

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

ENROLLED

Committee Substitute

For

House Bill 4511

BY DELEGATES LINVILLE, HOWELL, HANSHAW (MR. SPEAKER),
GRAVES, SUMMERS, ESPINOSA, HOUSEHOLDER, STEELE AND
HAMRICK

(BY REQUEST OF THE STATE TREASURER)

[Passed March 12, 2022; in effect ninety days from passage.]

1 AN ACT to amend and reenact §36-8-1, §36-8-2, §36-8-8, §36-8-10, §36-8-13, §36-8-15, §36-8-
2 25, and §36-8-33 of the Code of West Virginia, 1931, as amended, all relating generally
3 to unclaimed property and escheatment of said property to the state; defining terms;
4 setting forth presumption of abandonment period for virtual currency; setting forth the
5 presumption of abandonment period for demand, savings, or time deposits; requiring the
6 holder of virtual currency to liquidate said currency prior to remittance to the state;
7 providing that the owner of abandoned virtual currency has no recourse against the holder
8 or state for gain in value after liquidation; providing that the administrator shall reimburse
9 the holder of a safety deposit box for the cost of opening said box upon remittance to the
10 administrator using administrative funds in the Unclaimed Property Fund; authorizing the
11 administrator to invest the moneys in the Unclaimed Property Fund and allowing earnings
12 to accrue to said fund; eliminating obsolete language related to previous transfers of
13 moneys from the Unclaimed Property Fund; discontinuing an annual transfer from the
14 Unclaimed Property Trust Fund to the Prepaid Trust Escrow Fund and instead providing
15 for an annual transfer from the Unclaimed Property Trust Fund to the Jumpstart Savings
16 Trust Fund; authorizing the administrator to waive the requirement that an apparent owner
17 file a claim with the administrator in certain circumstances; permitting the administrator to
18 disclose the monetary value and nature or type of a property to a person who is reasonably
19 believed to be the property's apparent owner or a person authorized to receive the
20 property on the owner's behalf; and requiring the administrator to publish a report including
21 certain unclaimed property data for the most recently concluded fiscal year.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. UNIFORM UNCLAIMED PROPERTY ACT.

§36-8-1. Definitions.

1 As used in this article:

2 “Administrator” means the State Treasurer.

3 “Apparent owner” means a person whose name appears on the records of a holder as the
4 person entitled to property held, issued, or owing by the holder.

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

9 “Domicile” means the state of incorporation of a corporation and the state of the principal
10 place of business of a holder other than a corporation.

11 “Electronic” means relating to technology having electrical, digital, magnetic, wireless,
12 optical, electromagnetic, or similar capabilities.

13 “Electronic mail” means a communication by electronic means which is automatically
14 retained and stored and may be readily accessed or retrieved.

15 “Financial organization” means a savings and loan association, bank, banking
16 organization, or credit union.

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

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

24 “Mineral” means gas; oil; coal; other gaseous, liquid and solid hydrocarbons; oil shale;
25 cement material; sand and gravel; road material; building stone; chemical raw material; gemstone;

26 fissionable and non-fissionable ores; colloidal and other clay; steam and other geothermal
27 resource; or any other substance defined as a mineral by the law of this state.

28 “Mineral proceeds” means amounts payable for the extraction, production or sale of
29 minerals, or, upon the abandonment of those payments, all payments that become payable
30 thereafter. The term includes amounts payable:

31 For the acquisition and retention of a mineral lease, including bonuses, royalties,
32 compensatory royalties, shut-in royalties, minimum royalties, and delay rentals;

33 For the extraction, production, or sale of minerals, including net revenue interests,
34 royalties, overriding royalties, extraction payments, and production payments; and

35 Under an agreement or option, including a joint operating agreement, unit agreement,
36 pooling agreement, and farm-out agreement.

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

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

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

48 “Property” means tangible personal property described in section three of this article or a
49 fixed and certain interest in intangible personal property that is held, issued, or owed in the course
50 of a holder’s business, or by a government, governmental subdivision, agency or instrumentality,

51 and all income or increments therefrom. The term includes property that is referred to as or
52 evidenced by:

53 Money, virtual currency, check, draft, warrant for payment issued by the State of West
54 Virginia, deposit, interest, or dividend;

55 Credit balance, customer's overpayment, gift certificate, security deposit, refund, credit
56 memorandum, unpaid wage, unused ticket, mineral proceeds, or unidentified remittance;

57 Stock or other evidence of ownership of an interest in a business association or financial
58 organization;

59 A bond, debenture, note, or other evidence of indebtedness;

60 Money deposited to redeem stocks, bonds, coupons, or other securities or to make
61 distributions;

62 An amount due and payable under the terms of an annuity or insurance policy, including
63 policies providing life insurance, property and casualty insurance, workers' compensation
64 insurance, or health and disability insurance; and

65 An amount distributable from a trust or custodial fund established under a plan to provide
66 health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing,
67 employee savings, supplemental unemployment insurance, or similar benefits.

68 "Record" means information that is inscribed on a tangible medium or that is stored in an
69 electronic or other medium and is retrievable in perceivable form.

70 "State" means a state of the United States, the District of Columbia, the Commonwealth
71 of Puerto Rico or any territory or insular possession subject to the jurisdiction of the United States.

72 "United States savings bond" means property, tangible or intangible, in the form of a
73 savings bond issued by the United States Treasury whether in paper form, electronic or paperless
74 form, along with the proceeds thereof.

75 "Utility" means a person who owns or operates for public use any plant, equipment, real
76 property, franchise, or license for the transmission of communications or the production, storage,

77 transmission, sale, delivery, or furnishing of electricity, water, steam, or gas as defined in §24-1-
78 2 of this code.

79 “Virtual currency” means a digital representation of value, including cryptocurrency, used
80 as a medium of exchange, unit of account, or store of value, which does not have legal tender
81 status recognized by the United States. The term does not include:

- 82 (A) The software or protocols governing the transfer of the digital representation of value;
- 83 (B) Game-related digital content; or
- 84 (C) A loyalty card or gift card.

§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, 15 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, three years after the date of the most recent interest payment
13 unclaimed by the apparent owner;
- 14 (5) A demand, savings, or time deposit, including a deposit that is automatically
15 renewable, five years after the maturity of the deposit, except a deposit that is automatically
16 renewable is deemed matured on its initial date of maturity unless the apparent owner consented
17 in a record on file with the holder to renewal at or about the time of the renewal;

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

20 (7) Gift certificate, three years after December 31, of the year in which the certificate was
21 sold, but if redeemable in merchandise only, the amount abandoned is deemed to be 60 percent
22 of the certificate's face value;

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

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

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

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

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

35 (13) Deposit or refund owed to a subscriber by a utility, one year after the deposit or refund
36 becomes payable;

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

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

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

51 (17) Any virtual currency held or owing by any banking organization, corporation,
52 custodian, exchange, or other entity engaged in virtual currency business activity, three years
53 after the owner's last indication of interest in the property; and

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

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

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

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

67 (1) The presentment of a check or other instrument of payment of a dividend or other
68 distribution made with respect to an account or underlying stock or other interest in a business

69 association or financial organization or, in the case of a distribution made by electronic or similar
70 means, evidence that the distribution has been received;

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

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

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

80 (5) For demand, savings and time deposits held by a financial organization, any indication
81 of the owner's interest in any demand, savings and time deposit held by the financial organization
82 for that owner is an indication of the owner's interest in all demand, savings, and time deposits
83 held by that financial organization.

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

§36-8-8. Payment or delivery of abandoned property.

1 (a) Except for property held in a safe deposit box or other safekeeping depository, upon
2 filing the report required by §36-8-7 of this code, the holder of property presumed abandoned
3 shall pay, deliver, or cause to be paid or delivered to the administrator the property described in
4 the report as unclaimed, but if the property is an automatically renewable deposit, and a penalty
5 or forfeiture in the payment of interest would result, the time for compliance is extended until a
6 penalty or forfeiture would no longer result. Property held in a safe deposit box or other

7 safekeeping depository may not be delivered to the administrator until 120 days after filing the
8 report required by §36-8-7 of this code.

9 (b) If the property reported to the administrator is a security or security entitlement under
10 article eight of the uniform commercial code, the administrator is an appropriate person to make
11 an indorsement, instruction, or entitlement order on behalf of the apparent owner to invoke the
12 duty of the issuer or its transfer agent or the securities intermediary to transfer or dispose of the
13 security or the security entitlement in accordance with article eight of the uniform commercial
14 code.

15 (c) If the holder of property reported to the administrator is the issuer of a certificated
16 security, the administrator has the right to obtain a replacement certificate pursuant to article eight,
17 section four hundred eight of the uniform commercial code, but an indemnity bond is not required.

18 (d) An issuer, the holder, and any transfer agent or other person acting pursuant to the
19 instructions of and on behalf of the issuer or holder in accordance with this section is not liable to
20 the apparent owner and must be indemnified against claims of any person in accordance with
21 section 10 of this article.

22 (e) If the property reported is virtual currency, the holder shall liquidate the virtual currency
23 anytime within 30 days of filing the report and remit the proceeds to the administrator. The owner
24 shall have no recourse against either the holder or the administrator for any gain in value after
25 liquidation.

§36-8-10. Custody by state; recovery by holder; defense of holder.

1 (a) In this section, payment or delivery is made in “good faith” if:

2 (1) Payment or delivery was made in a reasonable attempt to comply with this article;

3 (2) The holder was not then in breach of a fiduciary obligation with respect to the property
4 and had a reasonable basis for believing, based on the facts then known, that the property was
5 presumed abandoned: *Provided*, That no fiduciary shall be deemed to be in breach of a fiduciary
6 obligation for purposes of this section by virtue of paying or delivering property to the administrator

7 prior to the expiration of the period for holding unclaimed or abandoned property contained in the
8 instrument under which such fiduciary is acting; and

9 (3) There is no showing that the records under which the payment or delivery was made
10 did not meet reasonable commercial standards of practice.

11 (b) Upon payment or delivery of property to the administrator, the state assumes custody
12 and responsibility for the safekeeping of the property. A holder who pays or delivers property to
13 the administrator in good faith is relieved of all liability arising thereafter with respect to the
14 property.

15 (c) A holder who has paid money to the administrator pursuant to this article may
16 subsequently make payment to a person reasonably appearing to the holder to be entitled to
17 payment. Upon a filing by the holder of proof of payment and proof that the payee was entitled to
18 the payment, the administrator shall promptly reimburse the holder for the payment without
19 imposing a fee or other charge. If reimbursement is sought for a payment made on a negotiable
20 instrument, including a traveler's check or money order, the holder must be reimbursed upon filing
21 proof that the instrument was duly presented and that payment was made to a person who
22 reasonably appeared to be entitled to payment. The holder must be reimbursed for payment made
23 even if the payment was made to a person whose claim was barred under §36-8-19(a) of this
24 code.

25 (d) A holder who has delivered property other than money to the administrator pursuant
26 to this article may reclaim the property if it is still in the possession of the administrator, without
27 paying any fee or other charge, upon filing proof that the apparent owner has claimed the property
28 from the holder.

29 (e) The administrator may accept a holder's affidavit as sufficient proof of the holder's right
30 to recover money and property under this section.

31 (f) If a holder pays or delivers property to the administrator in good faith and thereafter
32 another person claims the property from the holder or another state claims the money or property

33 under its laws relating to escheat or abandoned or unclaimed property, the administrator, upon
34 written notice of the claim, shall defend the holder against the claim and indemnify the holder
35 against any liability on the claim resulting from payment or delivery of the property to the
36 administrator.

37 (g) Property removed from a safe deposit box or other safekeeping depository is received
38 by the administrator subject to the holder's right to be reimbursed for the cost of the opening and
39 to any valid lien or contract providing for the holder to be reimbursed for unpaid rent or storage
40 charges in an amount not to exceed \$150. The administrator shall reimburse the holder after the
41 property has been claimed and returned to the apparent owner using funds in the Unclaimed
42 Property Fund.

§36-8-13. Deposit of funds

1 (a) The administrator shall record the name and last known address of each person
2 appearing from the holders reports to be entitled to the property and the name and last known
3 address of each insured person or annuitant and beneficiary and with respect to each policy or
4 annuity listed in the report of an insurance company, its number, the name of the company, and
5 the amount due.

6 (b) The Unclaimed Property Fund is continued. The administrator shall deposit all funds
7 received pursuant to this article in the Unclaimed Property Fund, including the proceeds from the
8 sale of abandoned property under §36-8-12 of this code. The administrator may invest the
9 Unclaimed Property Fund with the West Virginia Board of Treasury Investments or the Investment
10 Management Board and all earnings shall accrue to the fund and are available for expenditure in
11 accordance with the article. In addition to paying claims of unclaimed property duly allowed, the
12 administrator may deduct the following expenses from the Unclaimed Property Fund:

- 13 (1) Expenses of the sale of abandoned property;
- 14 (2) Expenses incurred in returning the property to owners, including without limitation the
15 costs of mailing and publication to locate owners;

16 (3) Reasonable service charge; and

17 (4) Expenses incurred in examining records of holders of property and in collecting the
18 property from those holders.

19 (c) The Unclaimed Property Trust Fund is continued within the State Treasury. The
20 administrator may invest the Unclaimed Property Trust Fund with the West Virginia Board of
21 Treasury Investments and all earnings shall accrue to the fund and are available for expenditure
22 in accordance with this article. After deducting the expenses specified in subsection (b) of this
23 section and maintaining a sum of money from which to pay claims duly allowed, the administrator
24 shall transfer the remaining moneys in the Unclaimed Property Fund to the Unclaimed Property
25 Trust Fund.

26 (d) On or before December 15 of each year, notwithstanding any provision of this code to
27 the contrary, the administrator may transfer the sum of \$1 million from the Unclaimed Property
28 Trust Fund to the Jumpstart Savings Trust Fund, until an actuary certifies there are sufficient
29 funds to satisfy all obligations and administrative expenses of the Jumpstart Savings Program.

30 (e) After transferring any money required by subsection (d) of this section, the
31 administrator shall transfer moneys remaining in the Unclaimed Property Trust Fund to the
32 General Revenue Fund.

§36-8-15. Filing claim with administrator; handling of claims by administrator.

1 (a) A person, excluding another state, claiming property paid or delivered to the
2 administrator may file a claim on a form prescribed by the administrator and verified by the
3 claimant.

4 (b) Within 90 days after a claim is filed, the administrator shall allow or deny the claim and
5 give written notice of the decision to the claimant. If the claim is denied, the administrator shall
6 inform the claimant of the reasons for the denial and specify what additional evidence is required
7 before the claim will be allowed. The claimant may then file a new claim with the administrator or
8 maintain an action under section 16 of this article.

9 (c) Within 30 days after a claim is allowed, the property or the net proceeds of a sale of
10 the property must be delivered or paid by the administrator to the claimant.

11 (d) The administrator may waive the requirement in subsection (a) and may pay or deliver
12 property directly to a person who does not file a claim if:

13 (1) The person receiving the property or payment is shown to be the apparent owner
14 included on a report filed pursuant to this act;

15 (2) The administrator reasonably believes the person is entitled to receive the property or
16 payment; and

17 (3) The property has a value of less than \$5,000.

§36-8-25. Records of abandoned property.

1 Records of abandoned property kept by the administrator are available for inspection and
2 copying only by an owner of such property as to the particular property he or she owns, or by his
3 or her personal representative, next of kin, attorney at law, or such person entitled to inherit from
4 the owner conducting a legal audit thereof. These records are exempt from the provisions of the
5 West Virginia Freedom of Information Act, Chapter 29B of this code: *Provided*, That nothing in
6 this section prevents the administrator from disclosing the monetary value of an unclaimed
7 property or the general nature or type of said property to any person that the administrator
8 reasonably believes to be the apparent owner of said property or a person entitled to claim the
9 property on the apparent owner's behalf.

§36-8-33. Report by administrator.

1 (a) Not later than six months after the end of the state's fiscal year, the administrator shall
2 compile and publish a report on the West Virginia Treasury website. The report must contain the
3 following information about property deemed unclaimed for the preceding fiscal year for the state:

4 (1) The total amount and value of all property paid or delivered under this act to the
5 administrator, separated into:

6 (A) The portion voluntarily paid or delivered; and

7 (B) The portion delivered as the result of an examination under the act.

8 (2) The total amount and value of all property paid or delivered by the administrator to
9 persons that made claims for property held by the administrator under this act.

10 (b) The report required under subsection (a) of this section is a public record and is subject
11 to disclosure pursuant to the West Virginia Freedom of Information Act, Chapter 29B of this code.

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

.....
Chairman, House Committee

.....
Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

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Clerk of the House of Delegates

.....
Clerk of the Senate

.....
Speaker of the House of Delegates

.....
President of the Senate

The within this the.....
day of, 2022.

.....
Governor