is further directed to make
32 prompt payment of claims duly allowed as hereinafter
33 provided from the general revenue fund.

34 (c) Before making any deposit to said fund, the state
35 treasurer shall record the name and last-known address
36 of each person appearing from the holder's reports to be
37 entitled to the abandoned property, and the name and
38 last-known address of each insured person or annuitant,
39 and with respect to each policy or contract listed in the
40 report of a life insurance corporation, its number, the
41 name of the corporation and the amount due. Such
42 records shall be available for public inspection at all
43 reasonable business hours.

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

William L. McKelvey
Chairman Senate Committee

Bernard V. Kelly
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Harrell E. Malone
Clerk of the Senate

Donald L. Stapp
Clerk of the House of Delegates

Walter Burdette
President of the Senate

Robert A. Curran
Speaker of the House of Delegates

The within *is approved* this the *14th*
day of *March*, 1990.
Anton Caperton
Governor

PRESENTED TO THE

GOVERNOR

Date 3/13/90

Time 2:44 pm

RECEIVED

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OFFICE OF SECRETARY
SECRETARY