



Sub. S.B. 223

126th General Assembly

(As Reported by H. Commerce & Labor)

Sens. Niehaus, Schuring, Spada, Mumper, Jacobson, Clancy, Armbruster, Coughlin, Hagan, Harris, Kearney, D. Miller, Roberts, Fedor, Zurz, R. Miller

Reps. Combs, Collier, Widener, J. McGregor, Cassell

BILL SUMMARY

- Prohibits a person who, for remuneration, is interested in entering into an agreement to locate, deliver, recover, or assist in the recovery of unclaimed funds from initiating any contact with an owner of unclaimed funds during the two-year period immediately after the date a report of unclaimed funds is filed with the Director of Commerce, and makes failure to comply grounds for invalidation of an agreement.
- Specifies additional information that must be disclosed in an agreement for recovering unclaimed funds or contents of a safe deposit box and requires that the agreement be notarized.
- Establishes conditions that must be satisfied when an agreement involves recovery of the contents of a safe deposit box.
- Prohibits an agreement from containing a power of attorney that allows for payment of the unclaimed funds or delivery of the contents of a safe deposit box to any person other than the owner of the unclaimed funds or contents of the safe deposit box.
- Prohibits the Director from recognizing or making any delivery and prohibits the Auditor of State from making any payment pursuant to a power of attorney between an owner and the person with whom the owner entered into an agreement if that power of attorney specifies that payment or delivery must be made to a person other than the owner or the owner's legal representative.

- Prohibits a person, on behalf of any other person, from engaging in any activity for the purpose of locating, delivering, recovering, or assisting in the recovery of unclaimed funds or contents of a safe deposit box and receiving a fee, compensation, commission, or other remuneration for such activity, without first obtaining a certificate of registration; makes violation of this prohibition a first-degree misdemeanor on a first offense and a fifth-degree felony on subsequent offenses; and delays the effect of these provisions until 60 days after the bill's effective date.
- Specifies criteria for obtaining and renewing a certificate of registration and procedures and authority to take disciplinary action against a certificate holder.
- Specifies procedures and authority to investigate allegations that a person is operating without a required certificate or operating under an invalid agreement.
- Requires that claims for unclaimed funds or contents of a safe deposit box submitted pursuant to an agreement anytime after 60 days after the bill's effective date, bear a certificate of registration number.
- Statutorily creates the office of the Superintendent of Unclaimed Funds and the Division of Unclaimed Funds.

CONTENT AND OPERATION

Unclaimed funds--background

Current law regulates the manner in which specified types of funds must be handled when the owner of the funds cannot be found. Holders of these "unclaimed funds" are required to report certain information about these funds to the Director of Commerce.¹ Detailed information, such as the name, last known address, and social security number of the owner, a description of the funds, and the amount due, is required for each item of unclaimed funds that has a value of

¹ "Unclaimed funds" are moneys, rights to moneys, or intangible property as described in existing law when, as shown by the records of their holder, the owner has not done any of the following within specified time periods: (1) increased, decreased, or adjusted their amount, (2) assigned, paid premiums on, or encumbered them, (3) presented an appropriate record for their crediting or received payment of them by check, draft, or otherwise, (4) corresponded with their holder concerning them, (5) indicated an interest in or knowledge of them, or (6) transacted business with their holder (sec. 169.01(B)(1)).

\$50 or more. With respect to items valued at less than \$50, only the number of items within each fund category and their aggregated value is required. Prior to filing its annual report with the Director, a holder of unclaimed funds must send notice to each owner of an item of unclaimed funds valued at \$50 or more (sec. 169.03, not in the bill). The Director must publish a notice of unclaimed funds annually (sec. 169.06, not in the bill). Any person claiming a property interest in unclaimed funds may file a claim on a form prescribed by the Director (sec. 169.08, not in the bill). An agreement by a person to receive a fee for assisting in the recovery of unclaimed funds must conform to specified requirements.

Agreements for assisting in recovery of unclaimed funds

Under existing law, all agreements to pay a fee, compensation, commission, or other remuneration to locate, deliver, recover, or assist in the recovery of unclaimed funds entered into within two years immediately after the date a report is filed with the Director are invalid.² Current law prohibits a person from receiving remuneration and from engaging in any activity for the purpose of locating, delivering, recovering, or assisting in the recovery of unclaimed funds under an invalid agreement. A person who does so is guilty of a first-degree misdemeanor for a first offense and a fifth-degree felony for each subsequent offense. (Sec. 169.13(A), (C), and (D).)

The bill adds a related prohibition that specifies that a person interested in entering into an agreement to locate, deliver, recover, or assist in the recovery of unclaimed funds for remuneration cannot initiate any contact with an owner during the two-year period immediately after the date a report is filed with the Director. The bill specifies that this prohibition applies only to agreements that are entered into on or after the bill's effective date. It further specifies that failure to comply with this requirement is grounds for the invalidation of any such agreement between the person and the owner. (Sec. 169.13(A)(2) and Section 3.)

Under existing law, an agreement entered into any time after the required two-year delay period is valid only if the remuneration agreed upon, paid directly or indirectly, is not in excess of 10% of the amount paid to the owner by the Auditor of State and the agreement is in writing, signed by the owner, and discloses all of the following items:

- (1) The nature and value of the property;

² Under the bill, for purposes of the Unclaimed Funds Law (R.C. Chapter 169.), "Director" may be interpreted as "Superintendent of Unclaimed Funds" or "Division of Unclaimed Funds." (See "**Creation of the Office of the Superintendent of Unclaimed Funds and of the Division of Unclaimed Funds**" at end of analysis.)

(2) The amount the owner will receive after the fee or compensation has been subtracted;

(3) The name and address of the person or entity in possession of the property.

The bill removes the reference to remuneration "paid directly or indirectly" and changes references to "property" in the list above to "unclaimed funds or contents of a safe deposit box."

Under the bill, any written agreement entered into on and after the bill's effective date also must be notarized and disclose the following additional information:

(1) The name, address, and telephone number of the owner, as shown by the records of the person or entity in possession of the unclaimed funds or contents of a safe deposit box;

(2) The name, address, and telephone number of the owner if the owner's name, address, or telephone number are different from the name, address, or telephone number of the owner as shown by the records of the person or entity in possession of the unclaimed funds or contents of a safe deposit box;

(3) That the person agreeing to locate, deliver, recover, or assist in the recovery of the unclaimed funds or contents of a safe deposit box is not an employee or agent of the Director;

(4) That the Director is not a party to the agreement;

(5) That the Auditor of State will pay the unclaimed funds directly to the owner or the Director will deliver the contents of the safe deposit box directly to the owner;

(6) That the person agreeing to locate, deliver, recover, or assist in the recovery of the unclaimed funds or contents of a safe deposit box holds a valid certificate of registration issued by the Director (see **'Obtaining a certificate of registration'** below);

(7) The number designated on the certificate of registration and the date the certificate expires. (Sec. 169.13(B) and Section 3.)

The bill adds an additional condition that must be satisfied for an agreement to be valid. It specifies that if the agreement involves recovery of the contents of a safe deposit box, the agreement must stipulate that the person receiving any fee, compensation, commission, or other remuneration for engaging in any activity for



the purpose of locating, delivering, recovering, or assisting in the recovery of unclaimed funds or other items stored in a safe deposit box on behalf of any other person must do all of the following:

(1) Make arrangements to have a licensed appraiser and the Director of Commerce view the contents of the safe deposit box together, at a time mutually agreeable to the appraiser and the Director;

(2) State that the value of the property in the safe deposit box is the amount established by the appraiser who viewed the safe deposit box contents;

(3) Base the fee, compensation, commission, or other remuneration for locating, delivering, recovering, or assisting in the recovery of unclaimed funds or other items stored in a safe deposit box on the amount established by the appraiser who viewed the safe deposit box contents. (Sec. 169.13(B)(4).)

Prohibitions

The bill specifies that a person who receives any fee, compensation, commission, or other remuneration for engaging in any activity for the purpose of locating, delivering, recovering, or assisting in the recovery of unclaimed funds or other items stored in a safe deposit box on behalf of any other person cannot function as an appraiser of the contents of the safe deposit box. Additionally, the bill prohibits a person from receiving remuneration and from engaging in any activity for the purpose of locating, delivering, recovering, or assisting in the recovery of contents of a safe deposit box under an invalid agreement. (Sec. 169.13(C) and (D).)

Power of attorney

The bill also prohibits any agreement from including a power of attorney for the payment of the unclaimed funds or delivery of the contents of a safe deposit box to any person other than the owner of the unclaimed funds or contents of a safe deposit box (sec. 169.13(B)(3)). Under the bill, the Director must not recognize or make any delivery and the Auditor of State must not make any payment pursuant to any power of attorney between an owner of the unclaimed funds or contents of a safe deposit box and the person with whom the owner entered into an agreement described above to locate, deliver, recover, or assist in the recovery of the unclaimed funds or contents of a safe deposit box if that power of attorney is entered into on or after the effective date of the bill and that power of attorney specifically provides for the payment of unclaimed funds or delivery of the contents of a safe deposit box to any person other than the owner of the unclaimed funds or contents of a safe deposit box. The bill specifies that nothing in the bill can be construed as prohibiting the payment of unclaimed funds or

delivery of the contents of a safe deposit box to the legal representative of the owner of the unclaimed funds or contents of the safe deposit box. Notwithstanding the definition of "owner" specified in the Unclaimed Funds Law,³ for purposes of the payment of unclaimed funds or delivery of the contents of the safe deposit box, a person with whom an owner entered into an agreement described above is not a legal representative.

Certificates of registration

Prohibition

The bill prohibits any person, on behalf of any other person, from engaging in any activity for the purpose of locating, delivering, recovering, or assisting in the recovery of unclaimed funds or contents of a safe deposit box, and receive a fee, compensation, commission, or other remuneration for such activity, without first having obtained a certificate of registration from the Director. (Sec. 169.16(A).) Violation of this prohibition is a first-degree misdemeanor for a first offense and a fifth-degree felony for any subsequent offense. (Sec. 169.99(B).)

Applying for a certificate of registration

To obtain a certificate of registration, a person must submit a written application in the form prescribed by the Director. The application must be accompanied by a recent full-face color photograph of the applicant and notarized character reference letters from two reputable character witnesses. The application, at a minimum, must provide all of the following:

- (1) The applicant's full name, home address, and work address;
- (2) The name, address, and telephone number of the two character witnesses who have provided the character reference letters;
- (3) A statement that the applicant has not, during the ten-year period immediately preceding the submission of the application:
 - Received remuneration for engaging in any activity for the purpose of locating, delivering, recovering, or assisting in the recovery of unclaimed funds either without having a certificate as required after the bill's effective date, or doing so under an invalid agreement, or

³ "Owner" means any person, or the person's legal representative, entitled to receive or having a legal or equitable interest in or claim against moneys, rights to moneys, or other intangible property, subject to the Unclaimed Funds Law (sec. 169.01(C)).

- Been convicted of, or pleaded guilty to, any felony or any offense involving moral turpitude, including theft, attempted theft, falsification, tampering with records, securing writings by deception, fraud, forgery, and perjury;

(4) The notarized signature of the applicant immediately following an acknowledgment that any false or perjured statement subjects the applicant to criminal liability under the law that prohibits falsification. (Sec. 169.16(B).)

Issuance of a certificate of registration

The Division may investigate the applicant upon receipt of the application to verify the information provided in the application and to determine the applicant's eligibility for a certificate. False information on an application is grounds for the denial or revocation of the applicant's certificate. (Sec. 169.16(C).)

The Director must issue a certificate of registration to an applicant if the Director finds that the following conditions are met:

(1) The statement described in (3) immediately above is true of the applicant;

(2) The applicant's character and general fitness command the confidence of the public and warrant the belief that the applicant's business will be conducted honestly and fairly. (Sec. 169.16(D).)

Certificate renewal

A certificate may be renewed annually if the Director finds that the following conditions are met:

(1) The applicant meets the conditions described in (1) and (2) directly above;

(2) The applicant submits a renewal application form prescribed by the Director;

(3) The applicant's certificate of registration is not subject to an order of revocation by the Director. (Sec. 169.16(E).)

Effect on existing practitioners

The bill specifies that the provisions described above requiring that certificate of registration numbers be included on agreements and prohibiting

specified activity without a certificate apply 60 days after the bill's effective date. (Section 4.)

Disciplinary actions

After notice and an opportunity for a hearing conducted in accordance with the Administrative Procedure Act, the Director must revoke or refuse to issue or renew a certificate if the Director finds either of the following is true concerning a person:

(1) During the immediately preceding ten-year period, the person received remuneration for engaging in any activity for the purpose of locating, delivering, recovering, or assisting in the recovery of unclaimed funds either without having a certificate as required after the bill's effective date or doing so under an invalid agreement, or the person was convicted of, or pleaded guilty to, any felony or any offense involving moral turpitude, including theft, attempted theft, falsification, tampering with records, securing writings by deception, fraud, forgery, and perjury;

(2) The person's character and general fitness do not command the confidence of the public or warrant the belief that the person's business will be conducted honestly and fairly. (Sec. 169.17(A).)

Investigation of alleged violations

The Director may investigate allegations that a person received remuneration for engaging in any activity for the purpose of locating, delivering, recovering, or assisting in the recovery of unclaimed funds either without having a required certificate or doing so under an invalid agreement, or complaints concerning such alleged activity. The Director may make application to a court of common pleas for an order enjoining such violation and, upon a showing by the Director that a person has committed or is about to commit such a violation, the court must grant an injunction, restraining order, or other appropriate relief. (Sec. 169.17(B).)

In conducting any investigation pursuant to this section, the Director may compel, by subpoena, witnesses to testify in relation to any matter over which the Director has jurisdiction and may require the production of any book, record, or other document pertaining to that matter. If a person fails to file any statement or report, obey any subpoena, give testimony, produce any book, record, or other document as required by a subpoena, or permit photocopying of any book, record, or other document subpoenaed, the court of common pleas of any county in this state, upon application made to it by the Director, must compel obedience by attachment proceedings for contempt, as in the case of disobedience of the

requirements of a subpoena issued from the court or a refusal to testify therein. (Sec. 169.17(C).)

If the Director determines that a person is engaged in or is believed to be engaged in activities that may constitute a violation of the prohibition against receiving remuneration for engaging in any activity for the purpose of locating, delivering, recovering, or assisting in the recovery of unclaimed funds either without having a required certificate or doing so under an invalid agreement, the Director, after notice and a hearing conducted in accordance with the Administrative Procedure Act, may issue a cease and desist order. That order is enforceable in the court of common pleas. (Sec. 169.17(D).)

Claims for unclaimed funds must bear certificate of registration number

The bill requires each person who files a claim for unclaimed funds with the director pursuant to an agreement to include with that claim the number designated on the certificate of registration that is issued to that person. The bill prohibits the Division from processing that type of claim if it does not include the required certificate of registration number. (Sec. 169.14.) The bill specifies that the requirement that a claim bear a certificate number applies only to agreements that are entered into on or after the bill's effective date. (Section 3.)

Creation of the Office of the Superintendent of Unclaimed Funds and of the Division of Unclaimed Funds

The bill *statutorily* creates, in the Department of Commerce, the office of the Superintendent of Unclaimed Funds and a Division of Unclaimed Funds. Under existing law, the Director, upon the Governor's approval, has authority to create divisions within the Department of Commerce (sec. 121.07, not in the bill). Pursuant to this authority, a Division of Unclaimed Funds already exists, but it is not created in statute. The bill further specifies that the Division has all powers and must perform all duties delegated to or vested by law in the Superintendent and that wherever powers are conferred or duties are imposed upon the Superintendent, those powers and duties are construed as vested in the Division. The bill expressly states that the Division is under the control and supervision of the Director of Commerce and must be administered by the Superintendent. The bill requires the Superintendent to exercise the powers and perform the functions and duties delegated to the Superintendent by the Director under the Unclaimed Funds Law (R.C. Chapter 169.), and as may otherwise be provided by law. (Secs. 121.04 and 121.08(B) and (J).)

HISTORY

ACTION	DATE
Introduced	11-08-05
Reported, S. Insurance, Commerce & Labor	03-01-06
Passed Senate (33-0)	03-07-06
Reported, H. Commerce & Labor	11-29-06

S0223-RH-126.doc/jc

