

By: Oliveira

H.B. No. 2829

A BILL TO BE ENTITLED

AN ACT

relating to enforcement of certain unclaimed property laws.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter H, Chapter 74, Property Code, is amended by adding Sections 74.7021 through 74.7026 to read as follows:

Sec. 74.7021. AUTHORITY TO TAKE TESTIMONY AND ISSUE SUBPOENAS AND COMMISSIONS. (a) In addition to the authority to examine and investigate granted under Section 74.702, the comptroller, or the comptroller's designee, in furtherance of that authority, at reasonable times and on reasonable prior notice, may:

(1) take testimony;

(2) administer oaths;

(3) subpoena witnesses; and

(4) issue subpoenas or commissions to require any person to appear at the place and time stated in the subpoena or commission and:

(A) give testimony under oath; or

(B) produce relevant books, records, documents, papers, accounts, or other data, in whatever form, for audit, inspection, and copying as may be relevant or material to the inquiry being made.

(b) A subpoena or commission issued under Subsection (a) may be directed to:

1 (1) a suspected holder;

2 (2) an affiliate, third-party agent, or third-party
3 recordkeeper of a suspected holder;

4 (3) another custodian of relevant information; or

5 (4) any other person the comptroller determines may
6 provide assistance to enforce this chapter.

7 (c) Authority granted under Subsection (a) may be exercised
8 for the purpose of:

9 (1) ascertaining the correctness of any report;

10 (2) obtaining a report in instances in which none has
11 been made;

12 (3) determining whether unclaimed property improperly
13 remains in the possession of any person;

14 (4) collecting all such unclaimed property; and

15 (5) inquiring into any offense connected with the
16 administration or enforcement of this chapter.

17 (d) On receipt of a subpoena or commission under this
18 section, the person to whom the subpoena or commission is directed
19 shall:

20 (1) assemble the witnesses and records requested; and

21 (2) be prepared to produce the testimony and records
22 pursuant to the subpoena or commission on the day on which the
23 witnesses and records are to be examined.

24 (e) Any person, or agent or employee of a person, who makes a
25 disclosure of records or gives testimony under this section in good
26 faith reliance on a subpoena or commission of the comptroller or a
27 court order requiring that the records be disclosed or the

1 testimony be given is not liable to any person for the disclosure or
2 testimony.

3 (f) A person authorized to serve process under the Texas
4 Rules of Civil Procedure may serve a subpoena or commission issued
5 under Subsection (a). The person shall serve the subpoena or
6 commission in accordance with the Texas Rules of Civil Procedure.

7 (g) A subpoena or commission issued under Subsection (a) to
8 a third-party recordkeeper may also be served by certified or
9 registered mail to the last known address of that recordkeeper.

10 Sec. 74.7022. NOTICE TO CERTAIN PERSONS INTERESTED IN
11 SUBPOENA OR COMMISSION. (a) Except as provided by Subsection (d)
12 or (e), if a subpoena or commission issued under Section 74.7021
13 requires a third-party recordkeeper to give testimony on or related
14 to the production of books, records, documents, papers, accounts,
15 or other data with respect to any person other than the third-party
16 recordkeeper, the comptroller shall give notice to that person on
17 or before the earlier of:

18 (1) the third day after the date on which the
19 third-party recordkeeper is served with the subpoena or commission;
20 or

21 (2) the 21st day before the date the data is to be
22 examined.

23 (b) Notice under Subsection (a) must be accompanied by a
24 copy of the subpoena or commission served and contain an
25 explanation of the right of the person to whom the notice is
26 directed to bring a proceeding to quash the subpoena or commission
27 under Section 74.7026.

1 (c) Notice required by this section is sufficient if served
2 in the time and manner provided by this section on the person
3 entitled to notice by certified or registered mail to the last known
4 address of that person or to the last known address of a fiduciary
5 of that person or, in the absence of a last known address, by
6 leaving the notice with the person.

7 (d) Notice is not required under this section if there is
8 reasonable cause to believe that giving the notice may lead a person
9 to attempt to:

10 (1) conceal, destroy, or alter records or assets
11 relevant to the examination;

12 (2) prevent the communication of information by other
13 persons through intimidation, bribery, or collusion; or

14 (3) flee to avoid prosecution, testifying, or
15 production of records.

16 (e) Notice is not required under this section or under other
17 law if:

18 (1) the holder or another party identified in the
19 subpoena or commission is under criminal investigation; and

20 (2) the subpoena or commission has been issued as part
21 of the criminal investigation.

22 (f) A third-party recordkeeper who is advised that a
23 subpoena or commission has been issued as part of a criminal
24 investigation is prohibited from informing by any means the holder
25 or any other party identified in the subpoena or commission of the
26 receipt of the subpoena or commission, the contents of the subpoena
27 or commission, or the fact that the holder or other party identified

1 may be or is under criminal investigation.

2 Sec. 74.7023. REIMBURSEMENT OF THIRD-PARTY COSTS. (a) The
3 comptroller shall by rule establish rates and conditions for
4 payments to reimburse a person, other than a holder or suspected
5 holder, who is subpoenaed or commissioned to give a deposition or to
6 produce books, records, documents, papers, accounts, or other data
7 under Section 74.7021, for specified costs directly incurred in
8 reproducing or transporting the items.

9 (b) Rules adopted under this section may:

10 (1) require presentation of a voucher that is sworn by
11 the person requesting reimbursement and approved by the
12 comptroller; and

13 (2) establish rates for payment of:

14 (A) mileage for going to and returning from the
15 place where the deposition is taken if the place is more than 25
16 miles from the deposed person's place of residence;

17 (B) a fee for each day or part of a day a person is
18 necessarily present as a deponent; or

19 (C) reasonable costs to copy, reproduce, or
20 transport books, records, documents, papers, accounts, or other
21 data required to be produced to the comptroller.

22 (c) The comptroller may assess costs reimbursed to a
23 third-party recordkeeper under this section against a holder if
24 information obtained during the course of the audit, inspection, or
25 investigation contributes to a determination that the holder is not
26 in compliance with the holder's duties under this chapter.

27 Sec. 74.7024. PRE-COMPLIANCE REVIEW. Before the return

1 date specified on a subpoena or commission issued under Section
2 74.7021, the person receiving the subpoena or commission may
3 petition a district court in Travis County for an order to modify or
4 quash the subpoena or commission or to prohibit disclosure of
5 applicable information.

6 Sec. 74.7025. ENFORCEMENT OF SUBPOENAS OR COMMISSIONS. (a)
7 A district court of Travis County has jurisdiction to hear a
8 proceeding brought under this section.

9 (b) If a person to whom a subpoena or commission is directed
10 under Section 74.7021 fails to comply with the subpoena or
11 commission or fails to file a motion under Section 74.7024 before
12 the return date specified on the subpoena or commission:

13 (1) the subpoena or commission has the force and
14 effect of a court order; and

15 (2) the comptroller acting through the attorney
16 general may bring suit to enforce the subpoena or commission.

17 (c) A suit under Subsection (b) may be brought:

18 (1) in a state or a federal district court in which
19 service may be obtained on the person refusing to testify or
20 produce, if the person is within this state; or

21 (2) in the appropriate court of the state having
22 jurisdiction over the person refusing to testify or produce, if the
23 person is outside the state.

24 (d) The burden to prove any challenge to a subpoena or
25 commission issued under Section 74.7021 rests on the person making
26 the challenge.

27 (e) A court that determines that a subpoena or commission

1 was issued in good faith under Section 74.7021 shall order
2 compliance with the subpoena or commission. The court may modify
3 the requirements of a subpoena or commission issued under that
4 section that the court determines are unreasonable. The court may
5 apply penalties for civil and criminal contempt otherwise available
6 at law if a person refuses to comply with the court's order.

7 (f) In addition to bringing suit under this section, the
8 comptroller may elect to initiate an action under Section 74.709 or
9 bring charges under Section 74.710.

10 Sec. 74.7026. RIGHT TO INTERVENE; NOTICE TO SUBPOENA OR
11 COMMISSION RECIPIENT AND TO COMPTROLLER. (a) Any person who is
12 entitled to notice of a subpoena or commission issued under Section
13 74.7021 has the right to intervene in any proceeding with respect to
14 the enforcement of the subpoena or commission and begin a
15 proceeding to quash the subpoena or commission not later than the
16 20th day after the date notice is given.

17 (b) In a proceeding to quash under Subsection (a), the
18 comptroller may seek to compel compliance with the subpoena or
19 commission.

20 (c) If a person begins a proceeding to quash under
21 Subsection (a) with respect to any subpoena or commission issued
22 under Section 74.7021, before the expiration of the period for
23 beginning the proceeding prescribed by Subsection (a), the person
24 shall mail by registered or certified mail a copy of the petition to
25 the recipient of the subpoena or commission and to the comptroller.

26 SECTION 2. This Act does not relieve a holder of any duty or
27 obligation that arose before the effective date of this Act to

1 report or deliver property or to comply with an examination of
2 records authorized under Section 74.702, Property Code. A holder
3 who did not comply with the law in effect before the effective date
4 of this Act remains subject to the applicable provisions for
5 collection, enforcement, and penalties that existed on that date,
6 and those provisions continue in effect for that purpose. On the
7 effective date of this Act the comptroller may exercise the
8 authority granted under this Act to issue and seek enforcement of
9 administrative subpoenas and commissions related to unclaimed
10 property examinations in progress as well as those initiated on or
11 after the effective date of this Act.

12 SECTION 3. This Act takes effect immediately if it receives
13 a vote of two-thirds of all the members elected to each house, as
14 provided by Section 39, Article III, Texas Constitution. If this
15 Act does not receive the vote necessary for immediate effect, this
16 Act takes effect September 1, 2017.