

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Committee Substitute

for

House Bill 2868

BY DELEGATES HANSHAW, WESTFALL AND FRICH

[Originating in the Committee on the Judiciary;

March 14, 2017]

1 A BILL to amend and reenact §36-8-2 of the Code of West Virginia, 1931, as amended, relating
2 generally to Uniform Unclaimed Property Act; and clarifying that presumed abandoned
3 property in the form of amounts owed by an insurer on a life or endowment insurance
4 policy or an annuity that has matured or terminated, and obligations related thereto, are
5 guided by policies, requirements and interpretations of the Insurance Commissioner.

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 reenacted
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 in which the insured has not been listed in the Death
30 Master file as defined in article thirteen-d, chapter thirty-three of this code, three years after the
31 insurer has learned of the death of the insured or the insured has attained, or would have attained
32 if living, the limiting age under the mortality table on which the reserve is based or in the case of
33 a policy or annuity payable upon proof of death on which the insured has been listed on the Death
34 Master file, two years after the date of the death of the insured as indicated on the death master
35 list: *Provided, That at such time as the proceeds owed by the insurer are presumed to be*
36 abandoned under this subdivision, those proceeds shall then be subject to the other provisions of
37 this Article and to the administration by the Administrator.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NOTE: The purpose of this bill is to clarify that presumed abandoned property in the form of amounts owed by an insurer on a life or endowment insurance policy or an annuity that has matured or terminated, and obligations related thereto, are guided by policies, requirements and interpretations of the Insurance Commissioner.

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