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SFA



BILL ANALYSIS

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Senate Bill 340 (as enrolled)
Sponsor: Senator Joanne G. Emmons
Senate Committee: Finance
House Committee: Tax Policy

PUBLIC ACT 195 of 1997

Date Completed: 2-25-99

RATIONALE

Article X, Section 4 of the Michigan Constitution requires the procedures relating to escheats and the custody and disposition of escheated property to be prescribed by law. Escheated property is tangible or intangible property that reverts to the State in the absence of legal owners or claimants because the owner died leaving no known heirs, has disappeared or been missing for a continuous period of at least five years, or has abandoned the property. A person may file a claim for redemption of his or her property at any time (even after it has escheated to the State and been disposed of), and the State must keep property (or its equivalent in money) for potential claimants in perpetuity.

From 1947 to 1996, escheated property was handled according to the provisions of the Michigan Code of Escheats. In 1995, the Uniform Unclaimed Property Act (effective April 1, 1996) was adopted and replaced the Michigan Code of Escheats, in order to update the State's escheat procedures and to align them with those of many other states (reportedly 27) that had adopted the same or a similar uniform law. After the Department of Treasury had a year to work with the new Act, it suggested some amendments to help the Department's Abandoned and Unclaimed Property Division administer the Act.

CONTENT

The bill amended the Uniform Unclaimed Property Act to delete requirements that abandoned securities be held for one year or three years before being sold; revise the deadline for reporting property that is presumed abandoned; allow the deadline to be extended if an estimated payment is made; revise requirements for notifying the apparent owner of property presumed abandoned, and for publishing notice; and expand requirements for filing a verified report. The bill also repealed a section of the Act that limited the number of

employees hired in the Abandoned and Unclaimed Property Division of the Department of Treasury and provided for the hiring of independent contractors. The bill is described in more detail below.

Reporting

The Act generally provides that all property that is unclaimed for more than five years is presumed abandoned and subject to the custody of the State; the Act also provides for the abandonment of specific types of property. A person holding property presumed abandoned must report to the administrator (the State Treasurer) concerning the property.

Previously, a report had to be filed by December 31 of each year for the 12-month period ending on the preceding June 30. The bill changed the filing deadline to November 1. The Act permits the administrator to postpone the filing date upon a person's request. The bill also permits the administrator to extend the filing date for up to 60 days after the deadline if an estimated payment is paid by the deadline for the 12-month period ending on the preceding June 30. Remittance of an estimated payment without a report by the deadline will be considered a request for extension. A request for extension of time to file a report will not be a request for an extension of time to remit payments. Interest and penalties will not accrue during the extension period against a person who remits an estimated payment. The administrator must determine how estimated payments will be remitted.

The Act provided that, not more than 120 days before filing the required report, the holder in possession of property presumed abandoned had to send the apparent owner written notice that the holder was in possession of the property, if the following requirements were met: the holder had

an address for the apparent owner that the holder's records did not disclose to be inaccurate, the claim of the apparent owner was not barred by the statute of limitations, and the property had a value of \$50 or more. The bill requires the holder to send the notice not less than 60 days or more than 365 days before filing a report. In addition, the holder must send notice if the property has a value of at least \$50 or, if the holder is reporting for the current report year at least 25,000 properties over \$50 each, the property has a value of \$100 or more. The requirements concerning an owner's address and the statute of limitations also must be met.

Previously, under the Act, the administrator had to have notice published by June 1 of the year following the required report in a newspaper of general circulation in the county containing the last known address of any person named in the notice. If no address was listed or if the address was outside of Michigan, the notice had to be published in the county in which the holder of the property had its principal place of business within this State. The bill requires the notice to be published by November 1, rather than June 1, and deletes a requirement that the notice be published at least once a week for two consecutive weeks. If no address is listed or if the address is outside of Michigan, the notice must be published in the county in which the holder has its principal place of business within this State or another county as determined by the administrator.

The Act provides that the administrator may require a person who has not filed a report to file a verified report stating whether the person is holding any unclaimed property reportable or deliverable under the Act. Under the bill, the administrator also may require a verified report from a person whom the administrator believes has filed an inactive, incomplete, or false report. A verified report must be in a form specified by the administrator. The report must state whether the person is holding any unclaimed property reportable or deliverable under the Act, describe unclaimed property not previously reported or about which the administrator has inquired, and specifically identify and state the amounts of property that may be in issue.

Under the Act, a person who is required to file a report must at the time for filing pay or deliver to the administrator all abandoned property that is required to be reported. The bill requires a person to pay or deliver all abandoned property or any balance owing if an estimated payment is made.

The Act permits the administrator to examine a person's records to determine whether the person has complied with the Act. The bill also provides that the administrator may contract with any other person to conduct the examination on behalf of the administrator.

Abandoned Securities

The Act generally required the administrator, within three years after receiving abandoned property, to sell it to the highest bidder at public sale. Unless the administrator considered it to be in the best interest of the State to do otherwise, all securities (except stock or other intangible ownership interest in a business association) had to be held for at least one year before they were sold. Stock and other intangible interest in a business association had to be held at least three years before being sold. If these securities were sold before the three-year period expired, anyone making a claim under the Act before the end of the period was entitled to either the proceeds of the sale or the market value of the securities at the time the claim was made, whichever was greater, minus certain costs. A person making a claim after the three-year period expired was entitled to receive either the securities or the proceeds of the sale, minus costs.

The bill deleted the requirements that the administrator hold securities for at least one year or at least three years. Under the bill, unless the administrator considers it to be in the best interest of the State to do otherwise, all securities presumed abandoned and delivered to the administrator must be sold within one year of their receipt.

Repeal

The bill repealed Section 43 of the Act, which prohibited the administrator and the Department of Treasury from increasing the number of full-time equivalent State employee positions in the Abandoned and Unclaimed Property Division of the Department beyond the number of such positions that existed on December 31, 1995. If additional personnel were needed to administer the Act, the administrator and the Department could hire independent contractors if doing so was more cost effective than hiring State employees; otherwise, additional personnel could be hired as needed. Section 43 also restricted independent contractors' contributions to candidates for State elective office.

MCL 567.231 et al.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The changes in the bill will help the Abandoned and Unclaimed Property Division, in several ways, to administer the provisions of the Uniform Unclaimed Property Act. Previously, all stock and other intangible interests in a business that were presumed abandoned and delivered to the State Treasurer had to be held for at least three years before being sold. In effect, this forced the Department to act as an investor for property that it did not own. This should not be the Department's role. The bill eliminated the three-year requirement and allows the Department to sell stock or other intangible business interests immediately upon delivery after abandonment.

The bill also eliminated the requirement that the State Treasurer publish a notice of abandoned property at least once a week for two weeks in a newspaper of general circulation, but retained a requirement to publish a notice of abandoned property at least once a year. This will allow the Department annually to develop and publish a book listing abandoned property and distribute it statewide.

Previously, the Act prohibited the Department from increasing the number of employees in the Abandoned and Unclaimed Property Division. In effect, this restriction prevented the Department from reacting when it developed a backlog of abandoned property that had to be handled. Eliminating the hiring restriction will give the Department greater flexibility. Further, the Treasurer previously could examine the records of a person to determine if the person had complied with the Act, such as by reporting presumed abandoned property that was subject to the State's custody. The bill allows the Treasurer to contract with another person to conduct an examination on behalf of the Treasurer, thus allowing the Treasurer to use contractors who specialize in tracking down abandoned property.

Legislative Analyst: G. Towne

FISCAL IMPACT

Fiscal information is not available.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.