

BILL ANALYSIS

Senate Research Center
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H.B. 3598
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Business & Commerce
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 3598 amends current law relating to certain unclaimed property that is presumed abandoned.

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 Section 72.101(a), Property Code, as follows:

(a) Provides that, except as provided by this section (Personal Property Presumed Abandoned) and Sections 72.1015 (Unclaimed Wages), 72.1016 (Stored Value Card), 72.1017 (Utility Deposits), 72.102 (Traveler's Check and Money Order), and 72.104 (Tangible Personal Property Held by County), personal property is presumed abandoned if, for longer than three years:

(1) the location of the owner of the property, rather than the existence and location of the owner of the property, is unknown to the holder of the property; and

(2) makes no changes to this subdivision.

SECTION 2. Amends Section 74.001(a), Property Code, as follows:

(a) Provides that, except as provided by Subsection (b), this chapter (Report, Delivery, and Claims Process) applies to property, rather than providing that this chapter applies to a holder of property, that is presumed abandoned under Chapter 72 (Abandonment of Personal Property), Chapter 73 (Property Held by Financial Institutions), or Chapter 75 (Texas Minerals).

SECTION 3. Amends Section 74.103(b), Property Code, as follows:

(b) Requires the record, without regard to whether the property is reported in the aggregate, to be kept for 10 years from the later of the date on which the property is reportable or the date the report is filed, rather than requiring the record to be kept for 10 years from the date on which the property is reportable regardless of whether the property is reported in the aggregate under Section 74.101 (Property Report).

SECTION 4. Amends Subchapter B, Chapter 74, Property Code, by adding Sections 74.105 and 74.106, as follows:

Sec. 74.105. COMBINED REPORTING. (a) Defines "affiliated group" and "controlling interest" for purposes of this section.

(b) Requires a holder that is required to file a property report under this chapter, if the holder is a member of an affiliated group, to file one report for the affiliated group.

Sec. 74.106. CONTINUING REPORTING REQUIREMENT. (a) Requires a person who is required to file a property report under Section 74.101 in any year to file a property report in each successive year.

(b) Requires a person required to file a property report under this section, if the person is not holding any property that is reportable under this chapter, to certify that fact.

SECTION 5. Amends Subchapter C, Chapter 74, Property Code, by adding Section 74.206, as follows:

Sec. 74.206. ADVERTISING AND PROMOTION. Authorizes the comptroller of public accounts of the State of Texas (comptroller) to advertise or otherwise promote the unclaimed property program in any available media to further the purposes of this title (Unclaimed Title) and to provide effective and efficient notice to reported owners.

SECTION 6. Amends Section 74.401(a), Property Code, as follows:

(a) Authorizes, rather than requires, the comptroller, except as provided by Section 74.404 (Sale of Military Awards and Decorations Prohibited), to sell at public sale any personal property, rather than except as provided by Subsection (c) (relating to providing that the comptroller is not required to offer property for sale if the property belongs to a person with an address outside this state or the comptroller determines that the probable cost of the sale of the property exceeds its value) or Section 74.404, to sell at public sale any rather than all personal property, other than money and marketable securities, delivered to the comptroller in accordance with Section 74.301 (Delivery of Property to Comptroller), authorizes, rather than requires, the comptroller to conduct the sale at the location and in the manner that the comptroller determines affords the most favorable market for the particular property, rather than in the city in this state that the comptroller determines affords the most favorable market for the particular property.

SECTION 7. Amends Sections 74.501(d) and (e), Property Code, 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:

(1)–(2) makes no changes to these subdivisions;

(3) if the reported owner died intestate:

(A) makes no changes to this paragraph; or

(B) the court-appointed administrator of the owner's estate, if the administrator was appointed before the fourth anniversary of the date of the death of the owner, rather than the court-appointed administrator of the owner's estate; or

(4)–(8) makes no changes to these subdivisions.

(e) Prohibits the comptroller, except as provided by Subsection (f), from paying to the following persons a claim to which this section applies:

(1)–(2) makes nonsubstantive changes to these subdivisions; or

(3) a person attempting to make a claim on behalf of a corporation that was previously forfeited, dissolved, or terminated, if the comptroller finds that:

(A) the corporation was revived for the purpose of making a claim under this section; and

(B) the person submitting the claim was not an authorized representative of the corporation at the time of the corporation's forfeiture, dissolution, or termination.

SECTION 8. Amends Section 74.702, Property Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Authorizes the comptroller, the Texas attorney general (attorney general), or an authorized agent of either, for purposes of the application and enforcement of this title, to at any reasonable time and place, examine the books and records of any person to determine whether the person has complied with this title, rather than authorizing the comptroller, the attorney general, or an authorized agent of either, at any reasonable time, to enforce this chapter (Report, Delivery, and Claims Process) and to determine whether reports have been made as required by this chapter, to examine the books and records of any holder.

(c) Provides that Subsection (a) applies to any books, records, papers, information, or other objects determined by the comptroller or attorney general to be necessary to conduct a complete examination under this title.

SECTION 9. Amends Subchapter H, Chapter 74, Property Code, by adding Section 74.7021, as follows:

Sec. 74.7021. LIMITATION PERIOD FOR EXAMINATION. (a) Prohibits the comptroller or attorney general from beginning an examination relating to the reporting, payment, or delivery of property under this chapter after the seventh anniversary of the date a person filed a property report under this title.

(b) Provides that the limitation provided by this section does not apply if:

(1) the person has filed a false or fraudulent property report with the intent to avoid delivery of property as required by this title;

(2) a property report for a period has not been filed; or

(3) a court grants a petition to compel the person to submit to an examination under this chapter, deliver property, or file a property report.

(c) Provides that, for purposes of Subsection (b)(1), a person is presumed to have acted with intent to avoid delivery of property as required by this title if, after correction of a report, the amount of property to be delivered under this title exceeds the amount initially reported by at least 25 percent.

SECTION 10. Amends Section 74.704, Property Code, as follows:

Sec. 74.704. ASSISTANCE IN ENFORCEMENT. (a) Creates Subsection (b) from existing text. Requires the attorney general, if the comptroller requests, to assist the comptroller in enforcing this title.

(b) Requires the state auditor, banking commissioner, securities commissioner, commissioner of insurance, savings and mortgage lending commissioner, Credit Union Commission, Department of Public Safety of the State of Texas (DPS), or Texas Workforce Commission, a district or county attorney, or any other state agency or political subdivision of this state, if the comptroller or the attorney

general requests, to assist the comptroller or attorney general in enforcing this title, rather than requiring the State Auditor, Banking Commissioner of Texas, securities commissioner, commissioner of insurance, savings and mortgage lending commissioner, Credit Union Commission, DPS, or any district or county attorney, if the comptroller or the attorney general requests, to assist the comptroller or attorney general in enforcing this title.

(c) Prohibits a state agency or political subdivision, notwithstanding any other law, from imposing a charge for providing a copy of public information requested by the comptroller under this section.

SECTION 11. Amends Amends Section 74.709(a), Property Code, as follows:

(a) Creates Subdivisions (1)–(2) from existing text and makes nonsubstantive changes. Requires the attorney general, on request of the comptroller, to bring an action in district court, in the name of the state, to compel a person, rather than to compel a holder, to:

(1) permit examination of records in accordance with this chapter; or

(2)–(3) makes nonsubstantive changes to these subdivisions.

SECTION 12. Amends Subchapter H, Chapter 74, Property Code, by adding Sections 74.711 and 74.712, as follows:

Sec. 74.711. **AUTHORITY TO TAKE TESTIMONY AND ISSUE ADMINISTRATIVE SUBPOENAS.** (a) Authorizes the comptroller, to enforce this title, to:

(1) take testimony;

(2) administer oaths; and

(3) issue subpoenas to compel any person to:

(A) appear and give testimony under oath at a time and place reasonable under the circumstances; or

(B) produce relevant books, records, documents, or other data, in whatever form, for audit, inspection, and copying.

(b) Authorizes the comptroller to delegate the authority granted under this section to take testimony, administer oaths, and issue subpoenas to an attorney employed by the comptroller.

(c) Authorizes a person authorized to serve process under the Texas Rules of Civil Procedure to serve a subpoena issued under this section. Requires the person to serve the subpoena in accordance with the Texas Rules of Civil Procedure.

Sec. 74.712. **ENFORCEMENT OF SUBPOENAS.** (a) Requires the attorney general, if the person to whom a subpoena is directed under Section 74.711 fails to comply with the subpoena, or fails to file a motion to quash or otherwise demand a pre-compliance review of the subpoena, within the return date specified in the subpoena, to, on the request of the comptroller, bring suit to enforce the subpoena. Authorizes the suit to be brought in a district court of Travis County.

(b) Requires a court that determines that the subpoena was issued in good faith to order compliance with the subpoena. Authorizes the court to apply penalties for civil and criminal contempt otherwise available at law if a person refuses to comply with the court's order.

SECTION 13. Repealer: Section 74.401(c) (relating to providing that the comptroller is not required to offer property for sale if the property belongs to a person with an address outside this state or the comptroller determines that the probable cost of the sale of the property exceeds its value), Property Code.

SECTION 14. Provides that the limitation provided by Section 74.7021, Property Code, as added by this Act, applies only to an examination commenced on or after the effective date of this Act. Provides that an examination commenced before the effective date of this Act is governed by the law in effect on the date the examination commenced, and the former law is continued in effect for that purpose.

SECTION 15. Effective date: upon passage or September 1, 2019.