

SB 125

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WEST VIRGINIA LEGISLATURE

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1997



# ENROLLED

*COMMITTEE SUBSTITUTE FOR*  
SENATE BILL NO. 125

(By Senator HENDERSON, ET AL)



PASSED APRIL 12, 1997

In Effect JULY 1, 1997 Passage

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SENATE

## ENROLLED

COMMITTEE SUBSTITUTE  
FOR

### Senate Bill No. 125

(SENATORS ANDERSON, BOWMAN, SCHOONOVER AND DEEM,  
*original sponsors*)

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[Passed April 12, 1997; to take effect July 1, 1997.]

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AN ACT to amend and reenact section three, article two, chapter thirty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact article eight, chapter thirty-six of said code; to further amend said chapter by adding thereto a new article, designated article eight-a; and to amend and reenact section three-c, article one, chapter forty-two of said code, all relating to the disposition of abandoned and unclaimed property; providing for the disposition of abandoned derelict property; adopting the uniform unclaimed property act; defining terms; establishing time periods for presumption of abandonment; providing for the abandonment of property held in safe deposit boxes; establishing rules for the taking of custody of abandoned

property; permitting the imposition of dormancy charges in certain instances; establishing burden of proof on abandonment issues; providing for the reporting of abandoned property; providing for the payment or delivery of abandoned property; requiring notice and publication of lists of abandoned property; providing for the custody of property paid or delivered to the state; providing for the recovery of property by holder and granting holder certain defenses; crediting of dividends, interest and increments to owner's account; providing for the public sale of abandoned property; requiring the deposit of funds into the general revenue fund; authorizing administrator to maintain a trust fund for the payment of claims; permitting the administrator to deduct expenses of public sale from deposits to general revenue fund; providing for the recovery of property by another state; establishing procedures for the filing and handling of claims; providing for a civil action to establish claim; authorizing the administrator to decline and accept certain property; authorizing holder to report and deliver property before presumption of abandonment; authorizing administrator to destroy or dispose of certain property; establishing periods of limitation; setting forth authority of administrator to request reports and examine records of holder; providing for confidentiality of holder's records; providing for the retention of records; authorizing administrator to enforce article and to enter into agreements with other states; providing for the imposition of interest and civil penalties for failure to report, pay or deliver property; exempting records held by the administrator from public disclosure; limiting scope of article; establishing transitional provisions; requiring administrator to promulgate legislative rules, including emergency legislative rules; establishing uniformity of application and construction, short title, severability and effective date; providing for disposition of unclaimed stolen property held by law-enforcement agencies; setting forth definitions; requiring law-enforcement agencies to file reports on unclaimed stolen property with state treasurer; requiring treasurer to evaluate reports and issue responses to law-enforcement agencies; providing for the sale or donation of such

property to nonprofit organizations; authorizing law-enforcement agencies to retain the proceeds of a public sale of such property conducted by the law-enforcement agency; requiring the treasurer to deposit into the general revenue fund the proceeds of a public sale of such property conducted by the treasurer; authorizing law-enforcement agencies to trade in unclaimed stolen firearms and ammunition of sufficient quality on new weapons and ammunition; requiring that unclaimed stolen firearms and ammunition of poor quality be delivered to the treasurer for destruction; providing immunity to law-enforcement agencies acting in compliance with this article; and providing for the disposition of property of certain intestate estates.

*Be it enacted by the Legislature of West Virginia:*

That section three, article two, chapter thirty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that article eight, chapter thirty-six of said code be amended and reenacted; that said chapter be further amended by adding thereto a new article, designated article eight-a; and that section three-c, article one, chapter forty-two of said code be amended and reenacted, all to read as follows:

**CHAPTER 34. ESTRAYS, DRIFT AND  
DERELICT PROPERTY.**

**ARTICLE 2. DERELICT PROPERTY.**

**§34-2-3. Decree of title to state.**

1 If, in such a suit as is mentioned in section one of this  
2 article, no person appears to show title in himself, the  
3 court shall decree the residuum or other property to the  
4 state, and enforce the collection thereof, or of the proceeds  
5 of the sale of such property. Any real property so decreed  
6 to the state shall be remitted to the state auditor. Any  
7 personal property shall be remitted to the state treasurer  
8 for disposition by public sale in accordance with the  
9 provisions of section twelve, article eight, chapter thirty-  
10 six of this code. The proceeds of the sale of any such real  
11 property shall be deposited to the credit of the general  
12 school fund. The proceeds of the sale of any such personal

13 property shall be deposited to the credit of the general  
14 fund.

## CHAPTER 36. ESTATES AND PROPERTY.

### ARTICLE 8. UNIFORM UNCLAIMED PROPERTY ACT.

#### §36-8-1. Definitions.

1 As used in this article:

2 (1) "Administrator" means the state treasurer.

3 (2) "Apparent owner" means a person whose name  
4 appears on the records of a holder as the person entitled to  
5 property held, issued or owing by the holder.

6 (3) "Business association" means a corporation, joint  
7 stock company, investment company, partnership, unin-  
8 corporated association, joint venture, limited liability  
9 company, business trust, trust company, safe deposit  
10 company, financial organization, insurance company,  
11 mutual fund, utility or other business entity consisting of  
12 one or more persons, whether or not for profit.

13 (4) "Domicile" means the state of incorporation of a  
14 corporation and the state of the principal place of business  
15 of a holder other than a corporation.

16 (5) "Financial organization" means a savings and loan  
17 association, bank, banking organization or credit union.

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

21 (7) "Insurance company" means an association, corpora-  
22 tion, or fraternal or mutual benefit organization, whether  
23 or not for profit, engaged in the business of providing life  
24 endowments, annuities or insurance, including accident,  
25 burial, casualty, credit life, contract performance, dental,  
26 disability, fidelity, fire, health, hospitalization, illness,  
27 life, malpractice, marine, mortgage, surety, wage protec-  
28 tion and workers' compensation insurance.

29 (8) "Mineral" means gas; oil; coal; other gaseous, liquid  
30 and solid hydrocarbons; oil shale; cement material; sand  
31 and gravel; road material; building stone; chemical raw

32 material; gemstone; fissionable and nonfissionable ores;  
33 colloidal and other clay; steam and other geothermal  
34 resource; or any other substance defined as a mineral by  
35 the law of this state.

36 (9) "Mineral proceeds" means amounts payable for the  
37 extraction, production or sale of minerals, or, upon the  
38 abandonment of those payments, all payments that  
39 become payable thereafter. The term includes amounts  
40 payable:

41 (i) For the acquisition and retention of a mineral lease,  
42 including bonuses, royalties, compensatory royalties, shut-  
43 in royalties, minimum royalties and delay rentals;

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

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

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

57 (11) "Owner" means a person who has a legal or equita-  
58 ble interest in property subject to this article or the  
59 person's legal representative. The term includes a deposi-  
60 tor in the case of a deposit, a beneficiary in the case of a  
61 trust other than a deposit in trust, and a creditor, claimant  
62 or payee in the case of other property.

63 (12) "Person" means an individual, business association,  
64 financial organization, estate, trust, government, govern-  
65 mental subdivision, agency or instrumentality, or any  
66 other legal or commercial entity.

67 (13) "Property" means tangible personal property  
68 described in section three of this article or a fixed and

69 certain interest in intangible personal property that is  
70 held, issued or owed in the course of a holder's business, or  
71 by a government, governmental subdivision, agency or  
72 instrumentality, and all income or increments therefrom.  
73 The term includes property that is referred to as or  
74 evidenced by:

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

77 (ii) Credit balance, customer's overpayment, gift certifi-  
78 cate, security deposit, refund, credit memorandum, unpaid  
79 wage, unused ticket, mineral proceeds or unidentified  
80 remittance;

81 (iii) Stock or other evidence of ownership of an interest  
82 in a business association or financial organization;

83 (iv) A bond, debenture, note or other evidence of indebt-  
84 edness;

85 (v) Money deposited to redeem stocks, bonds, coupons or  
86 other securities or to make distributions;

87 (vi) An amount due and payable under the terms of an  
88 annuity or insurance policy, including policies providing  
89 life insurance, property and casualty insurance, workers'  
90 compensation insurance, or health and disability insur-  
91 ance; and

92 (vii) An amount distributable from a trust or custodial  
93 fund established under a plan to provide health, welfare,  
94 pension, vacation, severance, retirement, death, stock  
95 purchase, profit sharing, employee savings, supplemental  
96 unemployment insurance or similar benefits.

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

100 (15) "State" means a state of the United States, the  
101 District of Columbia, the Commonwealth of Puerto Rico  
102 or any territory or insular possession subject to the  
103 jurisdiction of the United States.

104 (16) "Utility" means a person who owns or operates for

105 public use any plant, equipment, real property, franchise  
106 or license for the transmission of communications or the  
107 production, storage, transmission, sale, delivery or fur-  
108 nishing of electricity, water, steam or gas as defined in  
109 section two, article one, chapter twenty-four of this code.

**§36-8-2. Presumptions of abandonment.**

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

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

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

6 (3) Stock or other equity interest in a business associa-  
7 tion or financial organization, including a security entitle-  
8 ment under article eight of the uniform commercial code,  
9 five years after the earlier of: (i) The date of the most  
10 recent dividend, stock split or other distribution un-  
11 claimed by the apparent owner; or (ii) the date of the  
12 second mailing of a statement of account or other notifica-  
13 tion or communication that was returned as undeliverable  
14 or after the holder discontinued mailings, notifications or  
15 communications to the apparent owner;

16 (4) Debt of a business association or financial organiza-  
17 tion, other than a bearer bond or an original issue discount  
18 bond, five years after the date of the most recent interest  
19 payment unclaimed by the apparent owner;

20 (5) A noninterest bearing demand, savings or time  
21 deposit, including a deposit that is automatically renew-  
22 able, five years after the earlier of maturity or the date of  
23 the last indication by the owner of interest in the property;  
24 an interest bearing demand, savings or time deposit  
25 including a deposit that is automatically renewable, seven  
26 years after the earlier of maturity or the date of the last  
27 indication by the owner of interest in the property. A  
28 deposit that is automatically renewable is deemed ma-  
29 tured for purposes of this section upon its initial date of  
30 maturity, unless the owner has consented to a renewal at  
31 or about the time of the renewal and the consent is in  
32 writing or is evidenced by a memorandum or other record

33 on file with the holder;

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

37 (7) Gift certificate, three years after the thirty-first day  
38 of December of the year in which the certificate was sold,  
39 but if redeemable in merchandise only, the amount  
40 abandoned is deemed to be sixty percent of the certifi-  
41 cate's face value;

42 (8) Amount owed by an insurer on a life or endowment  
43 insurance policy or an annuity that has matured or  
44 terminated, three years after the obligation to pay arose  
45 or, in the case of a policy or annuity payable upon proof of  
46 death, three years after the insured has attained, or would  
47 have attained if living, the limiting age under the mortal-  
48 ity table on which the reserve is based;

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

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

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

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

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

62 (14) Property in an individual retirement account,  
63 defined benefit plan or other account or plan that is  
64 qualified for tax deferral under the income tax laws of the  
65 United States, three years after the earliest of the date of  
66 the distribution or attempted distribution of the property,  
67 the date of the required distribution as stated in the plan  
68 or trust agreement governing the plan, or the date, if  
69 determinable by the holder, specified in the income tax

70 laws of the United States by which distribution of the  
71 property must begin in order to avoid a tax penalty;

72 (15) Warrants for payment issued by the state of West  
73 Virginia which have not been presented for payment,  
74 within six months of the date of issuance;

75 (16) All funds held by a fiduciary, including the state  
76 municipal bond commission, for the payment of a note,  
77 bond, debenture or other evidence of indebtedness, five  
78 years after the principal maturity date, or if such note,  
79 bond, debenture or evidence of indebtedness is called for  
80 redemption on an earlier date, then the redemption date,  
81 such premium or redemption date to also be applicable to  
82 all interest and premium, if any, attributable to such note,  
83 bond, debenture or other evidence of indebtedness; and

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

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

92 (c) Property is unclaimed if, for the applicable period set  
93 forth in subsection (a) of this section, the apparent owner  
94 has not communicated in writing or by other means  
95 reflected in a contemporaneous record prepared by or on  
96 behalf of the holder, with the holder concerning the  
97 property or the account in which the property is held, and  
98 has not otherwise indicated an interest in the property. A  
99 communication with an owner by a person other than the  
100 holder or its representative who has not in writing identi-  
101 fied the property to the owner is not an indication of  
102 interest in the property by the owner.

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

105 (i) The presentment of a check or other instrument of  
106 payment of a dividend or other distribution made with  
107 respect to an account or underlying stock or other interest

108 in a business association or financial organization or, in  
109 the case of a distribution made by electronic or similar  
110 means, evidence that the distribution has been received;

111 (ii) Owner-directed activity in the account in which the  
112 property is held, including a direction by the owner to  
113 increase, decrease or change the amount or type of prop-  
114 erty held in the account;

115 (iii) The making of a deposit to or withdrawal from a  
116 bank account; and

117 (iv) The payment of a premium with respect to a prop-  
118 erty interest in an insurance policy; but the application of  
119 an automatic premium loan provision or other  
120 nonforfeiture provision contained in an insurance policy  
121 does not prevent a policy from maturing or terminating if  
122 the insured has died or the insured or the beneficiary of  
123 the policy has otherwise become entitled to the proceeds  
124 before the depletion of the cash surrender value of a policy  
125 by the application of those provisions.

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

**§36-8-3. Contents of safe deposit box or other safekeeping depository.**

1 Tangible personal property held in a safe deposit box or  
2 other safekeeping depository in this state in the ordinary  
3 course of the holder's business and proceeds resulting  
4 from the sale of the property permitted by other law, are  
5 presumed abandoned if the property remains unclaimed  
6 by the owner for more than five years after expiration of  
7 the lease or rental period on the box or other depository.

**§36-8-4. Rules for taking custody.**

1 Except as otherwise provided in this article or by other  
2 statute of this state, property that is presumed abandoned,  
3 whether located in this or another state, is subject to the  
4 custody of this state if:

5 (1) The last known address of the apparent owner, as

6 shown on the records of the holder, is in this state;

7 (2) The records of the holder do not reflect the identity  
8 of the person entitled to the property and it is established  
9 that the last known address of the person entitled to the  
10 property is in this state;

11 (3) The records of the holder do not reflect the last  
12 known address of the apparent owner and it is established  
13 that:

14 (i) The last known address of the person entitled to the  
15 property is in this state; or

16 (ii) The holder is domiciled in this state or is a govern-  
17 ment or governmental subdivision, agency or instrumen-  
18 tality of this state and has not previously paid or delivered  
19 the property to the state of the last known address of the  
20 apparent owner or other person entitled to the property;

21 (4) The last known address of the apparent owner, as  
22 shown on the records of the holder, is in a state that does  
23 not provide for the escheat or custodial taking of the  
24 property and the holder is domiciled in this state or is a  
25 government or governmental subdivision, agency or  
26 instrumentality of this state;

27 (5) The last known address of the apparent owner, as  
28 shown on the records of the holder, is in a foreign country  
29 and the holder is domiciled in this state or is a government  
30 or governmental subdivision, agency or instrumentality of  
31 this state;

32 (6) The transaction out of which the property arose  
33 occurred in this state, the holder is domiciled in a state  
34 that does not provide for the escheat or custodial taking of  
35 the property, and the last known address of the apparent  
36 owner or other person entitled to the property is unknown  
37 or is in a state that does not provide for the escheat or  
38 custodial taking of the property; or

39 (7) The property is a traveler's check or money order  
40 purchased in this state, or the issuer of the traveler's check  
41 or money order has its principal place of business in this  
42 state and the issuer's records show that the instrument

43 was purchased in a state that does not provide for the  
44 escheat or custodial taking of the property, or do not show  
45 the state in which the instrument was purchased.

**§36-8-5. Dormancy charge.**

1 A holder may deduct from property presumed aban-  
2 doned a charge imposed by reason of the owner's failure  
3 to claim the property within a specified time only if there  
4 is a valid and enforceable written contract between the  
5 holder and the owner under which the holder may impose  
6 the charge and the holder regularly imposes the charge,  
7 which is not regularly reversed or otherwise canceled. The  
8 amount of the deduction is limited to an amount that is  
9 not unconscionable.

**§36-8-6. Burden of proof as to property evidenced by record of  
check or draft.**

1 A record of the issuance of a check, draft or similar  
2 instrument is prima facie evidence of an obligation. In  
3 claiming property from a holder who is also the issuer, the  
4 administrator's burden of proof as to the existence and  
5 amount of the property and its abandonment is satisfied  
6 by showing issuance of the instrument and passage of the  
7 requisite period of abandonment. Defenses of payment,  
8 satisfaction, discharge and want of consideration are  
9 affirmative defenses that must be established by the  
10 holder.

**§36-8-7. Report of abandoned property.**

1 (a) A holder of property presumed abandoned shall  
2 make a report to the administrator concerning the prop-  
3 erty.  
4 (b) The report must be verified and must contain:  
5 (1) A description of the property;  
6 (2) Except with respect to a traveler's check or money  
7 order, the name, if known, and last known address, if any,  
8 and the social security number or taxpayer identification  
9 number, if readily ascertainable, of the apparent owner of  
10 property of the value of fifty dollars or more;

11 (3) An aggregated amount of items valued under fifty  
12 dollars each;

13 (4) In the case of an amount of fifty dollars or more held  
14 or owing under an annuity or a life or endowment insur-  
15 ance policy, the full name and last known address of the  
16 annuitant or insured and of the beneficiary;

17 (5) In the case of property held in a safe deposit box or  
18 other safekeeping depository, an indication of the place  
19 where it is held and where it may be inspected by the  
20 administrator, and any amounts owing to the holder;

21 (6) The date, if any, on which the property became  
22 payable, demandable or returnable, and the date of the  
23 last transaction with the apparent owner with respect to  
24 the property; and

25 (7) Other information that the administrator by rule  
26 prescribes as necessary for the administration of this  
27 article.

28 (c) If a holder of property presumed abandoned is a  
29 successor to another person who previously held the  
30 property for the apparent owner or the holder has changed  
31 its name while holding the property, the holder shall file  
32 with the report its former names, if any, and the known  
33 names and addresses of all previous holders of the prop-  
34 erty.

35 (d) The report must be filed before the first day of  
36 November of each year and cover the twelve months next  
37 preceding the first day of July of that year, but a report  
38 with respect to a life insurance company must be filed  
39 before the first day of May of each year for the calendar  
40 year next preceding.

41 (e) The holder of property presumed abandoned shall  
42 send written notice to the apparent owner, not more than  
43 one hundred twenty days or less than sixty days before  
44 filing the report, stating that the holder is in possession of  
45 property subject to this article, if:

46 (1) The holder has in its records an address for the  
47 apparent owner which the holder's records do not disclose

48 to be inaccurate;

49 (2) The claim of the apparent owner is not barred by a  
50 statute of limitations; and

51 (3) The value of the property is fifty dollars or more.

52 (f) Before the date for filing the report, the holder of  
53 property presumed abandoned may request the adminis-  
54 trator to extend the time for filing the report. The admin-  
55 istrator may grant the extension for good cause. The  
56 holder, upon receipt of the extension, may make an  
57 interim payment on the amount the holder estimates will  
58 ultimately be due, which terminates the accrual of addi-  
59 tional interest on the amount paid.

60 (g) The holder of property presumed abandoned shall  
61 file with the report an affidavit stating that the holder has  
62 complied with subsection (e) of this section.

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

1 (a) Except for property held in a safe deposit box or  
2 other safekeeping depository, upon filing the report  
3 required by section seven of this article, the holder of  
4 property presumed abandoned shall pay, deliver or cause  
5 to be paid or delivered to the administrator the property  
6 described in the report as unclaimed, but if the property  
7 is an automatically renewable deposit, and a penalty or  
8 forfeiture in the payment of interest would result, the time  
9 for compliance is extended until a penalty or forfeiture  
10 would no longer result. Property held in a safe deposit  
11 box or other safekeeping depository may not be delivered  
12 to the administrator until one hundred twenty days after  
13 filing the report required by section seven of this article.

14 (b) If the property reported to the administrator is a  
15 security or security entitlement under article eight of the  
16 uniform commercial code, the administrator is an appro-  
17 priate person to make an indorsement, instruction or  
18 entitlement order on behalf of the apparent owner to  
19 invoke the duty of the issuer or its transfer agent or the  
20 securities intermediary to transfer or dispose of the  
21 security or the security entitlement in accordance with  
22 article eight of the uniform commercial code.

23 (c) If the holder of property reported to the administra-  
 24 tor is the issuer of a certificated security, the administra-  
 25 tor has the right to obtain a replacement certificate  
 26 pursuant to article eight, section four hundred eight of the  
 27 uniform commercial code, but an indemnity bond is not  
 28 required.

29 (d) An issuer, the holder, and any transfer agent or other  
 30 person acting pursuant to the instructions of and on  
 31 behalf of the issuer or holder in accordance with this  
 32 section is not liable to the apparent owner and must be  
 33 indemnified against claims of any person in accordance  
 34 with section ten of this article.

**§36-8-9. Notice and publication of lists of abandoned property.**

1 (a) The administrator shall publish a notice not later  
 2 than the thirtieth day of November of the year next  
 3 following the year in which abandoned property has been  
 4 paid or delivered to the administrator. The notice must be  
 5 published in a newspaper of general circulation in the  
 6 county of this state in which is located the last known  
 7 address of any person named in the notice. If a holder  
 8 does not report an address for the apparent owner, or the  
 9 address is outside this state, the notice must be published  
 10 in the county in which the holder has its principal place of  
 11 business within this state or another county that the  
 12 administrator reasonably selects. The advertisement must  
 13 be in a form that, in the judgment of the administrator, is  
 14 likely to attract the attention of the apparent owner of the  
 15 unclaimed property. The form must contain:

16 (1) The name of each person appearing to be the owner  
 17 of the property, as set forth in the report filed by the  
 18 holder;

19 (2) The last known address or location of each person  
 20 appearing to be the owner of the property, if an address or  
 21 location is set forth in the report filed by the holder;

22 (3) A statement explaining that property of the owner is  
 23 presumed to be abandoned and has been taken into the  
 24 protective custody of the administrator; and

25 (4) A statement that information about the property and

26 its return to the owner is available to a person having a  
27 legal or beneficial interest in the property, upon request to  
28 the administrator.

29 (b) The administrator is not required to advertise the  
30 name and address or location of an owner of property  
31 having a total value less than fifty dollars or information  
32 concerning a traveler's check, money order or similar  
33 instrument.

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

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

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

5 (2) The holder was not then in breach of a fiduciary  
6 obligation with respect to the property and had a reason-  
7 able basis for believing, based on the facts then known,  
8 that the property was presumed abandoned: *Provided*,  
9 That no fiduciary shall be deemed to be in breach of a  
10 fiduciary obligation for purposes of this section by virtue  
11 of paying or delivering property to the administrator prior  
12 to the expiration of the period for holding unclaimed or  
13 abandoned property contained in the instrument under  
14 which such fiduciary is acting; and

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

18 (b) Upon payment or delivery of property to the admin-  
19 istrator, the state assumes custody and responsibility for  
20 the safekeeping of the property. A holder who pays or  
21 delivers property to the administrator in good faith is  
22 relieved of all liability arising thereafter with respect to  
23 the property.

24 (c) A holder who has paid money to the administrator  
25 pursuant to this article may subsequently make payment  
26 to a person reasonably appearing to the holder to be  
27 entitled to payment. Upon a filing by the holder of proof

28 of payment and proof that the payee was entitled to the  
29 payment, the administrator shall promptly reimburse the  
30 holder for the payment without imposing a fee or other  
31 charge. If reimbursement is sought for a payment made  
32 on a negotiable instrument, including a traveler's check or  
33 money order, the holder must be reimbursed upon filing  
34 proof that the instrument was duly presented and that  
35 payment was made to a person who reasonably appeared  
36 to be entitled to payment. The holder must be reimbursed  
37 for payment made even if the payment was made to a  
38 person whose claim was barred under subsection (a),  
39 section nineteen of this article.

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

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

49 (f) If a holder pays or delivers property to the adminis-  
50 trator in good faith and thereafter another person claims  
51 the property from the holder or another state claims the  
52 money or property under its laws relating to escheat or  
53 abandoned or unclaimed property, the administrator,  
54 upon written notice of the claim, shall defend the holder  
55 against the claim and indemnify the holder against any  
56 liability on the claim resulting from payment or delivery  
57 of the property to the administrator.

58 (g) Property removed from a safe deposit box or other  
59 safekeeping depository is received by the administrator  
60 subject to the holder's right to be reimbursed for the cost  
61 of the opening and to any valid lien or contract providing  
62 for the holder to be reimbursed for unpaid rent or storage  
63 charges. The administrator shall reimburse the holder out  
64 of the proceeds remaining after deducting the expense  
65 incurred by the administrator in selling the property.

**§36-8-11. Crediting of dividends, interest and increments to**

**owner's account.**

1 (a) If property other than money is delivered to the  
2 administrator under this article, the owner is entitled to  
3 receive from the administrator any income or gain realized  
4 or accruing on the property at or before liquidation or  
5 conversion of the property into money only as provided in  
6 this subsection:

7 (1) If the property was an interest bearing demand,  
8 savings or time deposit, including a deposit that is auto-  
9 matically renewable, the administrator shall pay interest  
10 at a rate of four percent per year or any lesser rate the  
11 property earned at the time the property was delivered to  
12 the administrator.

13 (2) If the property is any property other than an interest  
14 bearing demand, savings or time deposit, the administra-  
15 tor shall pay the owner four percent per year on the  
16 market value of the property at the time it was delivered  
17 to the administrator or any lesser annualized rate of  
18 income or gain the property earned from the time the  
19 property was delivered to the administrator to the time  
20 the owner established a claim to the property.

21 (3) In no event shall the administrator be required to pay  
22 the owner any income or gain realized or accruing on the  
23 property after the third anniversary of the delivery of the  
24 property to the administrator.

25 (b) Nothing in this section shall be construed to entitle  
26 an owner to interest on property which did not realize or  
27 accrue income or gain at the time it was delivered to the  
28 administrator.

**§36-8-12. Public sale of abandoned property.**

1 (a) Except as otherwise provided in this section, the  
2 administrator, within three years after the receipt of  
3 abandoned property, shall sell it to the highest bidder at  
4 public sale at a location in the state which in the judgment  
5 of the administrator affords the most favorable market for  
6 the property. The administrator may decline the highest  
7 bid and reoffer the property for sale if the administrator  
8 considers the bid to be insufficient. The administrator

9 need not offer the property for sale if the administrator  
10 considers that the probable cost of sale will exceed the  
11 proceeds of the sale. A sale held under this section must  
12 be preceded by a single publication of notice, at least three  
13 weeks before sale, in a newspaper of general circulation in  
14 the county in which the property is to be sold.

15 (b) Securities listed on an established stock exchange  
16 must be sold at prices prevailing on the exchange at the  
17 time of sale. Other securities may be sold over the counter  
18 at prices prevailing at the time of sale or by any reason-  
19 able method selected by the administrator. If securities  
20 are sold by the administrator before the expiration of  
21 three years after their delivery to the administrator, a  
22 person making a claim under this article before the end of  
23 the three-year period is entitled to the proceeds of the sale  
24 of the securities less any deduction for expenses of sale. A  
25 person making a claim under this article after the expira-  
26 tion of the three-year period is entitled to receive the  
27 securities delivered to the administrator by the holder, if  
28 they still remain in the custody of the administrator, or  
29 the net proceeds received from sale, and is not entitled to  
30 receive any appreciation in the value of the property  
31 occurring after delivery to the administrator, except in a  
32 case of intentional misconduct or malfeasance by the  
33 administrator.

34 (c) A purchaser of property at a sale conducted by the  
35 administrator pursuant to this article takes the property  
36 free of all claims of the owner or previous holder and of all  
37 persons claiming through or under them. The administra-  
38 tor shall execute all documents necessary to complete the  
39 transfer of ownership.

### §36-8-13. Deposit of funds.

1 (a) Except as otherwise provided by this section, the  
2 administrator shall promptly deposit in the general  
3 revenue fund of this state all funds received under this  
4 article, including the proceeds from the sale of abandoned  
5 property under section twelve of this article. The admin-  
6 istrator shall retain in a separate trust fund at least one  
7 hundred thousand dollars from which the administrator

8 shall pay claims duly allowed. The administrator shall  
9 record the name and last known address of each person  
10 appearing from the holders' reports to be entitled to the  
11 property and the name and last known address of each  
12 insured person or annuitant and beneficiary and with  
13 respect to each policy or annuity listed in the report of an  
14 insurance company, its number, the name of the company  
15 and the amount due.

16 (b) Before making a deposit to the credit of the general  
17 revenue fund, the administrator may deduct:

18 (1) Expenses of sale of abandoned property;

19 (2) Costs of mailing and publication in connection with  
20 abandoned property;

21 (3) Reasonable service charges; and

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

**§36-8-14. Claim of another state to recover property.**

1 (a) After property has been paid or delivered to the  
2 administrator under this article, another state may recover  
3 the property if:

4 (1) The property was paid or delivered to the custody of  
5 this state because the records of the holder did not reflect  
6 a last known location of the apparent owner within the  
7 borders of the other state and the other state establishes  
8 that the apparent owner or other person entitled to the  
9 property was last known to be located within the borders  
10 of that state and under the laws of that state the property  
11 has escheated or become subject to a claim of abandon-  
12 ment by that state;

13 (2) The property was paid or delivered to the custody of  
14 this state because the laws of the other state did not  
15 provide for the escheat or custodial taking of the property,  
16 and under the laws of that state subsequently enacted the  
17 property has escheated or become subject to a claim of  
18 abandonment by that state;

19 (3) The records of the holder were erroneous in that they

20 did not accurately identify the owner of the property and  
21 the last known location of the owner within the borders of  
22 another state and under the laws of that state the property  
23 has escheated or become subject to a claim of abandon-  
24 ment by that state;

25 (4) The property was subjected to custody by this state  
26 under subdivision (6), section four of this article and under  
27 the laws of the state of domicile of the holder the property  
28 has escheated or become subject to a claim of abandon-  
29 ment by that state; or

30 (5) The property is a sum payable on a traveler's check,  
31 money order or similar instrument that was purchased in  
32 the other state and delivered into the custody of this state  
33 under subdivision (7), section four of this article, and  
34 under the laws of the other state the property has  
35 escheated or become subject to a claim of abandonment by  
36 that state.

37 (b) A claim of another state to recover escheated or  
38 abandoned property must be presented in a form pre-  
39 scribed by the administrator, who shall decide the claim  
40 within ninety days after it is presented. The administrator  
41 shall allow the claim upon determining that the other  
42 state is entitled to the abandoned property under subsec-  
43 tion (a) of this section.

44 (c) The administrator shall require another state, before  
45 recovering property under this section, to agree to indem-  
46 nify this state and its officers and employees against any  
47 liability on a claim to the property.

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

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

5 (b) Within ninety days after a claim is filed, the adminis-  
6 trator shall allow or deny the claim and give written  
7 notice of the decision to the claimant. If the claim is  
8 denied, the administrator shall inform the claimant of the

9 reasons for the denial and specify what additional evi-  
10 dence is required before the claim will be allowed. The  
11 claimant may then file a new claim with the administrator  
12 or maintain an action under section sixteen of this article.

13 (c) Within thirty days after a claim is allowed, the  
14 property or the net proceeds of a sale of the property must  
15 be delivered or paid by the administrator to the claimant.

**§36-8-16. Action to establish claim.**

1 A person aggrieved by a decision of the administrator or  
2 whose claim has not been acted upon within ninety days  
3 after its filing may maintain an original action to establish  
4 the claim in the circuit court of Kanawha County, naming  
5 the administrator as a defendant. If the aggrieved person  
6 establishes the claim in an action against the administra-  
7 tor, the court may award the claimant reasonable attor-  
8 ney's fees.

**§36-8-17. Election to take payment or delivery.**

1 (a) The administrator may decline to receive property  
2 reported under this article which the administrator  
3 considers to have a value less than the expenses of notice  
4 and sale.

5 (b) A holder, with the written consent of the administra-  
6 tor and upon conditions and terms prescribed by the  
7 administrator, may report and deliver property before the  
8 property is presumed abandoned. Property so delivered  
9 must be held by the administrator and is not presumed  
10 abandoned until it otherwise would be presumed aban-  
11 doned under this article.

**§36-8-18. Destruction or disposition of property having no  
substantial commercial value; immunity from  
liability.**

1 If the administrator determines after investigation that  
2 property delivered under this article has no substantial  
3 commercial value, the administrator may destroy or  
4 otherwise dispose of the property at any time. An action  
5 or proceeding may not be maintained against the state or  
6 any officer or against the holder for or on account of an

7 act of the administrator under this section, except for  
8 intentional misconduct or malfeasance.

**§36-8-19. Periods of limitation.**

1 (a) The expiration, before or after the effective date of  
2 this article, of a period of limitation on the owner's right  
3 to receive or recover property, whether specified by  
4 contract, statute or court order, does not preclude the  
5 property from being presumed abandoned or affect a duty  
6 to file a report or to pay or deliver or transfer property to  
7 the administrator as required by this article.

8 (b) An action or proceeding may not be maintained by  
9 the administrator to enforce this article in regard to the  
10 reporting, delivery or payment of property more than ten  
11 years after the holder specifically identified the property  
12 in a report filed with the administrator or gave express  
13 notice to the administrator of a dispute regarding the  
14 property. In the absence of such a report or other express  
15 notice, the period of limitation is tolled. The period of  
16 limitation is also tolled by the filing of a report that is  
17 fraudulent.

**§36-8-20. Requests for reports and examination of records.**

1 (a) The administrator, or the administrator's designated  
2 agent, may require a person who has not filed a report, or  
3 a person who the administrator believes has filed an  
4 inaccurate, incomplete or false report, to file a verified  
5 report in a form specified by the administrator. The  
6 report must state whether the person is holding property  
7 reportable under this article, describe property not  
8 previously reported or as to which the administrator has  
9 made inquiry and specifically identify and state the  
10 amounts of property that may be in issue.

11 (b) The administrator, or the administrator's designated  
12 agent, at reasonable times and upon reasonable notice,  
13 may examine the records of any person to determine  
14 whether the person has complied with this article. The  
15 administrator may conduct the examination even if the  
16 person believes it is not in possession of any property that  
17 must be reported, paid or delivered under this article. The

18 administrator may contract with any other person to  
19 conduct the examination on behalf of the administrator.  
20 However, this subsection shall not be construed to grant  
21 the administrator the right to examine the records of a  
22 national banking association to an extent greater than  
23 permitted by applicable federal law, nor shall this subsec-  
24 tion permit the records of any bank chartered or incorpo-  
25 rated under the laws of any state to be subject to examina-  
26 tion to an extent greater than the examination permitted  
27 of the records of a national banking association under  
28 applicable federal law.

29 (c) The administrator, or the administrator's agent, at  
30 reasonable times may examine the records of an agent,  
31 including a dividend disbursing agent or transfer agent, of  
32 a business association or financial association that is the  
33 holder of property presumed abandoned if the administra-  
34 tor, or the administrator's agent, has given the notice  
35 required by subsection (b) of this section to both the  
36 association or organization and the agent at least ninety  
37 days before the examination.

38 (d) Documents and working papers obtained or compiled  
39 by the administrator, or the administrator's agents,  
40 employees or designated representatives, in the course of  
41 conducting an examination are confidential and are not  
42 public records, but the documents and papers may be:

43 (1) Used by the administrator or the administrator's  
44 attorney in the course of an action to collect unclaimed  
45 property or otherwise enforce this article;

46 (2) Used in joint examinations conducted with or  
47 pursuant to an agreement with another state, the federal  
48 government or any other governmental subdivision,  
49 agency or instrumentality;

50 (3) Produced pursuant to subpoena or court order; or

51 (4) Disclosed to the abandoned property office of  
52 another state for that state's use in circumstances equiva-  
53 lent to those described in this subdivision, if the other  
54 state is bound to keep the documents and papers confiden-  
55 tial.

56 (e) If an examination of the records of a person results in  
 57 the disclosure of property reportable under this article, the  
 58 administrator may assess the cost of the examination  
 59 against the holder at the rate of two hundred dollars a day  
 60 for each examiner, or a greater amount that is reasonable  
 61 and was incurred, but the assessment may not exceed the  
 62 value of the property found to be reportable. The cost of  
 63 an examination made pursuant to subsection (c) of this  
 64 section may be assessed only against the business associa-  
 65 tion or financial organization.

66 (f) If, after the effective date of this article, a holder does  
 67 not maintain the records required by section twenty-one  
 68 of this article and the records of the holder available for  
 69 the periods subject to this article are insufficient to permit  
 70 the preparation of a report, the administrator may require  
 71 the holder to report and pay to the administrator the  
 72 amount the administrator reasonably estimates, on the  
 73 basis of any available records of the holder or by any other  
 74 reasonable method of estimation, should have been but  
 75 was not reported.

**§36-8-21. Retention of records.**

1 (a) Except as otherwise provided in subsection (b) of this  
 2 section, a holder required to file a report under section  
 3 seven of this article shall maintain the records containing  
 4 the information required to be included in the report for  
 5 ten years after the holder files the report, unless a shorter  
 6 period is provided by rule of the administrator.

7 (b) A business association or financial organization that  
 8 sells, issues or provides to others for sale or issue in this  
 9 state, traveler's checks, money orders or similar instru-  
 10 ments other than third-party bank checks, on which the  
 11 business association or financial organization is directly  
 12 liable, shall maintain a record of the instruments while  
 13 they remain outstanding, indicating the state and date of  
 14 issue, for three years after the holder files the report.

**§36-8-22. Enforcement.**

1 The administrator may maintain an action in this or  
 2 another state to enforce this article. The court may award

3 reasonable attorney's fees to the prevailing party.

**§36-8-23. Interstate agreements and cooperation; joint and reciprocal actions with other states.**

1 (a) The administrator may enter into an agreement with  
2 another state to exchange information relating to aban-  
3 doned property or its possible existence. The agreement  
4 may permit the other state, or another person acting on  
5 behalf of a state, to examine records as authorized in  
6 section twenty of this article. The administrator by rule  
7 may require the reporting of information needed to enable  
8 compliance with an agreement made under this section  
9 and prescribe the form.

10 (b) The administrator may join with another state to  
11 seek enforcement of this article against any person who is  
12 or may be holding property reportable under this article.

13 (c) At the request of another state, the administrator's  
14 attorney may maintain an action on behalf of the other  
15 state to enforce, in this state, the unclaimed property laws  
16 of the other state against a holder of property subject to  
17 escheat or a claim of abandonment by the other state, if  
18 the other state has agreed to pay expenses incurred by the  
19 attorney general in maintaining the action.

20 (d) The administrator may request that the attorney  
21 general of another state or another attorney commence an  
22 action in the other state on behalf of the administrator.  
23 The administrator may retain any other attorney to  
24 commence an action in this state on behalf of the adminis-  
25 trator. This state shall pay all expenses, including attor-  
26 ney's fees, in maintaining an action under this subsection.  
27 With the administrator's approval, the expenses and  
28 attorney's fees may be paid from money received under  
29 this article. The administrator may agree to pay expenses  
30 and attorney's fees based, in whole or in part, on a per-  
31 centage of the value of any property recovered in the  
32 action. Any expenses or attorney's fees paid under this  
33 subsection may not be deducted from the amount that is  
34 subject to the claim by the owner under this article.

**§36-8-24. Interest and penalties.**

1 (a) A holder who fails to report, pay or deliver property  
2 within the time prescribed by this article shall pay to the  
3 administrator interest at the annual rate of twelve percent  
4 on the property or value thereof from the date the prop-  
5 erty should have been reported, paid or delivered.

6 (b) Except as otherwise provided in subsection (c) of this  
7 section, a holder who fails to report, pay or deliver  
8 property within the time prescribed by this article, or fails  
9 to perform other duties imposed by this article, shall pay  
10 to the administrator, in addition to interest as provided in  
11 subsection (a) of this section, a civil penalty of two  
12 hundred dollars for each day the report, payment or  
13 delivery is withheld, or the duty is not performed, up to a  
14 maximum of five thousand dollars.

15 (c) A holder who willfully fails to report, pay or deliver  
16 property within the time prescribed by this article, or  
17 willfully fails to perform other duties imposed by this  
18 article, shall pay to the administrator, in addition to  
19 interest as provided in subsection (a) of this section, a civil  
20 penalty of one thousand dollars for each day the report,  
21 payment or delivery is withheld, or the duty is not per-  
22 formed, up to a maximum of twenty-five thousand dollars,  
23 plus twenty-five percent of the value of any property that  
24 should have been but was not reported.

25 (d) A holder who makes a fraudulent report shall pay to  
26 the administrator, in addition to interest as provided in  
27 subsection (a) of this section, a civil penalty of one thou-  
28 sand dollars for each day from the date a report under this  
29 article was due, up to a maximum of twenty-five thousand  
30 dollars, plus twenty-five percent of the value of any  
31 property that should have been but was not reported.

32 (e) The administrator for good cause may waive, in  
33 whole or in part, interest under subsection (a) of this  
34 section and penalties under subsections (b) and (c) of this  
35 section, and shall waive penalties if the holder acted in  
36 good faith and without negligence.

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

1 Records of abandoned property kept by the administra-

2 tor are available for inspection and copying only by an  
3 owner of such property as to the particular property he or  
4 she owns, or by his or her personal representative, next of  
5 kin, attorney at law or such person entitled to inherit from  
6 the owner conducting a legal audit thereof. These records  
7 are exempt from the provisions of chapter twenty-nine-b  
8 of this code.

**§36-8-26. Foreign transactions.**

1 This article does not apply to property held, due and  
2 owing in a foreign country and arising out of a foreign  
3 transaction.

**§36-8-27. Transitional provisions.**

1 (a) An initial report filed under this article for property  
2 that was not required to be reported before the effective  
3 date of this article but which is subject to this article must  
4 include all items of property that would have been pre-  
5 sumed abandoned during the ten-year period next preced-  
6 ing the effective date of this article as if this article had  
7 been in effect during that period.

8 (b) This article does not relieve a holder of a duty that  
9 arose before the effective date of this article to report, pay  
10 or deliver property. Except as otherwise provided in  
11 subsection (b), section nineteen of this article, a holder  
12 who did not comply with the law in effect before the  
13 effective date of this article is subject to the applicable  
14 provisions for enforcement and penalties which then  
15 existed, which are continued in effect for the purpose of  
16 this section.

**§36-8-28. Rules.**

1 On or before the first day of July, one thousand nine  
2 hundred ninety-seven, the administrator shall promulgate  
3 emergency legislative rules in accordance with the provi-  
4 sions of section fifteen, article three, chapter twenty-nine-  
5 a of this code. The administrator shall propose legislative  
6 rules for promulgation in accordance with the require-  
7 ments of the secretary of state and the provisions of  
8 chapter twenty-nine-a of this code to otherwise effectuate  
9 the purposes of this article.

**§36-8-29. Uniformity of application and construction.**

1 This article shall be applied and construed to effectuate  
2 its general purpose to make uniform the law with respect  
3 to the subject of this article among states enacting it.

**§36-8-30. Short title.**

1 This article may be cited as the “Uniform Unclaimed  
2 Property Act”.

**§36-8-31. Severability clause.**

1 If any provision of this article or the application thereof  
2 to any person or circumstance is held invalid, the invalid-  
3 ity does not affect other provisions or applications of this  
4 article which can be given effect without the invalid  
5 provision or application, and to this end the provisions of  
6 this article are severable.

**§36-8-32. Effective date.**

1 This article shall take effect on the first day of July, one  
2 thousand nine hundred ninety-seven.

**ARTICLE 8A. UNCLAIMED STOLEN PROPERTY HELD BY LAW-EN-  
FORCEMENT AGENCIES.**

**§36-8A-1. Definitions.**

1 For purposes of this article, unless a different meaning  
2 clearly appears in the context:

3 (a) “Chief executive” means the superintendent of the  
4 state police; the chief conservation officer of the division  
5 of natural resources; the sheriff of any West Virginia  
6 county; or the chief of any West Virginia municipal  
7 law-enforcement agency.

8 (b) “Item” means any item of unclaimed stolen property  
9 or any group of similar items considered together for  
10 purposes of reporting, donation, sale or destruction under  
11 this article.

12 (c) “Law-enforcement agency” means any duly autho-  
13 rized state, county or municipal organization of the state  
14 of West Virginia employing one or more persons whose  
15 responsibility is the enforcement of laws of the state or

16 any county or municipality thereof: *Provided*, That  
17 neither the Hatfield-McCoy regional recreation authority  
18 nor any state institution of higher education may be  
19 deemed a law-enforcement agency.

20 (d) "Nonprofit organization" means: (i) Any nonprofit  
21 charitable organization; or (ii) any agency of the state of  
22 West Virginia the purpose of which is to provide health,  
23 recreational or educational services to citizens of the state  
24 of West Virginia.

25 (e) "Stolen property" means any tangible personal  
26 property, including cash and coins, which is confiscated  
27 by or otherwise comes into the custody of a law-enforce-  
28 ment agency during the course of a criminal investigation  
29 or the performance of any other authorized law-enforce-  
30 ment activity, whether or not the property was or can be  
31 proven to have been stolen.

32 (f) "Treasurer" means the state treasurer or his or her  
33 authorized designee for purposes of the administration of  
34 this article.

35 (g) "Unclaimed stolen property" is stolen property:

36 (1) Which has been held by a law-enforcement agency  
37 for at least six months, during which time the rightful  
38 owner has not claimed it;

39 (2) For which the chief executive determines that there  
40 is no reasonable likelihood of its being returned to its  
41 rightful owner; and

42 (3) Which the chief executive determines to have no  
43 evidentiary value.

**§36-8A-2. Unclaimed stolen property reports.**

1 (a) Prior to the first day of September, one thousand  
2 nine hundred ninety-seven, and on or before the first day  
3 of September of each succeeding year, each law-enforce-  
4 ment agency which has unclaimed stolen property in its  
5 possession shall file an unclaimed stolen property report  
6 with the treasurer which identifies all unclaimed stolen  
7 property in its possession at the time the report is filed.

8 (b) An unclaimed stolen property report shall include the  
9 following information with respect to all unclaimed stolen  
10 property in the possession of the law-enforcement agency  
11 filing it:

12 (1) A description of each item;

13 (2) An estimated value for each item;

14 (3) Whether any nonprofit organization has requested  
15 that any item be donated to it and whether any nonprofit  
16 organization might be considered to receive the item as a  
17 donation;

18 (4) Whether the law-enforcement agency could use the  
19 item for any legitimate and authorized law-enforcement  
20 or educational purpose;

21 (5) The chief executive's recommendation for the  
22 disposition of each item; and

23 (6) If any unclaimed stolen property in the law-enforce-  
24 ment agency's possession consists of firearms or ammuni-  
25 tion, the chief executive's determination of whether the  
26 firearms or ammunition are of a sufficient quality to be  
27 traded in on new weapons or ammunition for the law-  
28 enforcement agency or appropriated for the law-enforce-  
29 ment agency's use.

**§36-8A-3. Treasurer's response to unclaimed stolen property report.**

1 Within thirty days of the receipt of an unclaimed stolen  
2 property report, the treasurer shall send a response to the  
3 law-enforcement agency submitting it. For each item  
4 identified in the unclaimed stolen property report except  
5 firearms and ammunition which the chief executive  
6 determined to be of sufficient quality to trade in on new  
7 weapons or ammunition or to appropriate for the law-  
8 enforcement agency's use, the treasurer shall either  
9 require that it be delivered to the treasurer, authorize the  
10 law-enforcement agency to sell it at a public sale, autho-  
11 rize the law-enforcement agency to donate it to a non-  
12 profit organization, authorize the law-enforcement agency  
13 to use it for any legitimate and authorized law-enforce-

14 ment or educational purpose, or authorize the law-en-  
15 forcement agency either to sell it at a public sale, to  
16 donate it to a nonprofit organization, or to use it for any  
17 legitimate and authorized law-enforcement or educational  
18 purpose. However, the treasurer may not authorize the  
19 law-enforcement agency to sell or donate any firearms or  
20 ammunition. If the treasurer determines that any item  
21 identified in an unclaimed stolen property report is of  
22 such value that it should be processed by the treasurer's  
23 office, the treasurer shall have the authority to require  
24 that the item be delivered to the treasurer.

**§36-8A-4. Disposition of unclaimed stolen property other than  
firearms and ammunition.**

1 (a) Within ninety days of receipt of the treasurer's  
2 response required by section three of this article, the law-  
3 enforcement agency shall dispose of all items identified in  
4 the treasurer's response in the manner set forth in this  
5 section.

6 (b) If the treasurer's report requires the law-enforcement  
7 agency to deliver any item to the treasurer, the chief  
8 executive shall cause the item to be so delivered. Within  
9 three years after receiving the item from the law-enforce-  
10 ment agency, the treasurer shall sell it to the highest  
11 bidder at public sale at a location in the state which in the  
12 judgment of the treasurer affords the most favorable  
13 market for the property. The treasurer may decline the  
14 highest bid and reoffer the property for sale if the trea-  
15 surer considers the bid to be insufficient. The treasurer  
16 need not offer the property for sale if the treasurer  
17 considers that the probable cost of sale will exceed the  
18 proceeds of the sale. A sale held under this subsection  
19 must be preceded by a single publication of notice, at least  
20 three weeks before sale, in a newspaper of general circula-  
21 tion in the county in which the property is to be sold.

22 (c) If the treasurer's response authorizes the law-en-  
23 forcement agency to sell any item at a public sale, the  
24 chief executive shall retain an auctioneer licensed by the  
25 state of West Virginia to conduct the sale. The costs or  
26 fees incurred will be paid from a fund generated from

27 revenues gained by the sale of such property. The licensed  
28 auctioneer shall sell the item to the highest bidder at a  
29 location which in the judgment of the chief executive  
30 affords the most favorable market for the items. A sale  
31 under this subsection must be preceded by a single  
32 publication of notice, at least three weeks before the sale,  
33 in a newspaper of general circulation in the county in  
34 which the property is to be sold. The chief executive shall  
35 retain the proceeds of any public sale under this subsec-  
36 tion for the use of the law-enforcement agency.

37 (d) If the treasurer's response authorizes the law-en-  
38 forcement agency to donate any item to a nonprofit  
39 organization, the chief executive shall cause the item to be  
40 so donated.

41 (e) If the treasurer's report authorizes the law-enforce-  
42 ment agency to use any item for any legitimate and  
43 authorized law-enforcement or educational purpose, the  
44 chief executive shall cause the item to be used for that  
45 purpose. However, if the law-enforcement agency ever  
46 discontinues its use of the item, it must again report the  
47 item to the treasurer as provided in section two of this  
48 article.

49 (f) If the treasurer's response authorizes the law-en-  
50 forcement agency either to sell any item at a public sale,  
51 to donate it to a nonprofit organization or to use it for any  
52 legitimate and authorized law-enforcement or educational  
53 purpose, the chief executive may cause the item either to  
54 be sold, donated or used as provided in this section.  
55 However, the chief executive shall first attempt to donate  
56 the item as provided in subsection (d) of this section or to  
57 use it as provided in subsection (e) of this section before  
58 selling it at a public sale as provided in subsection (c) of  
59 this section.

**§36-8A-5. Trade-in or appropriation of unclaimed stolen  
firearms and ammunition.**

1 (a) If the chief executive determined in the law-enforce-  
2 ment agency's unclaimed stolen property report that any  
3 firearms or ammunition in the law-enforcement agency's  
4 possession are not of a sufficient quality to be traded in on

5 new weapons or ammunition for the agency or appropri-  
6 ated for the agency's use, the chief executive shall cause  
7 the firearms or ammunition to be delivered to the trea-  
8 surer for destruction.

9 (b) If the chief executive determined in the law-enforce-  
10 ment agency's unclaimed stolen property report that any  
11 firearms or ammunition in the law-enforcement agency's  
12 possession are of a sufficient quality to be traded in on  
13 new weapons or ammunition for the agency or appropri-  
14 ated for the agency's use, the chief executive shall cause  
15 the firearms or ammunition to be traded in on new  
16 weapons or ammunition or appropriated for the agency's  
17 use. After any trade-in or appropriation under this  
18 subsection, the law-enforcement agency shall file a report  
19 with the treasurer and the state tax department on the  
20 trade-in or appropriation.

#### **§36-8A-6. Deposit of funds.**

1 (a) The treasurer shall promptly deposit in the general  
2 revenue fund of this state all proceeds of any public sale  
3 of unclaimed stolen property conducted by the treasurer  
4 under subsection (b), section four of this article.

5 (b) Before making a deposit to the credit of the general  
6 revenue fund, the treasurer may deduct the expenses of  
7 the related public sale conducted by the treasurer.

8 (c) The treasurer may deduct the accumulated expenses  
9 incurred in the destruction of unclaimed stolen firearms  
10 and ammunition under this article from any deposit made  
11 under subsection (a) of this section.

#### **§36-8A-7. Immunity of law-enforcement agencies.**

1 If a law-enforcement agency delivers, sells or donates  
2 any item of unclaimed stolen property in good faith and in  
3 accordance with the provisions of this article, the law-  
4 enforcement agency and its chief executive, officers and  
5 employees involved in the delivery, sale or donation shall  
6 be immune from any subsequent claim of a person who  
7 purports to be the true owner of the item and who did not  
8 claim the item prior to the delivery, sale or donation.

**CHAPTER 42. DESCENT AND DISTRIBUTION.**

**ARTICLE 1. DESCENT.**

**§42-1-3c. No taker.**

1 If there is no taker under the provisions of this article,  
2 the intestate estate passes to the state. Any real property  
3 shall pass to the state auditor. Any personal property  
4 shall pass to the state treasurer for disposition by public  
5 sale in accordance with the provisions of section twelve,  
6 article eight, chapter thirty-six of this code. The proceeds  
7 of the sale of any such real property shall be deposited to  
8 the credit of the general school fund. The proceeds of the  
9 sale of any such personal property shall be deposited to  
10 the credit of the general revenue fund.

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

*Randy Spoonace*  
.....  
Chairman Senate Committee

*Mike Fantasia*  
.....  
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1997.

*Harold Holmes*  
.....  
Clerk of the Senate

*Bryan D. Fox*  
.....  
Clerk of the House of Delegates

*Carl Key Tompkins*  
.....  
President of the Senate

*[Signature]*  
.....  
Speaker House of Delegates

The within *is approved* this the *7th*  
*May*  
day of ....., 1997.

*[Signature]*  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date 4/30/97

Time 3:06 pm