

- SUBJECT:** Adding class-action lawsuit proceeds to unclaimed-property statute
- COMMITTEE:** Business and Industry — favorable, without amendment
- VOTE:** 8 ayes — Deshotel, Orr, Bohac, Garza, Giddings, S. Miller, Quintanilla, Workman
0 nays
1 absent — Solomons
- WITNESSES:** For — None
Against — None
On — Anna Presley-Burnham, Office of the Comptroller; (*Registered, but did not testify*: Kenneth Besserman, Office of the Comptroller; Lesli Ginn, Office of the Attorney General)
- BACKGROUND:** In Texas, after a dormancy period, unclaimed property is turned over to the comptroller, who tries to locate the rightful owner. Unclaimed monies are deposited into the General Revenue Fund and returned to the owner when located. Property is declared unclaimed after a set dormancy period, which begins after the last act of ownership. This is usually defined as the owner's last transaction or communication with the holder of the property.
- DIGEST:** HB 1886 would require a holder of class action lawsuit judgment or settlement proceeds to deliver them to the comptroller no later than the 60th day after the date the proceeds were presumed abandoned.
HB 1886 would specify who could claim unclaimed property of certain corporate entities. If the owner was an active corporation, then the comptroller could approve the claim of:
- the president;
 - the chair or officer of the board of directors;
 - any person legally authorized by the corporation; or
 - the corporation's bankruptcy trustee or other person appointed by a bankruptcy court if the corporation had been or was in bankruptcy.

If the owner was a business that had been dissolved, terminated, liquidated, or a foreign business entity whose registration to transact business in Texas had been revoked, then the appropriate claimant could be:

- the sole surviving shareholder or owner of the entity, if there was only one;
- the surviving shareholders or owners of the entity in proportion to their ownership of the entity, if there was more than one;
- the entity's bankruptcy trustee or other person appointed by a bankruptcy court; or
- a receiver appointed by a court.

The bill would allow the comptroller to challenge the validity of a receivership order in either the court that issued the order or in a district court in Travis County.

The bill would define "class-action proceeds," "holder," and "active corporation."

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2011. The bill would only apply to proceeds of a class action filed on or after the effective date or a claim for unclaimed property made on or after the effective date.

**SUPPORTERS
SAY:**

HB 1886 would bring clarity to the unclaimed property laws by specifically including unclaimed property proceeds and specifying who is eligible to claim the unclaimed property of a folded business.

Recently, several inconsistent lawsuits have clouded what had been a consistent understanding regarding unclaimed proceeds of a class action lawsuit. HB 1886 would make clear that if the proceeds of a class action had been segregated by the claimant to the point where a check had been issued but not cashed, deposited, or otherwise negotiated by the claimant, then this would constitute sufficient contact with and specification of the owner to trigger the start of a dormancy period. If that period passed, those unclaimed class-action proceeds would be turned over to the comptroller.

It is existing state policy that unclaimed checks be turned over to the comptroller. Property Code, sec. 73.102 specifies that unnegotiated checks

constitute unclaimed property that should be turned over after a certain period.

The bill would prevent corporate grave robbers from claiming the unclaimed property of a folded business to which they had no link. First, these false claimants issue the comptroller a freedom of information request to search for any funds that might belong to a folded business. After identifying funds, the false claimants reinstate a business' corporate charter with the secretary of state, appoint themselves proper claimants, and then request the folded business' unclaimed property from the comptroller. Having no link to the original business, they are not appropriate claimants, and HB 1886 would put a stop to this unethical practice.

**OPPONENTS
SAY:**

Administrators of class-action lawsuits should be allowed to hold unclaimed proceeds. These administrators typically are professional experts capable of identifying and locating class members. They should be granted more than a 60-day dormancy period before being required to remit the funds to the state in order to have more time to locate class members and disperse their shares of the class action proceeds.

NOTES:

According to the fiscal note, the fiscal implications of HB 1886 cannot be determined.

The companion bill, SB 1535 by Watson, was reported favorably, without amendment, by the Senate Finance committee on April 11.