

By: Zaffirini

S.B. No. 789

A BILL TO BE ENTITLED

AN ACT

relating to the administration of unclaimed property.

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

SECTION 1. Section 551.005(b), Estates Code, is amended to read as follows:

(b) The clerk of a court that orders an executor or administrator to pay funds to the comptroller under Section 551.001 shall provide to ~~[serve on]~~ the comptroller, by certified mail or e-mail ~~[personal service of citation]~~, a certified copy of the court order not later than the fifth day after the date the order is issued.

SECTION 2. Section 1109.013(c), Insurance Code, is amended to read as follows:

(c) An insurer shall report and deliver unclaimed proceeds to the comptroller as required by Chapter 74, Property Code ~~[Section 1109.051]~~.

SECTION 3. Section 72.001, Property Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) Tangible or intangible personal property is not subject to this chapter if it is:

(1) a worthless or non-freely transferable security;

or

(2) a firearm.

SECTION 4. Section 74.001(a), Property Code, is amended to

1 read as follows:

2 (a) Except as provided by this section [~~Subsection (b)~~],
3 this chapter applies to:

4 (1) property that is presumed abandoned under Chapter
5 72, Chapter 73, or Chapter 75;

6 (2) property that is presumed abandoned under Chapter
7 154, Finance Code;

8 (3) unclaimed proceeds under Chapter 1109, Insurance
9 Code; or

10 (4) any other law requiring a person to report and
11 deliver property to the comptroller under this chapter.

12 SECTION 5. Section 74.101(a), Property Code, is amended to
13 read as follows:

14 (a) Each holder who on March 1 holds property to which this
15 chapter applies [~~that is presumed abandoned under Chapter 72, 73,~~
16 ~~or 75 of this code or under Chapter 154, Finance Code,~~] shall file a
17 report of that property on or before the following July 1. The
18 comptroller may require the report to be in a particular format,
19 including a format that can be read by a computer.

20 SECTION 6. Sections 74.1011(a), (b), and (b-1), Property
21 Code, are amended to read as follows:

22 (a) Except as provided by Subsection (b), a holder who on
23 March 1 holds property to which this chapter applies that is valued
24 at more than \$250 [~~that is presumed abandoned under Chapter 72, 73,~~
25 ~~or 75 of this code or Chapter 154, Finance Code,~~] shall, not later
26 than the 60th day before the date the property is delivered to the
27 comptroller, provide to the owner by [~~on or before the following May~~

1 ~~17]~~ mail to the last known address of the [~~known~~] owner or by e-mail
2 written notice stating that:

3 (1) the holder is holding the property; and

4 (2) the holder may be required to deliver the property
5 to the comptroller on or before July 1 if the property is not
6 claimed.

7 (b) The notice required under Subsection (a) does not apply
8 to a holder who:

9 (1) has already provided such notice to the owner of
10 the property or a person entitled to the property under existing
11 federal law, rules, and regulations or state law within the time
12 specified under Subsection (a); or

13 (2) does not have a record of a physical or e-mail [~~an~~]
14 address for the property owner or any other person entitled to the
15 property.

16 (b-1) If an owner has designated a representative for notice
17 under Section 72.1021 or 73.103, the holder shall mail or e-mail the
18 written notice required under Subsection (a) to the representative
19 in addition to providing written [~~mailing the~~] notice to the owner.

20 SECTION 7. Section 74.301(a), Property Code, is amended to
21 read as follows:

22 (a) Except as provided by Subsection (c), each holder who on
23 March 1 holds property to which this chapter applies [~~that is~~
24 ~~presumed abandoned under Chapter 72, 73, or 75~~] shall deliver the
25 property to the comptroller on or before the following July 1
26 accompanied by the report required to be filed under Section
27 74.101.

1 SECTION 8. Section 74.401(d), Property Code, is amended to
2 read as follows:

3 (d) If after investigation the comptroller determines that
4 property delivered under this chapter is not marketable or [~~from a~~
5 ~~safe deposit box or other repository~~] has insubstantial commercial
6 value, the comptroller may destroy or otherwise dispose of the
7 property at any time.

8 SECTION 9. Subchapter E, Chapter 74, Property Code, is
9 amended by adding Section 74.405 to read as follows:

10 Sec. 74.405. DISPOSITION OF SECURITIES. (a) The
11 comptroller may sell or otherwise liquidate a security delivered to
12 the comptroller under this chapter.

13 (b) The comptroller may not sell a security listed on an
14 established stock exchange for less than the price prevailing on
15 the exchange at the time of sale. The comptroller may sell a
16 security not listed on an established exchange by any commercially
17 reasonable method.

18 SECTION 10. Sections 74.501(c), (d), and (f), Property
19 Code, are amended to read as follows:

20 (c) All claims to which this subchapter [~~section~~] applies
21 must:

22 (1) identify the specific property in the possession
23 of the comptroller that is being claimed;

24 (2) include all necessary documentation the
25 comptroller may require; and

26 (3) except as provided by Section 74.503, be filed in
27 accordance with procedures, contain the information, and be on

1 forms prescribed by the comptroller.

2 (d) On receipt of a claim form and all necessary
3 documentation the comptroller may require, or ~~[and]~~ as may be
4 appropriate under the circumstances, the comptroller may approve
5 the claim of:

6 (1) the reported owner of the property;

7 (2) if the reported owner died testate:

8 (A) the appropriate legal beneficiaries of the
9 owner as provided by the last will and testament of the owner that
10 has been accepted into probate or filed as a muniment of title; ~~[or]~~

11 (B) the executor of the owner's last will and
12 testament who holds current letters testamentary; or

13 (C) the appropriate legal beneficiaries of the
14 owner as provided by a valid last will and testament of the owner
15 that has not been accepted into probate or filed as a muniment of
16 title, if:

17 (i) the amount of the property being
18 claimed is less than \$10,000; and

19 (ii) the beneficiaries named in the will
20 are the same persons who would inherit the property if the owner had
21 died intestate;

22 (3) if the reported owner died intestate:

23 (A) the legal heirs of the owner as provided by
24 Sections 201.001, ~~[and]~~ 201.002, and 201.003, Estates Code; ~~[or]~~

25 (B) the court-appointed independent
26 administrator of the owner's estate, if the administrator was
27 appointed before the fourth anniversary of the date of the death of

1 the owner; or

2 (C) the court-appointed dependent administrator
3 of the owner's estate;

4 (4) the legal heirs of the reported owner as
5 established by a determination [~~an affidavit~~] of heirship order
6 signed by a judge of the county probate court or by a county judge;

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

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

11 (A) the president or chair of the board of
12 directors of the corporation, on behalf of the corporation; or

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

15 (7) if the reported owner is a corporation that has
16 been dissolved or liquidated:

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

19 (B) the surviving shareholders of the
20 corporation in proportion to their ownership of the corporation, if
21 there is more than one surviving shareholder;

22 (C) the corporation's bankruptcy trustee,
23 bankruptcy estate representative, or other person authorized
24 pursuant to Title 11, United States Code, or an order of a
25 bankruptcy court to act on behalf of or for the benefit of the
26 corporation's bankruptcy estate, or any assignee of any such
27 person; or

1 (D) the court-ordered receiver for the
2 corporation; or

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

5 (f) Notwithstanding Subsection (e), the [The] comptroller
6 may approve the [a] claim of [for]:

7 (1) the attorney general or other Title IV-D agency,
8 as defined by Section 101.033, Family Code, for child support
9 arrearages owed by the reported owner of the property that are [and]
10 reflected in a child support lien notice that complies with Section
11 157.313, Family Code; or

12 (2) a person holding a durable power of attorney of a
13 person who is medically incapacitated. [A claim under this
14 subsection may be submitted by the lienholder or the attorney
15 general on behalf of the lienholder.]

16 SECTION 11. Section 74.501(e), Property Code, as amended by
17 Chapters 267 (S.B. 1420) and 897 (H.B. 3598), Acts of the 86th
18 Legislature, Regular Session, 2019, is reenacted and amended to
19 read as follows:

20 (e) Except as provided by Subsection (d)(7) or (f) or
21 Section 551.051, Estates Code, the comptroller may not pay to the
22 following persons a claim to which this section applies:

23 (1) a creditor, a judgment creditor, a lienholder, or
24 an assignee of the reported owner or of the owner's heirs;

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

27 (3) a person attempting to make a claim on behalf of a

1 corporation that was previously forfeited, dissolved, or
2 terminated, if the comptroller finds that:

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

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

8 SECTION 12. Subchapter F, Chapter 74, Property Code, is
9 amended by adding Section 74.503 to read as follows:

10 Sec. 74.503. WAIVER OF CLAIM REQUIREMENT. The comptroller
11 may waive the requirement of filing a claim and pay or deliver
12 property directly to a person who does not file a claim if:

13 (1) the person receiving the property is the reported
14 owner of the property;

15 (2) the comptroller reasonably believes the person is
16 entitled to receive the property or payment; and

17 (3) the property has a value of less than \$5,000.

18 SECTION 13. Sections 74.506(a) and (b), Property Code, are
19 amended to read as follows:

20 (a) A person who has filed a claim that complies with
21 Section 74.501(c) may appeal ~~[aggrieved by]~~ the decision of the
22 comptroller on the [a] claim ~~[filed under this subchapter may~~
23 ~~appeal the decision]~~ before the 61st day after the day on which it
24 was rendered.

25 (b) If a claim that complies with Section 74.501(c) has not
26 been decided before the 91st day after the day on which it was
27 filed, the claimant may file an appeal if, after the claimant

1 provides notice by certified mail to the comptroller of the intent
2 to file an appeal, the comptroller does not reach a decision on the
3 claim on or before the 60th day after the date the notice is
4 delivered to the comptroller. An appeal under this section must be
5 made within one year of the date the claim was filed [~~the 60-day~~
6 ~~period beginning on the 91st day after the day of filing~~].

7 SECTION 14. The heading to Section 74.507, Property Code,
8 is amended to read as follows:

9 Sec. 74.507. ASSISTANCE OF CLAIMANT; FEE FOR RECOVERY.

10 SECTION 15. Section 74.507, Property Code, is amended by
11 amending Subsection (a) and adding Subsection (c) to read as
12 follows:

13 (a) A person who informs a potential claimant that the
14 claimant may be entitled to claim property that is reportable to the
15 comptroller under this chapter, that has been reported to the
16 comptroller, or that is in the possession of the comptroller may not
17 contract for or receive from the claimant for services an amount
18 that exceeds 10 percent of the value of the property recovered, plus
19 reasonable attorney's fees necessary to pursue the claim. If the
20 property involved is mineral proceeds, the amount for services may
21 not include a portion of the underlying minerals or any production
22 payment, overriding royalty, or similar payment.

23 (c) An agreement to assist a claimant in the recovery of
24 property that is reportable to the comptroller, that has been
25 reported to the comptroller, or that is in the possession of the
26 comptroller under this chapter is enforceable only if the
27 agreement:

- 1 (1) clearly states the nature of the property and the
2 services to be provided;
- 3 (2) is signed by or on behalf of the claimant; and
- 4 (3) states the amount or value of the property
5 reasonably expected to be recovered, computed before and after a
6 fee or other compensation has been deducted.

7 SECTION 16. Section 74.601(e), Property Code, is amended to
8 read as follows:

9 (e) The comptroller may [~~on receipt or from time to time may~~
10 ~~sell securities, including stocks, bonds, and mutual funds,~~
11 ~~received under this chapter or any other statute requiring the~~
12 ~~delivery of unclaimed property to the comptroller and] use the
13 proceeds from the sale of securities delivered under this chapter
14 to buy, exchange, invest, or reinvest in marketable securities.
15 When making or selling the investments, the comptroller shall
16 exercise the judgment and care of a prudent person.~~

17 SECTION 17. Section 74.707(a), Property Code, is amended to
18 read as follows:

19 (a) The comptroller may waive any penalty or interest, in
20 whole or in part, imposed on delinquent property if the comptroller
21 determines that the holder has made a good faith effort to comply
22 with Chapters 72-75, or for other good cause.

23 SECTION 18. The following provisions of the Insurance Code
24 are repealed:

- 25 (1) Section 1109.013(d);
- 26 (2) Section 1109.101; and
- 27 (3) Subchapters B and D, Chapter 1109.

1 SECTION 19. Section 1109.013(c), Insurance Code, as amended
2 by this Act, applies only to a report that is due under Chapter 74,
3 Property Code, on or after September 1, 2021.

4 SECTION 20. To the extent of any conflict, this Act prevails
5 over another Act of the 87th Legislature, Regular Session, 2021,
6 relating to nonsubstantive additions to and corrections in enacted
7 codes.

8 SECTION 21. This Act takes effect immediately if it
9 receives a vote of two-thirds of all the members elected to each
10 house, as provided by Section 39, Article III, Texas Constitution.
11 If this Act does not receive the vote necessary for immediate
12 effect, this Act takes effect September 1, 2021.