



# Ohio Legislative Service Commission

## Bill Analysis

Amber Hardesty

### H.B. 110

129th General Assembly  
(As Introduced)

**Reps.** Williams, Goyal, Letson, Antonio

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## BILL SUMMARY

- Requires an agreement between an owner of unclaimed funds and a person who assists in the recovery of unclaimed funds to disclose in a written agreement that the Director of Commerce will direct the Director of Budget and Management to pay from the unclaimed funds any legal amount specified in the agreement between the owner and the person who performed services under the agreement directly to the person who performed the services, less any fee charged by the Director of Commerce, and that the remaining unclaimed funds will be paid directly to the owner.
- Requires the Director of Budget and Management, instead of the Auditor of State as required under current law, to make the payment of unclaimed funds when the owner of the unclaimed funds has entered into an agreement with another person to locate, deliver, recover, or assist in the recovery of those unclaimed funds.
- Requires each person that files a claim for unclaimed funds with the Director of Commerce under an agreement to include a copy of the agreement with the claim.
- Generally replaces the term "unclaimed funds" with "property presumed abandoned."
- Requires the payment of interest to claimants of property presumed abandoned.
- Requires criminal records checks for applicants for registration to assist in locating property presumed abandoned.
- Changes the method of notifying out-of-state holders of property presumed abandoned by generally requiring publication on the Internet.

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## CONTENT AND OPERATION

### Compensation under an unclaimed funds recovery assistance agreement

The bill requires an unclaimed funds recovery assistance agreement between an owner of unclaimed funds and a person who assists in the recovery of unclaimed funds to include a provision notifying the parties that the Director of Commerce will direct the Director of Budget and Management (instead of the Auditor of State) to do, and requires the Director to do, all of the following with respect to the agreement:

- (1) Pay from the unclaimed funds any legal amount specified in the agreement to compensate a person for assisting in the recovery of the unclaimed funds under the agreement;
- (2) Pay the amount directly to the person who assisted with recovery of the unclaimed funds (referred to as the "registrant" in the bill), minus any amount the bill authorizes the Director of Commerce to establish as a reasonable fee for the processing and delivery of any payment to a registrant; and
- (3) Pay any remaining unclaimed funds directly to the owner.

The bill additionally requires each person who files a claim with the Director of Commerce under an agreement to include with that claim a copy of the agreement.<sup>1</sup>

A person who assists in the recovery of unclaimed funds is called a registrant because that person is required to file for a certificate of registration from the Director of Commerce to engage in any activity for the purpose of locating, delivering, recovering, or assisting in the recovery of unclaimed funds for a fee, compensation, commission, or other remuneration.

Under current law unchanged by the bill, following a two-year period after a holder of unclaimed funds reports those funds to the Director of Commerce, a person is entitled to receive unclaimed funds and an entity may enter into a paid agreement to locate, deliver, recover, or assist in the recovery of unclaimed funds only if certain conditions are met, including: charging an aggregate fee not in excess of 10% of the amount recovered, the agreement is in writing, signed by the owner, and notarized, the agreement discloses certain identifying items of the owner of the funds and of the person or entity holding the funds, the agreement does not include a power of attorney for the payment of the unclaimed funds to any person other than the owner, if the agreement involves recovery of the contents of a safe deposit box, certain additional

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<sup>1</sup> R.C. 169.13(B)(2)(f), 169.14(A), (C), and (D), and 169.16.

requirements, and the agreement discloses that the Auditor of State will pay the unclaimed funds directly to the owner of the funds, or that the Director of Commerce will deliver the contents of a safe deposit box to the owner.<sup>2</sup>

### **Replacement of term "unclaimed funds" with "property presumed abandoned"**

The bill generally replaces the term "unclaimed funds" with the term "property presumed abandoned," although the bill does retain "unclaimed funds" in certain sections of the Revised Code. The bill defines "unclaimed funds" to mean property presumed abandoned.<sup>3</sup>

### **Interest paid to claimants of property presumed abandoned**

The bill provides that if a claim is allowed, the Director of Commerce must pay over or deliver to the claimant the property presumed abandoned in the amount the Director actually received, or the net proceeds if securities or other intangible property delivered to the Director have been sold, together with any interest required to be paid by the bill. With respect to any claim paid on or after the bill's effective date, the Director must pay simple interest on the claim at a rate determined by the Director, who must adopt administrative rules governing the payment of interest on property delivered to the Director. Any returns on investment or interest earned beyond what the Director must pay as interest to the owner must be retained by the Director to fund administration of the Property Presumed Abandoned Law. Under existing law, interest is not payable to claimants of unclaimed funds held by the state.<sup>4</sup>

### **Criminal records checks for registrants to assist in locating property presumed abandoned**

Persons who assist in the recovery of property presumed abandoned for compensation must be issued a certificate of registration by the Director of Commerce. The bill requires the Superintendent of Unclaimed Funds, in the Department of Commerce to request the Superintendent of the Bureau of Criminal Identification and Investigation, or a vendor approved by the Bureau, to conduct a criminal records check based on the applicant's fingerprints. Notwithstanding a provision of existing law that prohibits the Department of Commerce from requesting a criminal records check from the Federal Bureau of Investigation unless the person who is the subject of the check

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<sup>2</sup> R.C. 163.03 and 163.13.

<sup>3</sup> R.C. 169.01, 169.02, 169.03, 169.06, 169.08, and 169.16.

<sup>4</sup> R.C. 169.08(D).

resides outside Ohio, has resided outside Ohio during the preceding five years, or may have a criminal record outside Ohio, the Superintendent of Unclaimed Funds must request that criminal record information from the Federal Bureau of Investigation be obtained as part of the criminal records check. The applicant must pay any fees required to be paid for the criminal records check.<sup>5</sup> (See **COMMENT**.)

### **Notice to out-of-state holders of property presumed abandoned; value of property required to be included on a specific list**

The bill requires that, if the address of an owner or property presumed abandoned is outside Ohio, publication be made on the Department of Commerce's web site for a period of time the Director reasonably selects.

The bill removes provisions in current law that require the Director of Commerce to do the following:

(1) For any person who appears to be an owner of property presumed abandoned for whom no address is listed and of which the holder has no principal place of business in Ohio, to make publication as the Director determines most effective;

(2) If the person's address is outside Ohio, to publish notice in a newspaper of general circulation in the county or parish of any state in the United States in which the person's last known address is located;

(3) If the last known address is in a foreign country, to make publication as the Director determines most effective.<sup>6</sup>

The bill provides that with respect to items of unclaimed funds each having a value of \$50 or more, the Director must have available in the Director's office during business hours an alphabetical list of owners and, if the holder is a person providing life insurance coverage, beneficiaries and their latest known addresses, if any, whose funds are being held by the state. Under current law, this threshold amount is \$10.<sup>7</sup>

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## **COMMENT**

The bill refers to a criminal records check being conducted in accordance with R.C. 109.572(A)(11), which requires the Superintendent of the Bureau of Identification and Investigation to search for and determine whether the person who is the subject of

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<sup>5</sup> R.C. 169.16.

<sup>6</sup> R.C. 169.06(A).

<sup>7</sup> R.C. 169.06(C).

the check has been convicted of or pleaded guilty to a felony in Ohio or another state. This cross-reference appears to be erroneous because: (1) the bill requires a federal check to be conducted as well, which would include federal offenses, and (2) the disqualifying offenses include misdemeanors (R.C. 169.16(C) and (D)(1)).

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## HISTORY

ACTION	DATE
Introduced	02-22-11

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