

Legislative Analysis



ESCHEATS: 5-YEAR LOOK BACK FOR COMMERCIAL ENTITIES

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House Bill 5577 (Substitute H-1)
Sponsor: Rep. Aric Nesbitt
Committee: Commerce

Complete to 5-30-12

A SUMMARY OF HOUSE BILL 5577 AS REPORTED FROM COMMITTEE

The bill would amend the Uniform Unclaimed Property Act. That act establishes a system whereby the state becomes the perpetual custodian of abandoned or unclaimed property until the property owner claims the property (or the value of the property), which the property owner, or an heir, can do at any time. This is sometimes referred to as the escheats process.

Under this act, entities that hold property that has gone unclaimed beyond the statutory dormancy period must report and remit the property to the State Treasurer by July 1 of each year. In enforcing this, the State Treasurer (who is referred to in the act as "the administrator") cannot begin an action or proceeding with respect to the duty of a "holder" more than 10 years after the duty arose. The treasury department can conduct examinations to determine if a person is in compliance. House Bill 5577 would reduce the look-back period to 5 years for the holder of records of transactions between two or more associations as defined under Section 37(a)(2) of the act. That section refers to a business association, a public corporation, or any other commercial entity, including a sole proprietorship.

The act currently requires a "holder" that must file a report to maintain a record of the name and last known address of the owner of the property for 10 years after the property becomes reportable (as abandoned). House Bill 5577 would require the records to be maintained for 5 years for transactions between business entities.

MCL 567.250 & 252

BACKGROUND INFORMATION:

A related bill, House Bill 4563, also dealt with how the escheats process deals with business-to-business transactions. That bill has been enacted as Public Act 144 of 2012. Under PA 144, the escheats act would not apply to credit balances, overpayments, deposits, refunds, discounts, rebates, credit memos, or unidentified remittances created on or after April 1, 2009, and issued, held, due, or owing in any transaction between two or more business entities. On that issue, business representatives said:

Unclaimed property laws require that property held by one person but rightfully owned by another person who cannot be located be turned over to the state to be held for its rightful owner. Although this requirement should be retained as an important protection for individuals, it imposes an unnecessary and undue burden on businesses engaged in business-to-business transactions. The lack of an exemption for business-to-business transactions in current law gives rise to audit abuse where the focus, often by contingent fee third-party audit firms, is on creating state assessments based on minor theoretical discrepancies in ancient paperwork rather than on restoring truly unclaimed property to its rightful owner. Businesses today are fully capable of tracking their own accounts and resolving paperwork discrepancies as part of their ongoing business relationships.

The current bill also reflects the business sector's belief that businesses, unlike individuals, do not need the protection that 10 years of recordkeeping provide. Instead the requirement is a burden to businesses.

FISCAL IMPACT:

House Bill 5577 would have a negative fiscal impact on state government. The bill would shorten the look-back period on unclaimed property due the state to five years from the current ten years for certain holders of property. The fiscal impact would be a function of the foregone revenue that would have been collected but for the reduction in the look-back period. There are currently no estimates on foregone revenue under the provisions of this bill.

POSITIONS:

According to committee minutes, the following indicated support for the bill at the meetings on 5-15 and 5-22: the Department of Treasury, the Michigan Chamber, the Associated Builders and Contractors, the Small Business Association of Michigan (SBAM), and the Michigan Restaurant Association.

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