

BILL ANALYSIS

Senate Research Center

C.S.S.B. 700
By: Armbrister
State Affairs
3-31-97
Committee Report (Substituted)

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, C.S.S.B. 700 clarifies the provision of the Property Code relating to unclaimed property. Additionally, C.S.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 1, 18, 22, 23 and 32 (Sections 4 and 15, 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. Amends Sections 4-12, and 14-16, Article 4.08, Insurance Code, as follows:

Sec. 4. **REPORTS.** 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 comptroller, rather than the state treasurer of Texas of all unclaimed funds. Makes conforming changes.

Sec. 5. **NOTICE; PUBLICATION.** Provides that the publication requirements under Chapter 74C, Property Code, apply to publication of notice under this section. Deletes provisions relating to publication requirements. Makes conforming changes.

Sec. 6. New heading: **PAYMENT TO COMPTROLLER.** Makes conforming changes.

Sec. 7. **CUSTODY OF UNCLAIMED FUNDS IN STATE; INSURERS INDEMNIFIED.** Makes conforming changes.

Sec. 8. **INDEMNIFICATION FOR CLAIMS.** 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.

Sec. 9. FUND ADMINISTRATION. Requires the comptroller, rather than the state 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.

Sec. 10. DETERMINATION AND REVIEW OF CLAIMS. Makes conforming changes.

Sec. 11. PAYMENT OF ALLOWED CLAIMS. Makes conforming changes.

Sec. 12. RECORDS REQUIRED. Makes conforming changes.

Sec. 14. New heading: ENFORCEMENT. Requires this article to be enforced in the manner provided for enforcement of Chapter 74, Property Code, under Subchapter H of that chapter. Deletes provisions relating to enforcement of this article.

Sec. 15. RULES. Makes conforming changes.

Sec. 16. EXAMINATION OF RECORDS. Makes conforming changes.

SECTION 2. Amends Section 117.002, Local Government Code, as follows:

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

SECTION 3. Amends Section 381.004, Local Government Code, by adding Subsection (e), as follows:

(e) Authorizes the legislature to appropriate unclaimed money the comptroller receives under Chapter 74, Property Code, for a county to use in carrying out a program established under this section. Requires the county, to receive money for that purpose for any fiscal year, to request the money for that fiscal year. Prohibits the amount a county may receive under this subsection for a fiscal year from exceeding an amount equal to the value of the capital credits the comptroller receives from an electric cooperative corporation on behalf of the corporation's members in the county requesting the money less an amount sufficient to pay anticipated expenses and claims. Requires the comptroller to transfer the money in response to a request after deducting the amount the comptroller determines to be sufficient to pay anticipated expenses and claims.

SECTION 4. Amends Section 71.101(a), Property Code, to make a conforming change.

SECTION 5. Amends Section 71.103(c), Property Code, to make a conforming change.

SECTION 6. Amends Section 71.301(c), Property Code, to make conforming changes.

SECTION 7. Amends Section 71.304(a), Property Code, to make a conforming change.

SECTION 8. 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 9. Amends Section 72.103, Property Code, to prohibit, notwithstanding any other provision of this title, a holder of abandoned property at any time from transferring or converting to the profits or assets of the holder or from otherwise reducing the value of the property. Provides that for purposes of this section, value is determined as of the date of the last transaction or contact concerning the property. Makes conforming changes.

SECTION 10. Amends the heading of Chapter 73, Property Code, as follows:

CHAPTER 73. New heading: PROPERTY HELD BY
FINANCIAL INSTITUTIONS

SECTION 11. Amends Sections 73.001(a), Property Code, by amending Subdivision (1) and by adding Subdivision (5), to redefine "account," and to define "check."

SECTION 12. Amends Sections 73.001(c) and (d), Property Code, to make conforming changes.

SECTION 13. Amends Sections 73.002 and 73.003, Property Code, as follows:

Sec. 73.002. DEPOSITORY. Provides that a depository includes, among others, a credit union.

Sec. 73.003. New heading: PRESERVATION OF INACTIVE ACCOUNT OR SAFE DEPOSIT BOX. Requires a depository to preserve an account that is inactive and the contents of a safe deposit box, rather than a deposit box, that is inactive. Prohibits the depository, at any time, by any procedure, including the imposition of a service charge, from transferring or converting to the profits or assets of the depository or from otherwise reducing the value of the account or the contents of such a box. Provides that, for purposes of this subsection, value is determined as of the date the account or safe deposit box becomes inactive. Provides that a safe deposit box is inactive if the rental on the box is delinquent. Provides that this section does not affect the provisions of Chapter 8B, Texas Banking Act (Article 342-8.10 et seq., V.T.C.S.). Deletes provisions relating to abandonment of accounts and safe deposit boxes.

SECTION 14. Amends Section 73.101, Property Code, to provide that an account or safe deposit box is presumed abandoned if, among other conditions, the account or safe deposit box has been inactive for at least five years as determined under Subsection (b). Provides that, for the purposes of Subsection (a)(1), an account becomes inactive beginning on the date of the depositor's last transaction or correspondence concerning the account; and a safe deposit box becomes inactive beginning on the date a rental was due but not paid. Deletes a previous provision relating to Subsection (a)(1). Makes a conforming change.

SECTION 15. Amends Chapter 73B, Property Code, by adding Section 73.102, as follows:

Sec. 73.102. CHECKS. Sets forth dates on which a check is presumed to be abandoned.

SECTION 16. Amends Sections 74.101(a) and (c), Property Code, to require each holder who on June 30 holds property that is presumed abandoned under, among other sections, Chapter 512, Acts of the 54th Legislature, 1955, rather than Section 5A (Article 548b, V.T.C.S.), to file a report of that property on or before the following November 1. Authorizes the comptroller to require the report to be in a particular format. Deletes a provision relating to forms. Requires the property report to include, among other items, the name and social security number of each person who appears to be the owner of the property; and a description of the property, rather than a brief description of the property. Deletes a provision requiring the property report to include any deduction made by the holder of the property for a service, maintenance, or other charge, unless fully restored and included in the amount reported. Makes conforming and nonsubstantive changes.

SECTION 17. Amends Section 74.102, Property Code, to make nonsubstantive changes.

SECTION 18. Amends Sections 74.103(a) and (c), Property Code, to make conforming changes.

SECTION 19. Amends Section 74.104, Property Code, to provide that except as provided by Section 74.201, 74.203, or, rather than and, 74.307, a property report filed with the comptroller under Section 74.101 is confidential until the second anniversary of the date the report is filed.

Makes conforming and nonsubstantive changes.

SECTION 20. Amends Sections 74.201-74.203, Property Code, as follows:

Sec. 74.201. New heading: **REQUIRED NOTICE**. Authorizes the comptroller, except as provided by Section 74.202, to use one or more methods as necessary to provide the most efficient and effective notice to each reported owner in the calendar year immediately following the year in which the report required by Section 74.101 is filed. Deletes reference to publication in a newspaper of general circulation. Requires the notice to be provided, rather than published, in the county of the property owner's last known address; or in the county in which the holder has its principal place of business or its registered office for service in this state, if the property owner's last address is unknown. Deletes reference to notice of publication by the state treasurer. Requires the notice to state that the reported property is presumed abandoned and subject to this chapter and to contain the name and city of last known address of the reported owner; a statement that, by inquiry, any person possessing a legal or beneficial interest in the reported property may obtain information concerning the amount and description of the property; and a statement that the person, rather than the owner, may present proof of the claim and establish the person's right to receive the property. Deletes reference to proceeds from the sale of certain advertising space. Makes conforming changes.

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

Sec. 74.203. New heading: **AUTHORIZED NOTICE**. Authorizes 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. Requires the notice under Subsection (a) to conform to the requirements for notice under Section 74.201(b). Deletes the provisions relating to the contents of the notice. Makes conforming changes.

SECTION 21. Amends Sections 74.205 and 74.301, Property Code, as follows:

Sec. 74.205. **CHARGE FOR NOTICE**. Makes conforming change.

Sec. 74.301. New heading: **DELIVERY OF PROPERTY TO COMPTROLLER**. Makes conforming and nonsubstantive changes.

SECTION 22. Amends Sections 74.3011(c), (e), and (g), Property Code, to make conforming changes.

SECTION 23. Amends Sections 74.3012(a), (e), and (g), Property Code, to delete a provision relating to the 1995-1996 fiscal year. Makes conforming changes.

SECTION 24. Amends Sections 74.304 and 74.306-74.308, Property Code, as follows:

Sec. 74.304. **RESPONSIBILITY AFTER DELIVERY**. Requires the holder, under certain circumstances, to be indemnified from unclaimed money received under this chapter or any other statute requiring delivery of unclaimed property to the comptroller against any liability on the claim. Provides 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.

Sec. 74.306. **UNCLAIMED PROPERTY HELD BY FEDERAL GOVERNMENT**. Makes conforming changes.

Section 74.307. LIST OF OWNERS. Requires 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.

Sec. 74.308. PERIOD OF LIMITATION NOT A BAR. Makes a conforming change.

SECTION 25. Amends Sections 74.401 and 74.402, Property Code, as follows:

Sec. 74.401. SALE OF PROPERTY. Makes conforming changes.

Sec. 74.402. NOTICE OF SALE. Makes a conforming change.

SECTION 26. Amends Section 74.403(b), Property Code, to make a conforming change.

SECTION 27. Amends Sections 74.501 and 74.502, Property Code, as follows:

Sec. 74.501. New heading: CLAIM FILED WITH COMPTROLLER. Requires the comptroller to review the validity of each claim filed under this section. Deletes a provision relating to a claim for property or proceeds from the sale of certain property. Requires the comptroller or the comptroller's authorized agent to approve the claim if the comptroller determines that a claim is valid. Deletes a provision relating to a claim for certain inactive property. Requires the comptroller to pay the claim if the claim is for money and has been approved under this section. Requires the comptroller, if a claim is for personal property other than money and has been approved under this section, to deliver the property to the claimant unless the comptroller has sold the property. Requires the comptroller, if the property has been sold under Section 74.401, to pay to the claimant the proceeds from the sale. Requires all claims to which this section applies to be filed in accordance with procedures, contain the information, and be on forms prescribed by the comptroller. Makes a conforming change.

Sec. 74.502. New heading: CLAIM FILED WITH HOLDER. Requires the comptroller to reimburse the holder for valid claims paid under this section. Requires the request from a holder for reimbursement 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 28. Amends Section 74.504, Property Code, to make conforming changes.

SECTION 29. 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 30. Amends Section 74.507-74.509, Property Code, as follows:

Sec. 74.507. FEE FOR RECOVERY. Prohibits a person 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 a form to claim or act on behalf of a claimant. Makes conforming changes.

Sec. 74.508. CLAIM OF ANOTHER STATE TO RECOVER PROPERTY; PROCEDURE. Makes conforming and nonsubstantive changes.

Sec. 74.509. HANDLING FEE FOR PROCESSING UNCLAIMED PROPERTY. Authorizes a handling fee to be deducted from the amount of the claim payment if the payment is at least \$100. Makes a conforming change.

SECTION 31. Amends Chapter 74G, Property Code, as follows:

SUBCHAPTER G. New heading: UNCLAIMED MONEY

Sec. 74.601 New heading: UNCLAIMED MONEY. Requires the comptroller to maintain a record that documents 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.

Sec. 74.602. New heading: USE OF MONEY. 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.

Sec. 74.603. AUDIT; APPROPRIATION. Makes a conforming change.

SECTION 32. Sections 74.701 and 74.702, Property Code, as follows:

Sec. 74.701. RULES. Makes a conforming change.

Sec. 74.702. EXAMINATION OF RECORDS. Makes conforming changes.

SECTION 33. Amends Section 74.703(a), Property Code, to make a conforming change.

SECTION 34. Amends Sections 74.704 and 74.705, Property Code, as follows:

Sec. 74.704. ASSISTANCE IN ENFORCEMENT. Makes conforming and nonsubstantive changes.

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 35. Amends Chapter 74H, Property Code, by adding Sections 74.706-74.710, as follows:

Sec. 74.706. PENALTY. Requires a penalty equal to five percent of the value 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 penalty equal to five percent of the value of the property due to be imposed upon a holder failing to pay or deliver property before the 31st day after the date the property is due.

Sec. 74.707. SETTLEMENT OR ABATEMENT OF PENALTY OR INTEREST. Requires the comptroller to settle a claim for a penalty or interest imposed on delinquent property if the comptroller determines that the holder has made a good faith effort to comply with Chapters 72-75. Authorizes the comptroller to provide for periods during which a holder of delinquent property may report and remit the unclaimed property without paying a penalty or interest.

Sec. 74.708. PROPERTY HELD IN TRUST. Provides that a holder who holds property presumed abandoned under Chapters 72-75 holds the property in trust for the benefit of the state on behalf of the missing owner and is liable to the state for the full value of the property.

Sec. 74.709. SUIT TO COMPEL DELIVERY OF PROPERTY AND CIVIL PENALTIES. Require the attorney general, on request of the comptroller, to bring an action in district court to compel a holder to deliver property or to file a property report. Sets forth venue. Provides

that the fact that 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 the verified property is sufficient evidence that the property is abandoned and subject to delivery under this chapter and for entry of a judgment transferring custody of the property to the comptroller. Authorizes the attorney general to recover reasonable attorney's fees from the holder in addition to recovery of any unclaimed property accrued or a penalty or interest due. Sets forth a civil penalty.

Sec. 74.710. CRIMINAL OFFENSE. Provides that a holder commits a Class B misdemeanor if the holder knowingly violates this chapter, including failing to file a report in accordance with this chapter; failing to pay or deliver property in accordance with this chapter; or refusing to permit examination of records in accordance with this chapter.

SECTION 36. Amends Chapter 75A, Property Code, by adding Section 75.002, as follows:

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

SECTION 37. Amends Section 91.403(c), Natural Resources Code, to make a conforming change.

SECTION 38. Repealers: Section 571.030, Government Code (State Ethics Fund); Sections 73.004, 73.305, and 74.505, Property Code (Drafts, Checks, & Similar Instruments; Notice That Accounts are Subject to this Chapter; Payment of Claim); and Section 74.503, Property Code (Consideration of Claim).

SECTION 39. (a) Makes application of this Act prospective in regard to an offense committed under this Act.

(b) Makes application of this Act prospective in regard to the change in law under Section 74.705, Property Code, as amended by this Act.

(c) Requires the comptroller to transfer to the general revenue fund money in the unclaimed money fund on the effective date of this Act.

SECTION 40. Effective date: September 1, 1997.

SECTION 41. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

SECTION 1.

Amends Sections 4-12 and 14-16, Article 4.08, Insurance Code, originally designated in SECTION 2. Revises suggested changes and makes additional conforming and nonsubstantive changes.

SECTION 2.

Amends Section 117.002, Local Government Code, originally designated in SECTION 3.

SECTION 3.

Amends Section 381.004, Property Code, originally designated in SECTION 4. Revises proposed Subsection (e).

SECTIONS 4-8.

Amends Sections 71.101(a), 71.103(c), 71.301(c), 71.304(a), and 71.102(b) and (c), Property Code, originally designated in SECTIONS 5-9.

SECTION 9.

Amends Section 72.103, Property Code, originally designated in SECTION 10. Revises proposed changes.

SECTION 10.

Amends the heading to Chapter 73, Property Code, originally designated in SECTION 11. Makes nonconforming changes to the proposed changes to the heading.

SECTION 11.

Amends Chapter 73.001(a), Property Code, originally designated in SECTION 12. Revises proposed definitions for "account" and "check." Omits proposed definition of "owner."

SECTION 12.

Amends Chapters 73.001(c) and (d), Property Code, originally designated in SECTION 12.

SECTION 13.

Amends Sections 73.002 and 73.003, Property Code, originally designated in SECTIONS 13 and 14. Revises the heading and proposed changes to Section 73.003, Property Code.

SECTION 14.

Amends Section 73.101, Property Code, originally proposed in SECTION 14. Revises proposed changes.

SECTION 15.

Amends Chapter 73B, Property Code, by adding Section 73.102, originally proposed in SECTION 17. Revises proposed changes.

SECTION 16.

Amends Sections 74.101(a) and (c), Property Code, originally designated in SECTION 18. Revises proposed changes.

SECTION 17.

Amends Sections 74.102, Property Code, originally designated in SECTION 19. Revises proposed nonsubstantive changes.

SECTION 18.

Amends Sections 74.103(a) and (c), Property Code, originally designated in SECTION 20. Revises proposed changes to conform with a revision to Section 74.101(c), Property Code.

SECTION 19.

Amends Section 74.104, Property Code, originally designated in SECTION 21. Revises proposed changes.

SECTION 20.

Amends Sections 74.201-203, Property Code, originally designated in SECTIONS 22-24. Revises proposed changes. Suggests changes to the headings of Section 74.201-74.203.

SECTION 21.

Amends Sections 74.205 and 74.301, Property Code, originally designated in SECTIONS 26 and 27. Makes nonsubstantive changes to Section 74.301, Property Code.

SECTION 22.

Amends Sections 74.011(c), (e), and (g), Property Code, originally designated in SECTION 28.

SECTION 23.

Amends Sections 74.3012(a), (e), and (g), Property Code, originally designated in SECTION 29. Proposes deletion of certain text in Section 74.3012(g).

SECTION 24.

Amends Sections 74.304 and 74.306-74.308, Property Code, originally designated in SECTIONS 30 and 32-34.

SECTION 25.

Amends Sections 74.401 and 74.402, Property Code, originally designated in SECTIONS 27 and 35.

SECTION 26.

Amends Section 74.403(b), Property Code, originally designated in SECTION 36.

SECTION 27.

Amends Section 74.501 and 74.502, Property Code, originally designated in SECTIONS 37 and 38. Revises proposed changes to both sections.

SECTIONS 28-34.

Amends Sections 74.504, 74.506(c), 74.507-74.509, 74.601-74.603, and 74.701-74.705, Property Code, originally designated in SECTIONS 40, 42-53. Revises proposed changes to Sections 74.507, 74.508, 74.601-74.603, and 74.705, Property Code.

SECTION 35.

Amends Chapter 74H, Property Code, by adding Sections 74.706-74.710, originally designated in SECTIONS 54-58. Revises certain proposed provisions. Omits proposed Section 74.711, regarding abatement of penalties and interest, originally proposed in SECTION 59.

SECTION 36.

Amends Chapter 75A, Property Code, by adding Section 75.002, originally designated in SECTION 36. Revises proposed text.

SECTION 37.

Amends Section 91.403(c), Natural Resources Code, originally designated in SECTION 61.

SECTION 38.

Repeals statutes originally repealed in SECTIONS 1, 15, 25, 31, 39, and 41.

SECTION 39.

Sets forth revised proposed session law.

SECTION 40-41.

Sets forth the effective date and the emergency clause originally designated in SECTIONS 62-63.