Committee Substitute

for

House Bill 2193

BY DELEGATE SHOTT

[Passed March 9, 2019; in effect ninety days from passage.]
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AN ACT to amend and reenact §36-8-1 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §36-8-2a, all relating to providing for the specific escheat of United States savings bonds and all rights and legal title thereto; defining “United States savings bond”; providing that a United States savings bond held or owing in West Virginia shall be presumed abandoned if the last known address of the owner is in West Virginia and the United States savings bond has remained unclaimed and unredeemed for a period of five years after final maturity; setting forth a procedure by which abandoned, lost, stolen and destroyed United States savings bonds may escheat to the state; requiring the State Treasurer to commence a civil action for a determination that a United States savings bond shall escheat to the state; requiring service by publication; providing that claimants may appear in court to defend their right to the subject bond or bonds; requiring the court to enter a judgment vesting title in the state if the State Treasurer has substantially complied with required procedure and no valid claim is made for a United States savings bond; requiring the Treasurer to redeem United States savings bonds that have escheated to the state; permitting the State Treasurer to pay collection and recovery costs from United States savings bond proceeds; requiring the State Treasurer to deposit remaining balance of proceeds into the Unclaimed Property Fund; permitting persons to file claims for escheated United States savings bonds or proceeds thereof after a United States savings bond has escheated to the state; and barring subsequent actions against the state after payment has been made to a claimant.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. UNIFORM UNCLAIMED PROPERTY ACT.

§36-8-1. Definitions.

As used in this article:

(1) “Administrator” means the State Treasurer.
(2) “Apparent owner” means a person whose name appears on the records of a holder as the person entitled to property held, issued or owing by the holder.

(3) “Business association” means a corporation, joint stock company, investment company, partnership, unincorporated association, joint venture, limited liability company, business trust, trust company, safe deposit company, financial organization, insurance company, mutual fund, utility or other business entity consisting of one or more persons, whether or not for profit.

(4) “Domicile” means the state of incorporation of a corporation and the state of the principal place of business of a holder other than a corporation.

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

(6) “Holder” means a person obligated to hold for the account of, or deliver or pay to, the owner property that is subject to this article.

(7) “Insurance company” means an association, corporation, or fraternal or mutual benefit organization, whether or not for profit, engaged in the business of providing life endowments, annuities or insurance, including accident, burial, casualty, credit life, contract performance, dental, disability, fidelity, fire, health, hospitalization, illness, life, malpractice, marine, mortgage, surety, wage protection and workers’ compensation insurance.

(8) “Mineral” means gas; oil; coal; other gaseous, liquid and solid hydrocarbons; oil shale; cement material; sand and gravel; road material; building stone; chemical raw material; gemstone; fissionable and nonfissionable ores; colloidal and other clay; steam and other geothermal resource; or any other substance defined as a mineral by the law of this state.

(9) “Mineral proceeds” means amounts payable for the extraction, production or sale of minerals, or, upon the abandonment of those payments, all payments that become payable thereafter. The term includes amounts payable:
(i) For the acquisition and retention of a mineral lease, including bonuses, royalties, compensatory royalties, shut-in royalties, minimum royalties and delay rentals;

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

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

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

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

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

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

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

(ii) Credit balance, customer’s overpayment, gift certificate, security deposit, refund, credit memorandum, unpaid wage, unused ticket, mineral proceeds or unidentified remittance;
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(iii) Stock or other evidence of ownership of an interest in a business association or financial organization;
(iv) A bond, debenture, note or other evidence of indebtedness;
(v) Money deposited to redeem stocks, bonds, coupons or other securities or to make distributions;
(vi) An amount due and payable under the terms of an annuity or insurance policy, including policies providing life insurance, property and casualty insurance, workers’ compensation insurance or health and disability insurance; and
(vii) An amount distributable from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance or similar benefits.

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

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

(16) “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.

(17) “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.

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

Chairman, House Committee

Member, Senate Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within is approved this the 26th day of March, 2019.

Governor
PRESENTED TO THE GOVERNOR

MAR 25, 2019

Time 2:40 pm