

BILL ANALYSIS

Senate Research Center
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S.B. 1535
By: Watson
Finance
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The comptroller of public accounts (comptroller) has administered the Texas Unclaimed Property Program since 1996. The program has traditionally not received unclaimed class action proceeds until recently, when a Corpus Christi judge awarded \$1.25 million to the comptroller after the Office of the Attorney General (OAG) successfully intervened to make sure Texas's unclaimed property laws were followed. Also recently, a San Antonio judge did not award unclaimed class action proceeds to the comptroller because the judge believed that the Property Code was not sufficiently explicit in relation to unclaimed/uncashed class action proceeds. The OAG financial litigation section recommended that the unclaimed property statutes be amended to specifically provide that uncashed class action proceeds are subject to abandonment.

S.B. 1535 states that class action proceeds are presumed abandoned if the proceeds are unclaimed within 90 days of the proceeds being made available, unless a different abandonment period is established by the court or the settlement agreement. It also clarifies definitions for owners of unclaimed property and allows the comptroller to challenge the validity of a receivership order.

As proposed, S.B. 1535 amends current law relating to unclaimed property.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter B, Chapter 72, Property Code, by adding Section 72.1025, as follows:

Sec. 72.1025. CLASS ACTION PROCEEDS. (a) Defines, in this section, "class action proceeds" and "holder."

(b) Provides that class action proceeds are presumed abandoned if the proceeds are unclaimed on or before the 90th day after the date the proceeds were made payable and available to the members of the class, unless a different abandonment period is established by the court or the settlement agreement.

(c) Requires a holder, notwithstanding Sections 74.101(a) (relating to property report to comptroller) and 74.301(a) (relating to delivery of property), to deliver class action proceeds, accompanied by a property report under Section 74.101, to the comptroller of public accounts (comptroller) not later than the 60th day after the date the proceeds are presumed abandoned.

(d) Provides that Sections 74.1011 (Notice by Property Holder Required) and 74.103 (Retention of Records) do not apply to a holder under this section.

(e) Provides that to the extent this section conflicts with any other law, this section controls.

SECTION 2. Amends Section 74.501, Property Code, by amending Subsections (d) and (e) and adding Subsections (d-1) and (e-1), as follows:

(d) Authorizes the comptroller, on receipt of a claim form and all necessary documentation and as may be appropriate under the circumstances, to approve the claim of certain persons including:

(6) if the reported owner is an active corporation:

(A) the president of the corporation or chair or officer of the board of directors of the corporation, on behalf of the corporation;

(B) any person who is legally authorized by the corporation, through the corporation's bylaws or a resolution of the corporation's board of directors, rather than any person who has legal authority, to act on behalf of the corporation; or

(C) the corporation's bankruptcy trustee or other person under current appointment by the bankruptcy court to manage the corporation's bankruptcy estate, if the corporation is or has been a debtor in bankruptcy;

(7) if the reported owner is a domestic entity, as defined by Section 1.002 (Definitions), Business Organizations Code, rather than a corporation, that has been dissolved, terminated as provided by Section 11.251 (Termination of Filing Entity by Secretary of State) of that code, or liquidated or is a foreign entity, as defined by Section 1.002 of that code, whose registration to transact business in this state has been revoked:

(A) the sole surviving shareholder or owner of the entity, rather than corporation, if there is only one surviving shareholder or owner;

(B) the surviving shareholder or owners of the entity, rather than corporation, in proportion to their ownership of the entity, if there is more than one surviving shareholder. Makes a conforming change;

(C) the entity's bankruptcy trustee or other person under current appointment by the bankruptcy court to manage the entity's bankruptcy estate;

(D) a receiver appointed for a domestic entity by a court under Section 11.404 (Appointment of Receiver to Rehabilitate) or 11.405 (Appointment or Receiver to Liquidate Domestic Entity; Liquidation), Business Organizations Code, or other law, except a receiver described by Subsection (e), rather than the court-ordered receiver for the corporation; or

(E) a receiver appointed for a foreign entity by a court under Section 11.410 (Receivership for all Property and Business of Foreign Entity), Business Organizations Code, or other law, except a receiver described by Subsection (e); or

(8) any other person authorized, rather than that is entitled, to receive the unclaimed property under rules adopted by the comptroller, rather than under other law or comptroller policy.

(d-1) Defines, in Subsection (d)(6), "active corporation."

(e) Prohibits the comptroller, notwithstanding Subsection (d), except as provided by Subsection (f) (relating to claim for child support arrearages), from paying to the following persons a claim to which this section applies:

(1) a creditor, a judgment creditor, a lienholder, or an assignee of the reported owner or of the owner's heirs;

(2) a person holding a power of attorney from the reported owner or the owner's heirs; or

(3) a receiver, agent, assignee, representative, or other person acting on behalf of a person described by Subdivision (1).

(e-1) Authorizes the comptroller to challenge the validity of a receivership order in the court that issued the order or in a district in Travis County.

SECTION 3. (a) Makes application of Section 72.1025, Property Code, as added by this Act, prospective.

(b) Makes application of Section 74.501, Property Code, as amended by this Act, prospective.

SECTION 4. Effective date: upon passage or September 1, 2011.