

CHAPTER 426

S.B. No. 581

AN ACT

relating to unclaimed property; providing penalties.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. The title of Title 6, Property Code, is amended to read as follows:

TITLE 6. UNCLAIMED PROPERTY [ESCHEAT]

SECTION 2. Section 72.001, Property Code, as amended, is amended to read as follows:

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Sec. 72.001. [RECIROCITY;] APPLICATION OF CHAPTER. (a) *Tangible or intangible personal property is subject to this chapter if it is covered by Section 72.101 and:*

(1) *the last known address of the apparent owner, as shown on the records of the holder, is in this state;*

(2) *the records of the holder do not disclose the identity of the person entitled to the property, and it is established that the last known address of the person entitled to the property is in this state;*

(3) *the records of the holder do not disclose the last known address of the apparent owner, and it is established that:*

(A) *the last known address of the person entitled to the property is in this state; or*

(B) *the holder is a domiciliary or a government or governmental subdivision or agency of this state and has not previously paid or delivered the property to the state of the last known address of the apparent owner or other person entitled to the property;*

(4) *the last known address of the apparent owner, as shown on the records of the holder, is in a state that does not provide by law for the escheat or custodial taking of the property or is in a state in which the state's escheat or unclaimed property law is not applicable to the property, and the holder is a domiciliary or a government or governmental subdivision or agency of this state;*

(5) *the last known address of the apparent owner, as shown on the records of the holder, is in a foreign nation and the holder is a domiciliary or a government or governmental subdivision or agency of this state; or*

(6) *the transaction out of which the property arose occurred in this state and:*

(A) *the last known address of the apparent owner or other person entitled to the property is:*

(i) *unknown; or*

(ii) *in a state that does not provide by law for the escheat or custodial taking of the property or in a state in which the state's escheat or unclaimed property law is not applicable to the property; and*

(B) *the holder is a domiciliary of a state that does not provide by law for the escheat or custodial taking of the property or a state in which the state's escheat or unclaimed property law is not applicable to the property. [Specific property is not presumed abandoned and is not subject to this chapter if:*

~~(1) the property is held for or owed or distributable to an owner whose last known address is in another state;~~

~~(2) the holder of the property is subject to the jurisdiction of the other state;~~

~~(3) the property has been claimed as abandoned or has escheated under the laws of the other state; and~~

~~(4) the other state has a reciprocal legal provision that property is not presumed abandoned or escheatable by the other state if the property is held for or owed or distributable to an owner whose last known address is in this state and the holder of the property is subject to the jurisdiction of this state.]~~

~~(b) [This chapter applies to tangible and intangible personal property held in this state and to tangible and intangible personal property held outside this state for a person whose last known address is in this state.~~

~~(c) [This chapter supplements Chapter 71, and either chapter may be followed to the extent applicable.~~

(c) ~~(d)~~ This chapter applies to property held by life insurance companies with the exception of unclaimed funds, as defined by Section 3, Article 4.08, Insurance Code, held by those companies that are subject to Article 4.08, Insurance Code.

(d) ~~[(e)]~~ A holder of property presumed abandoned under this chapter is subject to the procedures of Chapter 74.

(e) ~~[(f)]~~ In this chapter, a holder is a person, wherever organized or domiciled, who is:

- (1) in possession of property that belongs to another;
- (2) a trustee; or
- (3) indebted to another on an obligation.

(f) In this chapter, a corporation shall be deemed to be a domiciliary of the state of its incorporation.

SECTION 3. Subsections (a), (b), and (f), Section 72.101, Property Code, as amended, are amended to read as follows:

(a) Except as provided by *this section* ~~[Subsection (b)]~~ and Section 72.102, 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.

(b) Except as provided by Subsections (c), ~~[and] (d), and (f)~~, stock or another intangible ownership interest in a business association, the existence of which is evidenced by records available to the association, is presumed abandoned if:

(1) a dividend, distribution, or other sum payable as a result of the interest has remained unclaimed by the owner for five years and the owner within five years has not:

(A) communicated in writing with the association regarding the interest or a dividend, distribution, or other sum payable as a result of the interest; or

(B) otherwise communicated with the association regarding the interest or a dividend, distribution, or other sum payable as a result of the interest, as evidenced by a memorandum or other record on file with the association prepared by the association or its agents; and

(2) the business association does not know the location of the owner at the end of the five-year period.

(f) *Any* ~~[This section does not apply to any]~~ stock or other intangible ownership interest enrolled in a plan that provides for the automatic reinvestment of dividends, distributions, or other sums payable as a result of the interest *is subject to the presumption of abandonment as provided by Subsection (a), except that the applicable period of abandonment is five years* ~~[unless the records available to the administrator of the plan show, with respect to any intangible ownership interest not enrolled in the reinvestment plan, that the owner has not within five years communicated in any manner described by Subsection (b)].~~

SECTION 4. Subsections (d) and (e), Section 74.101, Property Code, as amended, are amended to read as follows:

~~(d) [If a holder holds proceeds from mineral interests for more than one owner, the holder shall assign an identifying number to each owner's account of proceeds. For mineral proceeds, a property report must include:~~

~~[(1) the name and last known address of the owner of the proceeds;~~

~~[(2) the nature of the proceeds and the identifying number of the account, if any, or a description of the proceeds;~~

~~[(3) credits grouped by the county from which the credited proceeds were derived, including credits that were previously disposed of in any manner other than by payment to the owner;~~

~~[(4) the fractional mineral interest of the owner;~~

~~[(5) the description and location of the land from which the minerals were produced;~~

~~[(6) the name of the person who operated the well or mine;~~

~~[(7) the period during which the proceeds accumulated;~~

~~[(8) the price for which the minerals were sold; and~~

~~[(9) the amount that, according to records, is due from each interest, except as provided by Subsection (e).]~~

~~[(e)]~~ Amounts due that individually are less than \$25 shall be reported in the aggregate without furnishing any of the information required by Subsection (c) ~~[or (d)]~~.

SECTION 5. Chapter 74, Property Code, as amended, is amended by amending Sections 74.201, 74.507, and 74.705 and by adding Sections 74.308, 74.309, and 74.508 to read as follows:

Sec. 74.201. PUBLISHED NOTICE. (a) Except as provided by *Subsection (b) and Section 74.202*, the State Treasurer shall publish a notice in a newspaper of general circulation in March of the year immediately following the year in which the report required by Section 74.101 is filed. The notice must be published:

(1) in the county in which the last known address of a person required to be named in the notice is located; or

(2) if the address of a person listed is not set out in the report or if it is outside the state, in the county in which the holder of the abandoned property has its principal place of business, registered office, or agent for service in this state.

(b) *The State Treasurer may use a method of publishing notice that is different from that prescribed by Subsection (a)(1) or (2) if the State Treasurer determines that the different method would be as likely as the prescribed method to give actual notice to the person required to be named in the notice.*

(c) The published notice must state that the reported property is presumed abandoned and subject to this chapter and must contain:

(1) the name and city of last known address, if any, of each person listed in the property report filed under Section 74.101, listed alphabetically by name;

(2) a statement that, by addressing an inquiry to the State Treasurer, any person possessing an interest in the reported property may obtain information concerning the amount and description of the property and the name and address of the holder; and

(3) a statement that if the owner does not present proof of the claim to the holder and establish the owner's right to receive the property within the period provided by Section 74.301, the property will be delivered to the State Treasurer and that all claims made after that delivery must be sent to the State Treasurer.

Sec. 74.308. PERIOD OF LIMITATION NOT A BAR. The expiration, on or after September 1, 1987, of any period specified by contract, statute, or court order, during which an action or proceeding may be initiated or enforced to obtain payment of a claim for money or recovery of property, does not prevent the money or property from being presumed abandoned property and does not affect any duty to file a report required by this chapter or to pay or deliver abandoned property to the State Treasurer.

Sec. 74.309. PRIVATE ESCHEAT AGREEMENTS PROHIBITED. An individual, corporation, business association, or other organization may not act through amendment of articles of incorporation, amendment of bylaws, private agreement, or any other means to take or divert funds or personal property into income, divide funds or personal property among locatable patrons or stockholders, or divert funds or personal property by any other method for the purpose of circumventing the unclaimed property process.

Sec. 74.507. FEE FOR RECOVERY. A person who informs a potential claimant that the claimant may be entitled to claim property *that is reportable to the State Treasurer under this chapter, that has been reported to the State Treasurer, or that is in the possession of the State Treasurer, or a person who files a claim under this subchapter for such property* on behalf of a claimant, may not contract for or receive from the claimant for services an amount that exceeds 10 percent of the value of the property recovered. *If*

the property involved is mineral proceeds, the amount for services may not include a portion of the underlying minerals or any production payment, overriding royalty, or similar payment.

Sec. 74.508. CLAIM OF ANOTHER STATE TO RECOVER PROPERTY: PROCEDURE. (a) At any time after property has been paid or delivered to the State Treasurer under this Act, another state may recover the property if:

(1) the property was subjected to custody by this state because the records of the holder did not reflect the last known address of the apparent owner when the property was presumed abandoned under this Act, and the other state establishes that the last known address of the apparent owner or other person entitled to the property was in that state and under the laws of that state the property escheated to or was subject to a claim of abandonment by that state;

(2) the last known address of the apparent owner or other person entitled to the property, as reflected by the records of the holder are in the other state and under the laws of that state the property has escheated to or become subject to a claim of abandonment by that state;

(3) the records of the holder were erroneous in that they did not accurately reflect the actual owner of the property and the last known address of the actual owner is in the other state and under the laws of that state the property escheated to or was subject to a claim of abandonment by that state;

(4) the property was subjected to custody by this state under Subdivision (6) of Subsection (a) of Section 72.001 and under the laws of the state of domicile of the holder the property has escheated to or become subject to a claim of abandonment by that state; or

(5) the property is the sum payable on a traveler's check, money order, or other similar instrument that was subjected to custody by this state under Subdivision (4) and the instrument was purchased in the other state and under the laws of that state the property escheated to or became subject to a claim of abandonment by that state.

(b) The claim of another state to recover escheated or abandoned property must be presented in a form prescribed by the State Treasurer, who shall decide the claim within 90 days after it is presented. The State Treasurer shall allow the claim if he determines that the other state is entitled to the abandoned property under Subsection (a).

Sec. 74.705. INTEREST, ATTORNEY'S FEES, AND PENALTIES. (a) A person who fails to pay or deliver property within the time prescribed by this chapter shall pay to the State Treasurer interest, at the judgment rate of interest as published by the consumer credit commissioner in the Texas Register, on the property or value of the property from the date the property should have been paid or delivered until the date the property is actually paid or delivered.

(b) If the State Treasurer presents a claim for unclaimed property to a person who fails timely to pay or deliver the property and the just amount of unclaimed property owed has not been tendered before the 31st day after the date the claim is presented, the State Treasurer may, on approval of a court of competent jurisdiction in Travis County, recover reasonable attorney's fees from the person in addition to unclaimed property and interest due.

(c) A person ~~holder~~ commits an offense if the person ~~holder~~:

- (1) wilfully fails to file a report required by this chapter;*
- (2) refuses to permit examination of records in accordance with this chapter;*
- (3) makes a deduction from or a service charge against a dormant account or dormant deposit of funds; or*
- (4) violates any other provision of this title.*

(d) ~~(4)~~ An offense under this section is punishable by:

- (1) a fine of not less than \$500 nor more than \$1,000;*

- (2) confinement in jail for a term not to exceed six months; or
- (3) both the fine and confinement.

(e) [(e)] In addition to a criminal penalty, a *person* [holder] who commits an offense under Subsection (c) [(a)] is subject to a civil penalty not to exceed \$100 for each day of the violation. The attorney general shall collect the civil penalty by bringing suit on behalf of the state in a district court in Travis County, Texas.

SECTION 6. Subsections (b) and (c), Section 75.001, Property Code, are amended to read as follows:

(b) This chapter applies to [a mineral interest and] mineral proceeds *and the owner's underlying right to receive those mineral proceeds* if:

- (1) the *owner's underlying right to receive mineral proceeds is related to land* [mineral interest is] located in this state;
- (2) the mineral proceeds result from the production of *minerals* [a mineral interest] located in this state; or
- (3) the mineral proceeds are an obligation for the acquisition or retention of a mineral lease to produce minerals located in this state.

(c) A holder of *property* [mineral proceeds] presumed abandoned under this chapter [or the holder of a mineral interest from which the proceeds are derived] is subject to the procedures of Chapter 74.

SECTION 7. Section 75.101, Property Code, is amended to read as follows:

Sec. 75.101. PRESUMPTION OF ABANDONMENT. (a) All mineral proceeds that are held or owing by the holder and that have remained unclaimed by the owner for longer than three years after they became payable or distributable *and the owner's underlying right to receive those mineral proceeds* are presumed abandoned.

(b) *At the time any owner's underlying right to receive mineral proceeds is presumed abandoned under this section, any mineral proceeds then held for or owing to the owner as a result of the underlying right and any mineral proceeds accruing after that time as a result of the underlying right and not previously presumed abandoned are presumed abandoned.*

SECTION 8. Sections 5 and 14, Article 4.08, Insurance Code, as amended, are amended to read as follows:

Sec. 5. NOTICE; PUBLICATION. (a) Not earlier than March 1 and not later than March 31 of each year following the making of such reports under Section 4, the State Treasurer shall cause to be published notices based on the information contained in such reports. *Except as provided by Subsection (d) of this Section, such* [Such] a notice shall be published once in a newspaper published or having a general circulation in each county of this state in which is located the last known address of a person appearing to be entitled to such funds.

(b) Each such notice shall set forth in alphabetical order the names of the insureds or annuitants under policies or contracts and the city of last known address, if any[, ~~together with the name and last known address of each beneficiary or other person who, according to the company's reports, may have an interest in such unclaimed funds.~~]. The notice shall also state that such unclaimed funds have been delivered to the State Treasurer on the preceding November 1 and that those funds may be claimed from the State Treasurer.

(c) It shall not be obligatory upon the State Treasurer to publish any item of less than Fifty Dollars (\$50) in such notice, unless the State Treasurer deems such publication to be in the public interest. Expenses incurred for the publication of notice may be charged against the funds delivered to the State Treasurer under Section 6 of this Article.

(d) *The State Treasurer may use a method of publishing notice that is different from that prescribed by Subsection (a) of this Section if the State Treasurer determines that the different method would be as likely as the prescribed method to give actual notice to the person required to be named in the notice.*

Sec. 14. INTEREST, ATTORNEY'S FEES, AND PENALTIES [PENALTY]. (a) A person who fails to pay or deliver property within the time prescribed by this Article

shall pay to the State Treasurer interest, at the judgment rate of interest as published by the consumer credit commissioner in the Texas Register, on the property or value of the property from the date the property should have been paid or delivered until the date the property is actually paid or delivered.

(b) If the State Treasurer presents a claim for unclaimed property to a person who fails timely to pay or deliver the property and the just amount of the unclaimed property owed has not been tendered before the 31st day after the date the claim is presented, the State Treasurer may, on approval of a court of competent jurisdiction in Travis County, recover reasonable attorney's fees from the person in addition to unclaimed property and interest due.

(c) Any person who wilfully fails to file a report required by this Article, or who violates any of the other terms and provisions of this Article shall be punished by a fine not less than Five Hundred Dollars (\$500.00), nor more than One Thousand Dollars (\$1000.00), or by confinement for not more than six months in the county jail, or both, and in addition, shall be subject to civil penalties of not exceeding One Hundred Dollars (\$100.00) for each day of such wilful failure or refusal, said civil penalties to be collected by suit in a District Court of Travis County, Texas, by the Attorney General in the name of the State of Texas.

SECTION 9. This Act takes effect September 1, 1987.

SECTION 10. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on March 26, 1987, by a viva-voce vote. Passed the House on May 29, 1987, by a non-record vote.

Approved June 17, 1987.

Effective Sept. 1, 1987.