

BILL ANALYSIS

Senate Research Center

S.B. 700
By: Armbrister
State Affairs
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As Filed

DIGEST

Currently, the office of the state Treasurer was abolished and all powers, duties, obligations, rights, and contracts transferred to the comptroller of public accounts (comptroller). The comptroller became the administrator for property collected under Chapters 71 through 75, Property Code. The comptroller is authorized to collect all unclaimed property due citizens of the state under the unclaimed property laws, and to locate rightful owners and return their property. The Property Code relating to unclaimed property is unclear. Additionally, the civil and criminal violation sections overlap and, as a result, criminal intent is needed before civil penalties may be enforced. This bill would clarify the provision of the Property Code as it relates to unclaimed property. Additionally, this bill would clarify the sections relating to civil and criminal sanctions to ensure that intent is not necessary to bring a civil action relating to unclaimed property.

PURPOSE

As proposed, S.B. 700 clarifies the provision of the Property Code relating to unclaimed property. Additionally, S.B. 700 clarifies the sections relating to civil and criminal sanctions to ensure that intent is not necessary to bring a civil action under the Property Code sections relating to unclaimed property.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the comptroller in SECTIONS 2, 20, 28, 29 and 49 (Sections 4 and 5, Article 4.08, Insurance Code; and Sections 74.103(c), 74.3011(e), 74.3012(e) and 74.701, Property Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Repealer: Section 571.030, Government Code (State Ethics Fund), to conform to Section 11.04, Chapter 4, Acts of 71st Legislature, 1st Called Session, 1991 (S.B. 3).

SECTION 2. Amends Sections 4-12, and 14-16, Article 4.08, Insurance Code, to conform to Section 11.04, Chapter 4, Acts of the 71st Legislature, Regular Session, 1995, and to Chapter 992, Acts of the 74th Legislature, Regular Session, 1995, as follows:

Section 4. Requires every such life insurance company on or before the first day of November of each year to make a report in writing to the state comptroller, rather than the state treasurer of Texas of all unclaimed funds. Makes conforming changes.

Section 5. Provides that the publication requirements of Chapter 74, Property Code, apply to this article. Deletes provisions relating to publication requirements. Makes conforming changes.

Sections 6-7. Makes conforming changes.

Section 8. Requires a life insurance company to be indemnified from the unclaimed money received under Chapter 74, Property Code, rather than from the unclaimed money fund established under Section 74.601, or any other statute requiring the delivery of unclaimed property to the comptroller, against any liability of claim. Makes conforming changes.

Section 9. Requires the comptroller, rather than the treasurer, to deposit any unclaimed funds from certain life insurance companies in the general revenue fund, rather than the unclaimed money fund established by Section 74.601, Property Code. Authorizes unclaimed money received under Chapter 74, Property Code, or another statute requiring the delivery of unclaimed money to the comptroller to be appropriated by the legislature to enforce and administer this article. Makes conforming changes.

Sections 10-12. Makes conforming changes.

Section 14. Requires the enforcement provisions of Chapter 74, Property Code, to apply to this article. Deletes provisions relating to enforcement of this article.

Sections 15-16. Makes conforming changes.

SECTION 3. Amends Section 117.002, Local Government Code, as follows:

Section 117.002. New heading: TRANSFER OF UNCLAIMED FUNDS TO STATE COMPTROLLER. Makes conforming changes.

SECTION 4. Amends Section 381.004, Local Government Code, to conform to Section 11.04, Chapter 4, Acts of the 71st Legislature, Regular Session, 1995, and to Chapter 992, Acts of the 74th Legislature, Regular Session, by adding Subsection (e), to authorize unclaimed money amounts received by the comptroller under Chapter 74, Property Code, to be appropriated by the legislature for a county to carry out a program created pursuant to this section. Requires funds appropriated to be available upon request each fiscal year. Prohibits such funds from exceeding a certain amount. Requires the comptroller to transfer the requested funds after deducting funds sufficient to pay anticipated expenses and claims.

SECTION 5. Amends Section 71.101(a), Property Code, to make a conforming change.

SECTION 6. Amends Section 71.103(c), Property Code, to make a conforming change.

SECTION 7. Amends Section 71.301(c), Property Code, to make conforming changes.

SECTION 8. Amends Section 71.304(a), Property Code, to make a conforming change.

SECTION 9. Amends Sections 72.102(b) and (c), Property Code, to provide that a traveler's check is presumed to be abandoned on the latest of the 15th anniversary of the date on which the issuer of the check last received from the owner of the check communication, rather than written communication, concerning the check. Makes a conforming change.

SECTION 10. Amends Section 72.103, Property Code, to prohibit, notwithstanding any other provision of law under this title, a holder of abandoned property at any time from transferring or converting the property to the profits or assets of the holder, or otherwise reducing the original value of the property as of the date of the last transaction or contact. Makes conforming changes.

SECTION 11. Amends the heading of Chapter 73, Property Code, as follows:

CHAPTER 73.

New heading: PROPERTY HELD BY FINANCIAL INSTITUTIONS

SECTION 12. Amends Sections 73.001(a), (c) and (d), Property Code, to redefine "account" and "owner," and to define "check." Provides that any property, other than a check, among others, held by a depository is subject to the abandonment provisions of Chapter 72. Makes conforming changes.

SECTION 13. Amends Section 73.002, Property Code, to provide that a depository includes, among others, a credit union.

SECTION 14. Amends Section 73.003, Property Code, to prohibit a depository, at any time by any procedure, from transferring, converting, or reducing certain accounts or the contents of certain deposit boxes to the profits or assets of the depository as of the date the accounts or safe deposit boxes become inactive. Deletes a provision relating to an inactive safe deposit box. Provides that this section does not affect the provisions of Articles 342-8.101 et seq., V.T.C.S. (Texas Banking Act of 1995). Deletes provisions relating to abandonment of accounts and safe deposit boxes. Makes a conforming change.

SECTION 15. Repealer: Section 73.004, Property Code (Drafts, Checks, & Similar Instruments).

SECTION 16. Amends Section 73.101, Property Code, to provide that a five-year period of inactivity on an account begins on the date of the last transaction or correspondence by the depositor. Provides that a five-year period of inactivity of a safe deposit box begins on the date the rental was due but not paid. Makes conforming changes.

SECTION 17. Amends Chapter 73, Property Code, by adding Section 73.102, as follows:

Sec. 73.102. CHECKS. Sets forth when a check is presumed to be abandoned.

SECTION 18. Amends Sections 74.101(a) and (c), Property Code, to authorize the comptroller to require a holder to report unclaimed property in computer-readable or other format that is prescribed and approved by the comptroller. Requires the property report to include, among other items, the social security number, if known, of the person who appears to be the owner of the property; and a description, rather than a brief description, of the property, the identification number, and a balance of each account, except as provided by Subsection (d), rather than Subsection (e). Deletes a provision requiring the report to include certain deductions. Makes conforming and nonsubstantive changes.

SECTION 19. Amends Section 74.102, Property Code, to make nonsubstantive changes.

SECTION 20. Amends Sections 74.103(a) and (c), Property Code, to make conforming changes.

SECTION 21. Amends Section 74.104, Property Code, to make conforming and nonsubstantive changes.

SECTION 22. Amends Section 74.201, Property Code, to authorize the comptroller to use a method or variety of methods, determined to give the most efficient and effective notification to the reported owners. Requires the notice to be in the county of the property owner's last known address or in the county of the holder's principal place of business, registered office for service, in this state, if the property owner's last known address is unknown. Deletes a provision regarding the use of proceeds from the sale of advertising space in a notice published under this section. Makes conforming and nonsubstantive changes.

SECTION 23. Amends Section 74.202, Property Code, as follows:

Sec. 74.202. New heading: NOTICE FOR ITEM WITH VALUE LESS THAN \$100. Provides that in the notice required by Section 74.201, the comptroller, rather than the treasurer, is not required to publish information regarding an item having a value that is less than \$100, rather than \$50. Makes a conforming change.

SECTION 24. Amends Section 74.203, Property Code, to authorize a notice to be mailed to each person who has been reported with a Texas address and appears to be entitled to the reported property. Provides that the notice requirement will be in accordance with Section 74.201(b), Property Code. Deletes provisions relating to contents of the notice. Makes conforming changes.

SECTION 25. Repealer: Section 74.204, Property Code (Notice That Accounts are Subject to This Chapter).

SECTION 26. Amends Section 74.205, Property Code, to make a conforming change.

SECTION 27. Amends Section 74.301, Property Code, as follows:

Section 74.301. New heading: DELIVERY OF PROPERTY TO THE COMPTROLLER. Makes conforming changes.

SECTION 28. Amends Sections 74.3011(c), (e), and (g), Property Code, to make conforming changes.

SECTION 29. Amends Sections 74.3012(a), (e), and (g), Property Code, to make conforming changes.

SECTION 30. Amends Section 74.304, Property Code, to provide that for purposes of this section, payment or delivery is made in good faith if, among three conditions, the holder delivering the property was not a fiduciary then in breach of trust with respect to the property and had a reasonable basis for believing based on the facts then known to the holder that the property was abandoned or inactive for purposes of this chapter. Makes conforming and nonsubstantive changes.

SECTION 31. Repealer: Section 74.305, Property Code (Suit to Compel Delivery).

SECTION 32. Amends Section 74.306, Property Code, to make conforming changes.

SECTION 33. Amends Section 74.307, Property Code, to require the comptroller to compile and revise each year a list, rather than an alphabetical list, of the names and last known addresses of the owners listed in the reports and the amount credited to each account. Makes conforming changes.

SECTION 34. Amends Section 74.308, Property Code, to make a conforming change.

SECTION 27. Amends Section 74.401, Property Code, to make conforming changes.

SECTION 35. Amends Section 74.402, Property Code, to make a conforming change.

SECTION 36. Amends Section 74.403(b), Property Code, to make a conforming change.

SECTION 37. Amends Section 74.501, Property Code, as follows:

Sec. 74.501. New heading: CLAIM FILED WITH THE COMPTROLLER. Requires a claim to be on a form prescribed by the comptroller. Requires a claim to be submitted according to procedures and containing all information required by the comptroller. Requires the comptroller to consider the validity of each claim filed under this section. Requires the comptroller or the comptroller's authorized agent to approve the claim if the comptroller determines that a claim is valid. Requires the comptroller to pay the claim if a claim is for money and has been approved under this section. Requires the comptroller to deliver the personal property to the claimant unless the comptroller has sold the property. Requires the comptroller to pay to the claimant the proceeds from the sale if the property has been sold under Section 74.401. Deletes previous provisions of Section 74.501.

SECTION 38. Amends Section 74.502, Property Code, as follows:

Sec. 74.502. New heading: CLAIM FILED WITH HOLDER. Requires the comptroller to reimburse the holder for valid claims paid under this section. Requires requests from the holder for reimbursement to which this section applies to be filed in accordance with procedures and on forms prescribed by the comptroller. Delete provisions relating to claims filed with a depository. Makes conforming changes.

SECTION 39. Repealer: Section 74.503, Property Code (Consideration of Claim).

SECTION 40. Amends Section 74.504, Property Code, to make conforming changes.

SECTION 41. Repealer: Section 74.505, Property Code (Payment of Claim).

SECTION 42. Amends Section 74.506(c), Property Code, to delete a provision allowing an appeal under this section to be made by filing suit against the state in the county in which the claimed funds were deposited.

SECTION 43. Amends Section 74.507, Property Code, to prohibit a person or entity who informs a potential claimant and by contract or other written agreement is to receive a percentage of the value of the property from filing or receiving any forms to claim or act on behalf of a claimant. Makes conforming changes.

SECTION 44. Amends Section 74.508, Property Code, to make conforming changes.

SECTION 45. Amends Section 74.509, Property Code, to authorize a handling fee to be deducted from the claim payment amount if the payment is equal to or greater than \$100. Makes conforming changes.

SECTION 46. Amends Section 74.601, Chapter 74G, Property Code, as follows:

SUBCHAPTER G. New heading: UNCLAIMED MONEY

Sec. 74.601 New heading: UNCLAIMED MONEY. Requires the comptroller to maintain records documenting unclaimed money received under this chapter or any other statute requiring the delivery of unclaimed property to the comptroller. Requires the comptroller to deposit to the credit of the general revenue fund certain proceeds, funds, and income. Makes conforming and nonsubstantive changes.

SECTION 47. Amends Section 74.602, Property Code, as follows:

Sec. 74.602. New heading: USE OF FUND. Requires, except as provided by Section 381.004, Local Government Code, rather than Subsection (b), the comptroller to use the unclaimed money received under this chapter or any other statute requiring the delivery of unclaimed property to the comptroller to pay the claims of persons or states establishing ownership of property in the possession of the comptroller. Deletes provisions relating to use of funds by the state treasurer and the attorney general. Makes conforming changes.

SECTION 48. Amends Section 74.603, Property Code, to make conforming and nonsubstantive changes.

SECTION 49. Amends Section 74.701, Property Code, to make a conforming change.

SECTION 50. Amends Section 74.702, Property Code, to make conforming changes.

SECTION 51. Amends Section 74.703(a), Property Code, to make a conforming change.

SECTION 52. Amends Section 74.704, Property Code, to make conforming changes.

SECTION 53. Amends Section 74.705, Property Code, as follows:

Sec. 74.705. New heading: INTEREST. Requires a holder who fails to pay or deliver property within the time prescribed by this chapter to pay to the comptroller interest, at an annual rate of 10 percent, on the property from the date the property should have been paid or delivered until the date the property is actually paid or delivered. Deletes Sections (b)-(e). Makes conforming changes.

SECTION 54. Amends Chapter 74, Property Code, by adding Section 74.706, as follows:

Sec. 74.706. PENALTY ON DELINQUENT PROPERTY. Requires a penalty of five percent of the property due to be imposed on a holder who fails to pay or deliver property

within the time prescribed by this chapter. Requires an additional five percent penalty to be imposed when the holder fails to pay or deliver property within 30 days after the day on which the property is due.

SECTION 55. Amends Chapter 74, Property Code, by adding Section 74.707, as follows:

Sec. 74.707. SETTLEMENT OF PENALTY AND INTEREST. Authorizes the comptroller to settle a claim for a penalty and interest imposed on delinquent property if the comptroller determines that holder has made a good faith effort to comply with Chapters 72 through 75 of this title.

SECTION 56. Amends Chapter 74, Property Code, by adding Section 74.708, as follows:

Sec. 74.708. HOLDER HOLDS PROPERTY IN TRUST. Provides that any holder who holds property presumed abandoned under Chapters 72 through 75 of this title, holds the amount for the benefit of the state on behalf of the missing owners and is liable to the state for the full amount, plus any accrued interest and penalties on the amount held.

SECTION 57. Amends Chapter 74, Property Code, by adding Section 74.709, as follows:

Sec. 74.709. SUIT TO COMPEL DELIVERY OF PROPERTY AND CIVIL PENALTIES. Requires the attorney general to bring an action in the name of the state on request of the comptroller to compel the delivery of the property and/or to compel the filing of a property report by a holder. Provides that venue for a suit under this section is in Travis County district court. Provides that the fact a suit seeks enforcement of this section from more than one holder is not grounds for an objection concerning misjoinder of parties or causes of action. Provides that when introduced into evidence the verified property report is sufficient evidence that the property is abandoned and subject to delivery under this chapter for entry of a judgment transferring custody of the property to the comptroller. Authorizes the attorney general, on behalf of the comptroller, to recover reasonable attorney's fees from the holder. Provides that a holder who fails to pay or deliver property or who fails to file a property report within the time prescribed by this chapter is subject to a civil penalty not to exceed \$100 for each day of violation.

SECTION 58. Amends Chapter 74, Property Code, by adding Section 74.710, as follows:

Sec. 74.710. CRIMINAL VIOLATION. Sets forth the occasions under which a holder commits a Class B misdemeanor under this section.

SECTION 59. Amends Chapter 74, Property Code, by adding Section 74.711, as follows:

Sec. 74.711. ABATEMENT OF PENALTIES AND INTEREST. Authorizes the comptroller to provide for periods of time during which holders of delinquent unclaimed property may report and remit unclaimed property without paying penalties or interest.

SECTION 60. Amends Chapter 75A, Property Code, by adding Section 75.002, as follows:

Sec. 75.002. TRANSFER AND PURCHASE OF MINERAL INTEREST ON MINERAL PROCEEDS. Provides that any person, business or entity purchasing mineral proceeds of an owner whose name has been reported or is reportable to the comptroller, must provide documentation required by the comptroller to substantiate the transfer is executed by the reported owner or the owner's legal agent.

SECTION 61. Amends Section 91.403(c), Natural Resources Code, to make a conforming change.

SECTION 62. Effective date: September 1, 1997.

SECTION 63. Emergency clause.