

By: Martinez Fischer

H.B. No. 3598

Substitute the following for H.B. No. 3598:

By: Darby

C.S.H.B. No. 3598

A BILL TO BE ENTITLED

AN ACT

relating to certain unclaimed property that is presumed abandoned.

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

SECTION 1. Section 72.101(a), Property Code, is amended to read as follows:

(a) Except as provided by this section and Sections 72.1015, 72.1016, 72.1017, 72.102, and 72.104, personal property is presumed abandoned if, for longer than three years:

(1) the ~~[existence and]~~ location of the owner of the property is unknown to the holder of the property; and

(2) according to the knowledge and records of the holder of the property, a claim to the property has not been asserted or an act of ownership of the property has not been exercised.

SECTION 2. Section 74.001(a), Property Code, is amended to read as follows:

(a) Except as provided by Subsection (b), this chapter applies to ~~[a holder of]~~ property that is presumed abandoned under Chapter 72, Chapter 73, or Chapter 75.

SECTION 3. Section 74.103(b), Property Code, is amended to read as follows:

(b) Without regard to whether the property is reported in the aggregate, the ~~[The]~~ record must be kept for 10 years from the later of:

1 (1) the date on which the property is reportable; or

2 (2) the date the report is filed~~[, regardless of~~
3 ~~whether the property is reported in the aggregate under Section~~
4 ~~74.101]~~.

5 SECTION 4. Subchapter B, Chapter 74, Property Code, is
6 amended by adding Sections 74.105 and 74.106 to read as follows:

7 Sec. 74.105. COMBINED REPORTING. (a) In this section:

8 (1) "Affiliated group" means a group of one or more
9 entities in which a controlling interest is owned by a common owner,
10 either corporate or noncorporate, or by one or more of the member
11 entities.

12 (2) "Controlling interest" means:

13 (A) for a corporation, more than 50 percent,
14 owned directly or indirectly, of the total voting power of all
15 classes of stock of the corporation;

16 (B) for a partnership, more than 50 percent,
17 owned directly or indirectly, of the capital or profits in the
18 partnership;

19 (C) for a limited liability company, more than 50
20 percent, owned directly or indirectly, of the total membership
21 interest of the limited liability company; and

22 (D) for an association, trust, or other entity,
23 more than 50 percent, owned directly or indirectly, of the
24 beneficial interest in the association, trust, or other entity.

25 (b) If a holder that is required to file a property report
26 under this chapter is a member of an affiliated group, the holder
27 shall file one report for the affiliated group.

1 Sec. 74.106. CONTINUING REPORTING REQUIREMENT. (a) A
2 person who is required to file a property report under Section
3 74.101 in any year shall file a property report in each successive
4 year.

5 (b) If a person required to file a property report under
6 this section is not holding any property that is reportable under
7 this chapter, the person shall certify that fact.

8 SECTION 5. Subchapter C, Chapter 74, Property Code, is
9 amended by adding Section 74.206 to read as follows:

10 Sec. 74.206. ADVERTISING AND PROMOTION. The comptroller
11 may advertise or otherwise promote the unclaimed property program
12 in any available media to further the purposes of this title and to
13 provide effective and efficient notice to reported owners.

14 SECTION 6. Section 74.401(a), Property Code, is amended to
15 read as follows:

16 (a) Except as provided by [~~Subsection (c) or~~] Section
17 74.404, the comptroller may [~~shall~~] sell at public sale any [~~all~~]
18 personal property, other than money and marketable securities,
19 delivered to the comptroller in accordance with Section 74.301.
20 The comptroller may [~~shall~~] conduct the sale at the location and in
21 the manner [~~city in this state~~] that the comptroller determines
22 affords the most favorable market for the particular property.

23 SECTION 7. Sections 74.501(d) and (e), Property Code, are
24 amended to read as follows:

25 (d) On receipt of a claim form and all necessary
26 documentation and as may be appropriate under the circumstances,
27 the comptroller may approve the claim of:

- 1 (1) the reported owner of the property;
- 2 (2) if the reported owner died testate:
- 3 (A) the appropriate legal beneficiaries of the
- 4 owner as provided by the last will and testament of the owner that
- 5 has been accepted into probate or filed as a muniment of title; or
- 6 (B) the executor of the owner's last will and
- 7 testament who holds current letters testamentary;
- 8 (3) if the reported owner died intestate:
- 9 (A) the legal heirs of the owner as provided by
- 10 Sections 201.001 and 201.002, Estates Code; or
- 11 (B) the court-appointed administrator of the
- 12 owner's estate, if the administrator was appointed before the
- 13 fourth anniversary of the date of the death of the owner;
- 14 (4) the legal heirs of the reported owner as
- 15 established by an affidavit of heirship order signed by a judge of
- 16 the county probate court or by a county judge;
- 17 (5) if the reported owner is a minor child or an adult
- 18 who has been adjudged incompetent by a court of law, the parent or
- 19 legal guardian of the child or adult;
- 20 (6) if the reported owner is a corporation:
- 21 (A) the president or chair of the board of
- 22 directors of the corporation, on behalf of the corporation; or
- 23 (B) any person who has legal authority to act on
- 24 behalf of the corporation;
- 25 (7) if the reported owner is a corporation that has
- 26 been dissolved or liquidated:
- 27 (A) the sole surviving shareholder of the

1 corporation, if there is only one surviving shareholder;

2 (B) the surviving shareholders of the
3 corporation in proportion to their ownership of the corporation, if
4 there is more than one surviving shareholder;

5 (C) the corporation's bankruptcy trustee; or

6 (D) the court-ordered receiver for the
7 corporation; or

8 (8) any other person that is entitled to receive the
9 unclaimed property under other law or comptroller policy.

10 (e) Except as provided by Subsection (f), the comptroller
11 may not pay to the following persons a claim to which this section
12 applies:

13 (1) a creditor, a judgment creditor, a lienholder, or
14 an assignee of the reported owner or of the owner's heirs; ~~or~~

15 (2) a person holding a power of attorney from the
16 reported owner or the owner's heirs; or

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

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

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

25 SECTION 8. Section 74.702, Property Code, is amended by
26 amending Subsection (a) and adding Subsection (c) to read as
27 follows:

1 (a) For purposes of the application and enforcement of this
2 title [~~To enforce this chapter and to determine whether reports~~
3 ~~have been made as required by this chapter~~], the comptroller, the
4 attorney general, or an authorized agent of either, may at any
5 reasonable time and place, [~~may~~] examine the books and records of
6 any person to determine whether the person has complied with this
7 title [~~holder~~].

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

12 SECTION 9. Subchapter H, Chapter 74, Property Code, is
13 amended by adding Section 74.7021 to read as follows:

14 Sec. 74.7021. LIMITATION PERIOD FOR EXAMINATION. (a) The
15 comptroller or attorney general may not begin an examination
16 relating to the reporting, payment, or delivery of property under
17 this chapter after the seventh anniversary of the date a person
18 filed a property report under this title.

19 (b) The limitation provided by this section does not apply
20 if:

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

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

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

1 file a property report.

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

7 SECTION 10. Section 74.704, Property Code, is amended to
8 read as follows:

9 Sec. 74.704. ASSISTANCE IN ENFORCEMENT. (a) If the
10 comptroller requests, the attorney general shall assist the
11 comptroller in enforcing this title.

12 (b) If the comptroller or the attorney general requests, the
13 state auditor [State Auditor], banking commissioner [Banking
14 Commissioner of Texas], securities commissioner, commissioner of
15 insurance, savings and mortgage lending commissioner, Credit Union
16 Commission, Department of Public Safety of the State of Texas, or
17 Texas Workforce Commission, a [or any] district or county attorney,
18 or any other state agency or political subdivision of this state
19 shall assist the comptroller or attorney general in enforcing this
20 title.

21 (c) Notwithstanding any other law, a state agency or
22 political subdivision may not impose a charge for providing a copy
23 of public information requested by the comptroller under this
24 section.

25 SECTION 11. Section 74.709(a), Property Code, is amended to
26 read as follows:

27 (a) On request of the comptroller, the attorney general

1 shall bring an action in district court, in the name of the state,
2 to compel a person [~~holder~~] to:

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

5 (2) deliver property; or

6 (3) [~~to~~] file a property report.

7 SECTION 12. Subchapter H, Chapter 74, Property Code, is
8 amended by adding Sections 74.711 and 74.712 to read as follows:

9 Sec. 74.711. AUTHORITY TO TAKE TESTIMONY AND ISSUE
10 ADMINISTRATIVE SUBPOENAS. (a) To enforce this title, the
11 comptroller may:

12 (1) take testimony;

13 (2) administer oaths; and

14 (3) issue subpoenas to compel any person to:

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

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

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

23 (c) A person authorized to serve process under the Texas
24 Rules of Civil Procedure may serve a subpoena issued under this
25 section. The person shall serve the subpoena in accordance with the
26 Texas Rules of Civil Procedure.

27 Sec. 74.712. ENFORCEMENT OF SUBPOENAS. (a) If the person

1 to whom a subpoena is directed under Section 74.711 fails to comply
2 with the subpoena, or fails to file a motion to quash or otherwise
3 demand a pre-compliance review of the subpoena, within the return
4 date specified in the subpoena, the attorney general shall, on the
5 request of the comptroller, bring suit to enforce the subpoena. The
6 suit may be brought in a district court of Travis County.

7 (b) A court that determines that the subpoena was issued in
8 good faith shall order compliance with the subpoena. The court may
9 apply penalties for civil and criminal contempt otherwise available
10 at law if a person refuses to comply with the court's order.

11 SECTION 13. Section 74.401(c), Property Code, is repealed.

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

18 SECTION 15. This Act takes effect immediately if it
19 receives a vote of two-thirds of all the members elected to each
20 house, as provided by Section 39, Article III, Texas Constitution.
21 If this Act does not receive the vote necessary for immediate
22 effect, this Act takes effect September 1, 2019.