

By: Martinez Fischer

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        (c) The affiliated group is a single entity for purposes of  
2 the application and enforcement of this title.

3        Sec. 74.106. CONTINUING REPORTING REQUIREMENT. (a) A  
4 person who is required to file a property report under Section  
5 74.101 in any year shall file a property report in each successive  
6 year.

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

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

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

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

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

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

27        (d) On receipt of a claim form and all necessary

1 documentation and as may be appropriate under the circumstances,  
2 the comptroller may approve the claim of:

3 (1) the reported owner of the property;

4 (2) if the reported owner died testate:

5 (A) the appropriate legal beneficiaries of the  
6 owner as provided by the last will and testament of the owner that  
7 has been accepted into probate or filed as a muniment of title; or

8 (B) the executor of the owner's last will and  
9 testament who holds current letters testamentary;

10 (3) if the reported owner died intestate:

11 (A) the legal heirs of the owner as provided by  
12 Sections 201.001 and 201.002, Estates Code; or

13 (B) the court-appointed administrator of the  
14 owner's estate, if the administrator was appointed before the  
15 fourth anniversary of the date of the death of the owner;

16 (4) the legal heirs of the reported owner as  
17 established by an affidavit of heirship order signed by a judge of  
18 the county probate court or by a county judge;

19 (5) if the reported owner is a minor child or an adult  
20 who has been adjudged incompetent by a court of law, the parent or  
21 legal guardian of the child or adult;

22 (6) if the reported owner is a corporation:

23 (A) the president or chair of the board of  
24 directors of the corporation, on behalf of the corporation; or

25 (B) any person who has legal authority to act on  
26 behalf of the corporation;

27 (7) if the reported owner is a corporation that has

1 been dissolved or liquidated:

2 (A) the sole surviving shareholder of the  
3 corporation, if there is only one surviving shareholder;

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

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

8 (D) the court-ordered receiver for the  
9 corporation; or

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

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

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

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

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

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

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

27 SECTION 8. Section 74.702, Property Code, is amended by

1 amending Subsection (a) and adding Subsection (c) to read as  
2 follows:

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

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

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

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

21 (b) The limitation provided by this section does not apply  
22 if:

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

26 (2) a property report for a period has not been filed;

27 or

1           (3) a court grants a petition to compel the person to  
2 submit to an examination under this chapter, deliver property, or  
3 file a property report.

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

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

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

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

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

27           SECTION 11. Section 74.709(a), Property Code, is amended to

1 read as follows:

2 (a) On request of the comptroller, the attorney general  
3 shall bring an action in district court, in the name of the state,  
4 to compel a person [~~holder~~] to:

5 (1) permit examination of records in accordance with  
6 this chapter;

7 (2) deliver property; or

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

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

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

14 (1) take testimony;

15 (2) administer oaths; and

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

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

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

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

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



1 Texas Rules of Civil Procedure.

2 Sec. 74.712. ENFORCEMENT OF SUBPOENAS. (a) If the person  
3 to whom a subpoena is directed under Section 74.711 fails to comply  
4 with the subpoena, or fails to file a motion to quash or otherwise  
5 demand a pre-compliance review of the subpoena, within the return  
6 date specified in the subpoena, the attorney general shall, on the  
7 request of the comptroller, bring suit to enforce the subpoena. The  
8 suit may be brought in a district court of Travis County.

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

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

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

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