

# **WEST VIRGINIA LEGISLATURE**

**2016 REGULAR SESSION**

**Introduced**

## **Senate Bill 423**

BY SENATORS HALL, BOSO AND PLYMALE

[Introduced January 29, 2016;

Referred to the Committee on Finance.]



1 A BILL to amend and reenact §36-8-1 of the Code of West Virginia, 1931, as amended; and to  
2 amend said code by adding thereto a new section, designated §36-8-2a, all relating to the  
3 specific escheat of United States savings bonds and all rights and legal title thereto; and  
4 defining terms.

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

1 That §36-8-1 of the Code of West Virginia, 1931, as amended, be amended and  
2 reenacted; and that said code be amended by adding thereto a new section, designated §36-8-  
3 2a, all to read as follows:

**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 appears on the records of a holder as  
4 the person entitled to property held, issued or owing by the holder.

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

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

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

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

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

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

25 (9) "Mineral proceeds" means amounts payable for the extraction, production or sale of  
26 minerals or, upon the abandonment of those payments, all payments that become payable  
27 thereafter. The term includes amounts payable:

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

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

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

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

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

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

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

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

52 (ii) Credit balance, customer's overpayment, gift certificate, security deposit, refund, credit  
53 memorandum, unpaid wage, unused ticket, mineral proceeds or unidentified remittance;

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

56 (iv) A bond, debenture, note or other evidence of indebtedness;

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

59 (vi) An amount due and payable under the terms of an annuity or insurance policy,  
60 including policies providing life insurance, property and casualty insurance, workers'  
61 compensation insurance, or health and disability insurance; and

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

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

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

70 (16) "United States savings bond" means property, tangible or intangible, in the form of a  
71 savings bond issued by the United States Treasury whether in paper form, electric, or paperless  
72 form, along with all proceeds thereof.

73 ~~(16)~~ (17) "Utility" means a person who owns or operates for public use any plant,  
74 equipment, real property, franchise or license for the transmission of communications or the  
75 production, storage, transmission, sale, delivery or furnishing of electricity, water, steam or gas  
76 as defined in section two, article one, chapter twenty-four of this code.

**§36-8-2a. Escheat of United States savings bonds.**

1 (a) Notwithstanding any other section of this article or any other section of code to the  
2 contrary, United States savings bonds held or owing in the state by any person, or issued or owed  
3 in the course of a holder's business, or by a state or other government, governmental subdivision,  
4 agency, or instrumentality, and all proceeds thereof, shall be presumed abandoned in the state  
5 if:

6 (1) The last known address of the owner of the United States savings bond is in West  
7 Virginia; and

8 (2) The United States savings bond has remained unclaimed and unredeemed for five  
9 years after final maturity.

10 (b) United States savings bonds which are presumed abandoned and unclaimed under  
11 subsection (a) of this section, including bonds in the possession of the administrator, and those  
12 lost, stolen or destroyed bonds registered to persons with last known addresses in the state, shall  
13 escheat to the State of West Virginia one year after such bonds are presumed abandoned, and  
14 all property rights and legal title to and ownership of the United States savings bonds or proceeds  
15 from the bonds, including all rights, powers and privileges of survivorship of any owner, co-owner,

16 or beneficiary, shall vest solely in the State of West Virginia according to the procedure set forth  
17 in subsections (d) through (g), inclusive, of this section.

18 (c) Within one hundred eighty days after the one year prescribed in subsection (b) of this  
19 section, if no claim has been filed in accordance with the provisions of subsection (g) of this  
20 section for such United States savings bonds, the administrator shall commence a civil action in  
21 the circuit court of Kanawha County, or in any other court of competent jurisdiction, for a  
22 determination that such United States savings bonds shall escheat to the State of West Virginia.  
23 The administrator may postpone the bringing of such action until sufficient United States savings  
24 bonds have accumulated in the administrator's custody to justify the expense of such  
25 proceedings.

26 (d) The administrator shall make service by publication of the civil action in accordance  
27 with Rule 4(e) of the Rules of Civil Procedure.

28 (e) If no person shall file a claim or appear at the hearing to substantiate a claim or where  
29 the court determines that a claimant is not entitled to the property claimed by such claimant, then  
30 the court, if satisfied by evidence that the administrator has substantially complied with the laws  
31 of the State of West Virginia, shall enter a judgment that the subject United States savings bonds,  
32 including bonds in the possession of the administrator and those lost, stolen or destroyed bonds  
33 registered to persons with last known addresses in the state, have escheated to the State of West  
34 Virginia, and all property rights and legal title to and ownership of such United States savings  
35 bonds or proceeds from such bonds, including all rights, powers and privileges of survivorship of  
36 any owner, co-owner or beneficiary, shall vest in the State of West Virginia.

37 (f) The administrator shall redeem such United States savings bonds escheated to the  
38 State of West Virginia and when the proceeds which have escheated have been recovered by  
39 the administrator, it shall first pay all costs incident to the collection and recovery of such proceeds  
40 from the redemption of the United States savings bonds and shall thereafter promptly deposit the  
41 remaining balance of such proceeds into the Unclaimed Property Fund pursuant to section

42 thirteen of this article or into a separate account selected by the administrator to be distributed in  
43 accordance with law.

44 (g) Notwithstanding the provisions of sections fifteen and sixteen of this article, any person  
45 making a claim for the United States savings bonds escheated to the State of West Virginia under  
46 this section, or for the proceeds from such bonds, may file a claim with the administrator pursuant  
47 to section fifteen of this article. Upon providing sufficient proof of the validity of such person's  
48 claim, the administrator may, in his or her sole discretion, pay such claim less any expenses and  
49 costs which shall have been incurred by the state in securing full title and ownership of such  
50 property by escheat. If payment has been made to any claimant, no action thereafter shall be  
51 maintained by any other claimant against the state or any officer thereof, for or on account of such  
52 funds.

NOTE: The purpose of this bill is to provide for disposition of unclaimed and unredeemed savings bonds.

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