

## **BILL ANALYSIS**

H.B. 2829  
By: Oliveira  
Business & Industry  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Interested parties raise concerns that the law authorizing the comptroller of public accounts to examine the books and records of a holder of property presumed abandoned does not provide an enforcement mechanism in the event a holder fails to comply. H.B. 2829 seeks to provide for such an enforcement mechanism.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the comptroller of public accounts in SECTION 1 of this bill.

### **ANALYSIS**

H.B. 2829 amends the Property Code to authorize the comptroller of public accounts or the comptroller's designee, in furtherance of the comptroller's authority to examine the books and records of any holder of property presumed abandoned, to take the following actions, at reasonable times and on reasonable prior notice: take testimony; administer oaths; subpoena witnesses; and issue subpoenas or commissions to require any person to appear at the place and time stated in the subpoena or commission and give testimony under oath or produce relevant data, in whatever form, for audit, inspection, and copying as may be relevant or material to the inquiry being made. The bill sets out provisions relating to the exercise of that authority and to whom such a subpoena or commission may be directed. The bill requires the person to whom the subpoena or commission is directed, on receipt of the subpoena or commission, to assemble the witnesses and records requested and be prepared to produce the testimony and records pursuant to the subpoena or commission on the day on which the witnesses and records are to be examined. The bill exempts any person or agent or employee of a person who makes a disclosure of records or gives testimony in good faith reliance on such a subpoena or commission or a court order requiring that the records be disclosed or the testimony be given from liability to any person for the disclosure or testimony. The bill authorizes a person authorized to serve process under the Texas Rules of Civil Procedure to serve a subpoena or commission issued by the comptroller under the bill's provisions and requires the person to serve the subpoena or commission in accordance with those rules. The bill authorizes such a subpoena or commission issued to a third-party recordkeeper to also be served by certified or registered mail to the last known address of that recordkeeper.

H.B. 2829 requires the comptroller, if a subpoena or commission issued under the bill's provisions requires a third-party recordkeeper to give testimony on or related to the production of data with respect to any person other than the recordkeeper, to give notice to that person on or

before the earlier of the third day after the date on which the third-party recordkeeper is served with the subpoena or commission or the 21st day before the date the data is to be examined and sets out provisions related to that notice. The bill prohibits a third-party recordkeeper who is advised that a subpoena or commission has been issued as part of a criminal investigation from informing by any means the holder or any other party identified in the subpoena or commission of the receipt of the subpoena or commission, the contents of the subpoena or commission, or the fact that the holder or other party identified may be or is under criminal investigation.

H.B. 2829 requires the comptroller by rule to establish rates and conditions for payments to reimburse a person, other than the holder or suspected holder of the property presumed abandoned, who is subpoenaed or commissioned to give a deposition or to produce data for specified costs directly incurred in reproducing or transporting the data and sets out provisions relating to those rules. The bill authorizes the comptroller to assess costs reimbursed to a third-party recordkeeper against the property holder if information obtained during the course of the audit, inspection, or investigation contributes to a determination that the holder is not in compliance with the holder's duties under statutory provisions relating to the report, delivery, and claims process for unclaimed property. The bill authorizes the person receiving a subpoena or commission issued under the bill's provisions to petition a district court in Travis County for an order to modify or quash the subpoena or commission or to prohibit disclosure of applicable information before the return date specified on the subpoena or commission.

H.B. 2829 establishes that, if a person to whom the subpoena or commission is directed fails to comply with the subpoena or commission or fails to file a motion to so modify or quash before the return date specified on the subpoena or commission, the subpoena or commission has the force and effect of a court order. The bill authorizes the comptroller acting through the attorney general to bring suit to enforce the subpoena or commission. The bill sets out provisions related to court action on such a suit and grants jurisdiction to a Travis County district court to hear a proceeding under these provisions. The bill authorizes the comptroller to elect to initiate an action under statutory provisions relating to suit to compel delivery of property and civil penalties or to bring charges under statutory provisions relating to certain criminal offenses in addition to bringing suit as provided by the bill.

H.B. 2829 grants to any person who is entitled under the bill to notice of a subpoena or commission the right to intervene in any proceeding with respect to the enforcement of the subpoena or commission and to begin a proceeding to quash the subpoena or commission not later than the 20th day after the date notice is given. The bill authorizes the comptroller to seek to compel compliance with the subpoena or commission in a proceeding to quash and requires a person who begins such a proceeding before the expiration of the period for beginning the proceeding to mail by registered or certified mail a copy of the petition to the recipient of the subpoena or commission and to the comptroller.

#### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2017.