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H.B. 270*
133rd General Assembly

Bill Analysis

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Version: As Reported by House Finance

Primary Sponsor: Rep. Merrin

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SUMMARY

- Establishes a minimum threshold of \$25 for what constitutes unclaimed funds, replacing the current requirements under which there is no threshold.
- Includes unclaimed Ohio tax refunds of \$25 or more as unclaimed funds.
- Explicitly includes virtual currency as a type of property that may become an item of unclaimed funds.
- Provides that if the only activity on an account is one or more recurring transactions between the owner and a financial organization, the account will not become an item of unclaimed funds.
- Changes the triggering date for the dormancy period for certificates of deposit and requires the owner's periodic consent to renew a certificate of deposit to prevent the certificate of deposit from becoming unclaimed funds.
- Requires all unclaimed funds to be turned in to the state, rather than allowing holders to retain 90% of funds valued at more than \$50.
- Requires all holders currently possessing unclaimed funds to transfer those funds to the state within one year of the bill's effective date.
- Gives the Treasurer of State explicit, exclusive control over investment of unclaimed funds rather than allowing the Director of Commerce and holders of unclaimed funds to invest those funds.

* This analysis was prepared before the report of the House Finance Committee appeared in the House Journal. Note that the legislative history may be incomplete.

- Allows the Treasurer to invest unclaimed funds in separately managed accounts.
- Revises the allocation of unclaimed funds in the state treasury in relation to the Housing Development Fund.
- Implements a five-year statute of limitations for actions by the Director of Commerce against a holder.
- Revises the penalties for failing to report or deliver unclaimed funds to the Director of Commerce.
- Requires the Director of Commerce to adopt rules for liquidating tangible property that comes into the Director's possession that the Director is unable to return.
- Requires the Director of Commerce to set up an online platform to facilitate the reporting and claiming of unclaimed funds.
- Requires government agencies to share information with each other regarding unclaimed funds.
- Creates a small or closed estate affidavit to allow streamlined claiming of a decedent's unclaimed funds.

DETAILED ANALYSIS

Overview

Institutions such as banks hold funds for other people, and at times, the owners of the funds fail to give indication that they are still aware of the funds' existence – the funds become unclaimed. Under the Unclaimed Funds Program, the funds are “reported” to the state, and the holder or the state holds the funds for the true owners. The bill revises the criteria under which funds become unclaimed funds subject to reporting, revises the authority of the Treasurer of State to invest those unclaimed funds, requires government agencies to share information regarding unclaimed funds, and streamlines the manner in which certain persons may claim a decedent's unclaimed funds.

Qualifying as unclaimed funds

Items qualify as “unclaimed funds” if they meet two criteria: (1) the item is money, a right to money, or intangible property (such as stock) held for the owner by another and (2) the owner has not taken specified actions indicating that the owner is aware of the funds within a specified period of time. The specified actions and the “dormancy period” vary according to the type of item.¹

¹ R.C. 169.01(B) and 169.02.

Types of items – monetary threshold, Ohio tax refunds, and virtual currency

The bill establishes a threshold value of \$25 for an item to qualify as unclaimed funds and therefore be subject to the requirements of the Unclaimed Funds Law. Under current law, the only threshold is \$50 for sums payable as wages (there is no threshold for any other type of money), and different reporting and allocation requirements (see “**Allocation of unclaimed funds**” below) apply depending on whether a particular item of unclaimed funds is valued at \$50 or more. These requirements and their changes are as follows:

- The duty to send a notice to the last known address of the owners of unclaimed funds having a value of \$50 or more. The bill retains this requirement as is.
- The duty to report to the Director of Commerce certain information relating to unclaimed funds having a value of less than \$50 and different, more complete information for unclaimed funds having a value of \$50 or more. The bill retains these requirements as is.
- The duty to pay to the Director of Commerce all unclaimed funds less than \$50 and pay to the Director of Commerce 10% of unclaimed funds worth \$50 or more. The bill requires *all* items of unclaimed funds to be turned over to the Director in their entirety (see “**Control over and investment of unclaimed funds**,” below).

Similarly, funds having a value of less than \$50 will not be included in the Director of Commerce’s annually published Notice of Unclaimed Funds.

The bill also includes as unclaimed funds Ohio tax refunds of \$25 or more that are not presented for payment (cashed) within five years after they are issued.²

In addition to these provisions regarding amount and tax refunds, the bill explicitly includes virtual currency as a type of property that may constitute an item of unclaimed funds if all other requirements are met (e.g., it is in an account or other form covered by the Unclaimed Funds Law, it is valued at \$25 or more, and it meets the relevant dormancy requirement). The bill defines “virtual currency” as a digital representation of value used as a medium of exchange, unit of account, or store of value that does not have legal tender status recognized by the U.S. It explicitly excludes the following from this definition:

- The software or protocols governing the transfer of the digital representation of value;
- Game-related digital content (generally, digital content that exists only in an electronic game or electronic-game platform);
- A gift card, loyalty card, or rewards card.³

² R.C. 169.01(B)(1), 126.37(F), 169.02(N) and (S), 169.03(A)(2), (A)(3), and (D), 169.05(A) and (C), Section 4 of the bill, and R.C. 169.06, not in the bill.

³ R.C. 169.01(B)(1) and (L) through (O).

Keeping the account active

Recurring transaction

Under the bill, when the only activity on an account is one or more recurring transactions between the owner and a financial organization (a bank, trust company, savings bank, safe deposit company, mutual savings bank without mutual stock, savings and loan association, credit union, or investment company), the money in the account will never become an item of unclaimed funds. This provision does not apply if the recurring transactions are in the nature of fees charged by the financial organization or automatic reinvestments of dividends or interest. In other words, if the recurring transactions *are* fees or automatic reinvestments, the account may still become an item of unclaimed funds. Under continuing law, funds become unclaimed when the *owner* fails to take certain specified actions within a specified period of time, such as adding money to an account. With automated electronic transfers, however, the owner may not be the person taking the immediate action, and it is possible that the only activity associated with an account is regularly recurring electronic transfers initiated by the owner some time before. For example, a person may have an account on which the only activity is a recurring mortgage payment or recurring payroll payments. Therefore, absent any other activity, such recurring transfers would prevent an account from becoming unclaimed funds.⁴

Certificates of deposit

Sometimes, investments are set up to automatically reinvest dividends or distributions. Under continuing law, funds that are subject to an agreement providing for automatic reinvestment and that constitute dividends, distributions, or other funds held by the holder in connection with a security, an ownership interest in a registered investment company, *or a certificate of deposit (CD)* become unclaimed funds if they are unclaimed for a period of five years. The bill makes two changes for determining when CDs are “unclaimed.”

First, the bill moves the CD provisions to their own division. The new division retains the five-year dormancy period, but it changes the triggering date to the date the CD is due for renewal. Under current law, the five-year time period after which an automatically renewing investment qualifies as unclaimed funds commences from the date a second shareholder notification (sent not less than quarterly) or communication mailing is returned to the holder as undeliverable.

Regarding the first time the CD is due for renewal, the five-year dormancy period does not begin to run if the owner consented to the continued automatic reinvestment or renewal at or about the time the underlying CD is due for renewal. For subsequent renewals, a new consent must be given not less frequently than every five years, regardless of the CD’s term. If consent is not timely given, the five-year dormancy period begins to run five years after the

⁴ R.C. 169.01(A), (B)(1)(a), and (B)(1)(h).

most recent consent is due. If a new consent is given, the five-year period after which a new consent is required begins from the date that new consent is given.

Also, if a CD becomes unclaimed funds prior to its maturity date (this could conceivably happen if the term of the CD is 18 months, which is not an even multiple of five years), it need not be turned over to the Director if a penalty or forfeiture of interest would result. Instead, the bill permits the holder to turn it over at the point at which no such penalty or forfeiture would result (see “**Control over and investment of unclaimed funds**” below).⁵

Control over and investment of unclaimed funds

The bill gives the Treasurer of State explicit control over the investment of all unclaimed funds. Under current law, a holder of unclaimed funds may retain 90% of any item of unclaimed funds over \$50 and pay to the Director Commerce the remaining 10%, which the Director may deposit into the state treasury or a financial institution in an interest bearing account. Items in the amount of \$50 or less must be turned over in their entirety. Under the bill, all items of unclaimed funds (under the bill, items having a value of \$25 or more) must be paid to the Director (but see “**Certificates of deposit**” above) and deposited in the state treasury. All unclaimed funds in the possession of a holder on the bill’s effective date must be turned over to the Director within one year of that date.

The Treasurer of State may invest unclaimed funds in the State Treasury Asset Reserve of Ohio separately managed accounts (so-called “STAR SMAs”). In addition, the bill exempts these accounts from the continuing law limitation on investment in debt interests other than commercial paper that requires the investments to be in debt interests that (1) are rated in the three highest categories by two nationally recognized standard rating services, (2) issued by entities that are organized under the laws of the U.S. or a state, or issued by a foreign nation diplomatically recognized by the U.S. government, or any instrument based on, derived from, or related to such interests, and (3) do not exceed in the aggregate 25% of the state’s portfolio.⁶

Allocation of unclaimed funds

Under current law, 50% of unclaimed funds, whether in the state treasury or a financial institution, are allocated to the Development Services Agency’s Mortgage Insurance Fund. After allocation of sufficient moneys to the Ohio Housing Finance Agency’s (OHFA) Minority Business Bonding Fund, the remainder is allocated to OHFA’s Housing Development Fund. The bill retains this allocation, but instead of allocating the remainder to the Housing Development Fund, the Director determines the amount of the remainder to be allocated to the Housing Development Fund.⁷

⁵ R.C. 169.02(R)(1) and 169.05(A).

⁶ R.C. 169.01(B)(1), 169.05, 169.07, 169.08, 169.10, 169.12, and 122.58 and Section 4 of the bill and R.C. 135.143(A)(10)(a), not in the bill.

⁷ R.C. 169.05(A).

Statute of limitations

The bill prohibits the Director from commencing an action or proceeding against a holder more than five years after the holder filed a report with the Director. This five-year limitation does not apply if the holder fails to file such a report or files a fraudulent report.⁸

Penalties

Current law imposes penalties of up to \$100 or \$500 per day if a holder does any of the following:

- Knowingly fails to report unclaimed funds;
- Knowingly fails to report unclaimed funds upon request;
- Knowingly fails to pay the unclaimed funds to the Department of Commerce when required to do so.

Current law also imposes a civil penalty of 1% of the amount of unclaimed funds not reported, underreported, or on which settlement has not been made. The penalty is imposed for each month from the date prescribed for the reporting and payment or agreement until the required settlement is made. But, the penalty cannot be imposed for more than 25 months.⁹

The bill removes the 1% civil penalty and replaces the \$100 and \$500 penalties as follows:

- For negligently failing to report or deliver unclaimed funds, including when specifically requested by the Director, up to 5% of the funds or \$5,000 for each month the violation occurs, with a cap of the lesser of 25% of the funds or \$5,000;
- For knowingly failing to report or deliver unclaimed funds, including when specifically requested by the Director, up to 5% of the funds or \$10,000 for each month the violation occurs, with a cap of the lesser of 50% of the funds or \$10,000.¹⁰

Tangible property

Under continuing law, only specified intangible property qualifies as unclaimed funds. In some instances, tangible property is mistakenly sent to the Department of Commerce as if it were an item of unclaimed funds. If the sender was going through a liquidation or similar proceeding, it is sometimes not possible to return the tangible item to the sender. In such a case, the Department of Commerce has no choice but to retain the item.

The bill addresses this situation by requiring the Director to adopt rules to liquidate such tangible property if the Director is unable to return the property to the sender or owner. It

⁸ R.C. 169.03(H)(2).

⁹ R.C. 169.12 and 169.99; R.C. 169.10, not in the bill.

¹⁰ R.C. 169.12 and 169.99; R.C. 169.10, not in the bill.

requires that any proceeds from the sale of such property be treated as if they were unclaimed funds.¹¹

Online platform for reporting and claiming unclaimed funds

Under the bill, the Director of Commerce must set up and maintain an online platform for both the reporting and claiming of unclaimed funds within one year of the bill's effective date.¹² Although an online platform currently exists to facilitate the claiming of unclaimed funds, the Director is not legally required to ensure the platform's continued existence, and the platform does not facilitate the reporting of unclaimed funds.¹³

Information sharing

The bill requires the state or a political subdivision to make its books and records available to the Director upon request and to cooperate with the Director to determine the current address of an owner of unclaimed funds or tangible property mistakenly sent to the Department of Commerce or otherwise assist the Director in administering the Unclaimed Funds Law. It further allows the Director to enter into data sharing agreements to enable such other governmental agencies and political subdivisions to provide an additional notice to owners of unclaimed funds or owners of tangible property mistakenly sent to the Department.¹⁴

Claiming unclaimed funds – small or closed estate affidavit

In addition to the above changes, the bill also creates an affidavit to allow the heirs or next of kin of a decedent to claim the decedent's unclaimed funds without requiring letters testamentary or letters of administration to be issued upon the estate. Under continuing law, when an estate goes through the probate process, a letter testamentary or letter of administration is issued by a probate court that grants powers to an executor or administrator. The executor or administrator appears to be discharged upon the closing of the estate.

Standard for distribution

Under the bill, if an item of unclaimed funds belonging to a decedent is reported to the Director of Commerce, the Director must distribute the funds without requiring a letter testamentary or letter of administration when all of the following conditions are met:

- At least 210 days have passed since the owner died;
- All unclaimed funds together are valued at \$5,000 or less;

¹¹ R.C. 169.09.

¹² R.C. 169.091.

¹³ See MissingMoney.com, available at <https://missingmoney.com/en/> (accessed June 10, 2020).

¹⁴ R.C. 169.18 and 5703.21.

- The person claiming the item is the surviving spouse, any one or more of the deceased owner's natural born or adopted children 18 years of age or older, or the parent of the deceased owner, with preference given in that order.¹⁵

Procedure

To claim the item, a person must provide the Director all of the following:

- A certified death certificate of the deceased owner;
- Other information or documentary evidence the Director determines necessary to distribute the property or pay funds to the proper person;
- A list of all individual beneficiaries in the decedent's will or individuals who would inherit pursuant to Ohio's intestacy law if the decedent died intestate;
- A sworn affidavit under penalty of perjury requesting the Director to release the item. The affidavit must include the following information:
 - The deceased owner's name;
 - The date and place of the deceased owner's death;
 - A statement that more than 210 days have passed since the deceased owner's death;
 - A statement that either:
 - ❖ An executor, administrator, or commissioner has not been appointed to administer the estate and no application to relieve an estate from administration is pending in any jurisdiction; or
 - ❖ The executor, administrator, or commissioner has been discharged.
 - A description and dollar value of the item;
 - A statement that the deceased owner's funeral and burial expenses have been paid, that the claimant will pay them, or that the unclaimed funds will be used to pay them;
 - If the statement described above indicates that the unclaimed funds will be used to pay the expenses, an additional statement that if the unclaimed funds are in an amount sufficient to cover all unpaid funeral and burial expenses, the unclaimed funds will be used to cover all such expenses. If the unclaimed funds are insufficient to cover all such expenses, a statement that all the unclaimed funds will go toward the expenses;

¹⁵ R.C. 169.052(A)(1) to (3) and R.C. 2113.03, not in the bill.

- A statement that the claimant is entitled to inherit from the deceased owner either by virtue of being a beneficiary in the decedent’s will or under Ohio’s intestacy law if the decedent died intestate;
- The following statement: “No other person has a superior right to the interest of the decedent in the described property”;
- A statement that the claimant requests that the item be paid, delivered, or transferred to the claimant;
- A statement that the claimant will distribute the unclaimed funds pursuant to the deceased owner’s will or Ohio’s intestacy law if the decedent died intestate;
- The claimant’s affirmation under penalty of perjury that the foregoing affidavit is true and correct.¹⁶

Effect of distribution

Distributing funds in response to such an affidavit releases the Director to the same extent as by an entry granting release from administration or as if the distribution had been made to a duly appointed executor, administrator, or commissioner. The bill does not require the Director to oversee the application of the payment, delivery, or transfer made.

The bill provides that the payment, delivery, or transfer of the unclaimed funds due to the deceased owner constitutes a full discharge and release to the Director from any claim for the funds or property paid, delivered, or transferred. Instead, a claimant to whom payment is made is liable to anyone prejudiced by an improper payment.¹⁷

HISTORY

Action	Date
Introduced	05-30-19
Reported, H. Finance	---

H0270-RH-133/ts

¹⁶ R.C. 169.052(A)(4).

¹⁷ R.C. 169.052(B) and (C).