

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 4473

BY DELEGATES WESTFALL, B. WHITE AND HARTMAN

[Introduced February 10, 2016; Referred
to the Committee on Banking and Insurance then the
Judiciary.]

1 A BILL to amend and reenact §36-8-2 of the Code of West Virginia, 1931, as amended, relating
 2 to clarifying that when the presumption of abandonment arises with respect to a life
 3 insurance policy or annuity payable upon proof of death; clarifying that the obligation to
 4 pay does not arise until after a claim is made with the insurer and due proof of death is
 5 received by the insurer; clarifying that the proceeds of a life or endowment insurance policy
 6 or annuity are presumed abandoned three years after the date of an insured's death; and
 7 providing for retroactivity.

Be it enacted by the Legislature of West Virginia:

1 That §36-8-2 of the Code of West Virginia, 1931, as amended, be amended and enacted
 2 to read as follows:

ARTICLE 8. UNIFORM UNCLAIMED PROPERTY ACT.

§36-8-2. Presumptions of abandonment.

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

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

4 (2) Money order, seven years after issuance;

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

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

14 (5) A noninterest bearing demand, savings or time deposit, including a deposit that is

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

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

24 (7) Gift certificate, three years after December 31, of the year in which the certificate was
25 sold, but if redeemable in merchandise only, the amount abandoned is deemed to be sixty percent
26 of the certificate's face value;

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

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

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

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

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

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

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

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

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

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

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

60 (c) Property is unclaimed if, for the applicable period set forth in subsection (a) of this
61 section, the apparent owner has not communicated in writing or by other means reflected in a
62 contemporaneous record prepared by or on behalf of the holder, with the holder concerning the
63 property or the account in which the property is held, and has not otherwise indicated an interest
64 in the property. A communication with an owner by a person other than the holder or its
65 representative who has not in writing identified the property to the owner is not an indication of
66 interest in the property by the owner.

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

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

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

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

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

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

84 (f) Notwithstanding subsection (e) of this section and any other provision of this article:

85 (1) For purposes of subdivision (8), subsection (a) of this section in the case of a life or
86 endowment insurance policy or an annuity payable upon proof of death, the obligation to pay does
87 not arise until after a claim is made with the insurer and due proof of death is received by the
88 insurer; and

89 (2) Under circumstances where an insurer has not received both a claim and due proof of
90 death, subdivision (8), subsection (a) of this section was never intended to mean and may not be
91 interpreted to mean that the proceeds of a life or endowment insurance policy or annuity become
92 presumed abandoned three years after the date of the insured's death. Rather, as stated in that

93 subdivision, if unclaimed, those proceeds become presumed abandoned three years after the
94 insured has attained, or would have attained if living, the limiting age under the mortality table on
95 which the reserve is based.

96 (g) As subsection (f) of this section is intended to clarify the intent and meaning of this
97 section, the amendments to this section made during the 2016 Legislative session is retroactive.

NOTE: The purpose of this bill is to clarify an unintended result as expressed in the holding of the Supreme Court of Appeals of West Virginia in the case of *State of West Virginia ex rel. John D. Perdue v. Nationwide Life Insurance Company*, No. 14-0100 (W. Va. June 16, 2015). The bill clarifies that the obligation to pay does not arise until after a claim is made with the insurer and due proof of death is received by the insurer. The bill clarifies that the proceeds of a life or endowment insurance policy or annuity are presumed abandoned three years after the date of an insured's death. The bill is retroactive given its intent to restate and clarify the law as previously enacted by the Legislature prior to the court decision.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.