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Bill Analysis

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CORRECTED VERSION

SUMMARY

- Establishes a minimum threshold of \$25 for money or rights to money to constitute unclaimed funds, replacing the current requirements under which there is no threshold.
- Permits a holder of funds less than \$25 that otherwise meet the definition of “unclaimed funds,” to voluntarily report such funds.
- Explicitly includes virtual currency as a type of property that may become an item of unclaimed funds.
- Requires holders of virtual currency unclaimed funds to liquidate the virtual currency prior to reporting the unclaimed funds to the Director.
- Provides that if the only activity on an account is one or more recurring electronic credit or debit transfers, other than certain fees and automatic reinvestments, 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.
- Specifies that sums from preneed funeral contracts held in a trust and unutilized for three years from the date of the contract beneficiary’s death are subject to the Unclaimed Funds Law.
- Requires holders to retain records applicable to unclaimed funds for a period of ten years beyond the filing of the report to the Director, instead of the current law requirement of five years beyond the dormancy period or until completion of an audit, whichever occurs first.
- 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 six months of the bill’s effective date.
- Requires the Director of Commerce to consult with the Treasurer of State over investment of unclaimed funds.
- Requires all entities holding unclaimed trust fund moneys to annually notify the Director of the amount of interest earned or other income realized on the unclaimed funds.
- 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 ten-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.
- Authorizes the Director of Commerce to liquidate tangible and intangible 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.

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DETAILED ANALYSIS

Overview

Ohio’s Unclaimed Funds Law governs unclaimed property, a financial asset that has been abandoned or unclaimed by the rightful owner for a specific period of time. There are several reasons property could become unclaimed. In some cases, the owner simply forgot about the property, passed away, or left it behind. Businesses holding unclaimed funds must follow procedures specified in the Unclaimed Funds Law. Under the law, the holders of unclaimed funds must report their existence to the state, and the holder or the state then holds the funds for the true owners. The bill makes several changes to the Unclaimed Funds Law. The bill revises the criteria under which funds become unclaimed funds subject to reporting, requires the Director of Commerce to consult with 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

Under continuing law, revised in part by the bill, 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, referred to as the “dormancy period.” 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 and virtual currency

Under the bill, only money or rights to money with a value of \$25 or more in total held by a holder for a particular owner qualify as unclaimed funds and therefore are subject to the requirements of the Unclaimed Funds Law. Virtual currency and other intangible property are not subject to this threshold. Under current law, the only threshold is \$50 for sums payable as wages, which the bill changes to the \$25 threshold (there is no threshold for any other type of money).

Under current law, revised in part by the bill, 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 “**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.²

Virtual currency. 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 and it is dormant for five years. As noted above, unclaimed virtual currency is not subject to a monetary threshold in order to be subject to the Unclaimed Funds Law. 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);

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

- A gift card, loyalty card, or rewards card.

The bill requires that holders of unclaimed funds that consist of virtual currency to liquidate the virtual currency prior to filing the report of unclaimed funds held by the holder that is required to be sent to the Director of Commerce. The bill also specifies that the owner of unclaimed funds that is virtual currency does not have recourse against either the holder or the Director for any gain in value after the liquidation.³

Voluntary reporting. Lastly, in regards to the \$25 threshold established in the bill, the bill also authorizes a holder to voluntarily make funds subject to the reporting requirements under law if the funds have a value of less than \$25 but would otherwise meet the definition of unclaimed funds.⁴

Keeping the account active

Recurring transaction

Under the bill, moneys in a demand or savings account at a holder that is a bank, bank holding company, savings bank, savings association, savings and loan holding company, mutual holding company, credit union, or affiliate of any of these are not considered unclaimed funds when the only activity on the account is one or more recurring electronic debit or credit transfers, including transfers made via automated clearing house. This exclusion does not apply if the recurring transactions are in the nature of fees charged by the holder 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.⁵

Automatic reinvestments, including 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*

³ R.C. 169.01(B)(1) and (L) through (P), 169.02(S), and 169.03(A)(4).

⁴ R.C. 169.03(K).

⁵ R.C. 169.01(A), (B)(1)(a), and (B)(2)(h).

certificate of deposit (CD) become unclaimed funds if they are unclaimed for a period of five years.

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. For these types of investments, other than CDs, the bill clarifies that this communication is electronic or digital.

The bill also makes two changes for determining when CDs are “unclaimed.”

First, the bill retains the five-year dormancy period, but changes the triggering date to the date the CD is due for renewal. 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 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.

Second, 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 “**Investment of unclaimed funds**” below).⁶

Preneed funeral contracts

The bill specifies that sums from a preneed funeral contract held in trust and unutilized for three years from the date of the contract beneficiary’s death are subject to the Unclaimed Funds Law. If the beneficiary has reached the age of 105 and the contract remains unperformed, the beneficiary is presumed deceased. The amount reportable is subject to the contract seller adjustments permitted under the Preneed Funeral Contracts Law.⁷

Record retention

The bill makes a change to the record retention requirement. Under current law, holders are generally required to retain records that are applicable to unclaimed funds for a period of five years beyond the dormancy period or until the completion of an audit whichever occurs first. The bill instead requires holders to retain records for a period of ten years beyond the time the holder files the report with the Director (see also, “**Statute of Limitations**,” below).⁸

⁶ R.C. 169.02(R)(1) and 169.05(A).

⁷ R.C. 169.02(T).

⁸ R.C. 169.03(G)(2).

Annual report of holder of unclaimed funds

Annually, every holder of unclaimed funds is required to report to the Director of Commerce with respect to the unclaimed funds. Before filing this report, the holder must send notice to each owner or beneficiary of each item of unclaimed funds having a value of \$50 or more at the last known address of the owner as shown by the holder's records. Unless the holder has verified that the last known address of the owner or beneficiary as shown by the records of the holder is not accurate, the notice must be mailed (1) by first class mail if the item has a value of \$50 to \$999.99 and (2) by certified mail, return receipt requested, if the item has a value of \$1,000 or more.

The bill provides an alternative delivery method for notices relating to items having a value of \$50 to \$999.99: Notice also may be sent to a digital or electronic address provided to the holder by the owner with "read receipt" requested.

The bill also expands the ways that a holder may verify that the holder has verified that the owner's last known address is not accurate by documenting at least two of the following:

1. The owner or beneficiary failed to respond to a first class mail notice sent to the last known address of the owner or beneficiary.
2. The first class mail notice was returned as undeliverable.
3. An electronic or manual search of available public records failed to confirm that the last known address of the owner or beneficiary is accurate.

The bill adds an additional method: electronic or digital notice sent by the holder to the last known electronic mail, text telephone number, or facsimile number verified as received by a "read receipt" or otherwise.⁹

Investment of 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). All unclaimed funds in the possession of a holder on the bill's effective date must be turned over to the Director within six months of that date. The bill requires the Director to consult with the Treasurer of State each April to formulate an investment strategy and plan that consists of the best method to invest the funds to achieve the goals of the Department of Commerce and to achieve an appropriate rate of return.

⁹ R.C. 169.03(A) and (E).

When requested by the Director, the Treasurer of State must invest unclaimed funds in the Unclaimed Trust Fund in income-bearing accounts in custodial accounts outside of the state treasury. 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.

The holders of all investments and entities with which trust fund moneys are deposited must annually notify the Director of the amount of income realized on the unclaimed funds held by or invested with the entity. The bill requires that any interest earned on money in the custodial account be credited to the Trust Fund.¹⁰

The bill additionally expands what constitutes an income bearing account to include an investment account through which investments are made in the Ohio Subdivision's Fund.¹¹

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.¹²

Claiming unclaimed funds

Continuing law requires the Director to pay the unclaimed funds (plus interest) to the owner or other person who has established the right to payment. Under the bill, in order to establish the right to payment an individual appointed as the administrator for the estate of a deceased unclaimed property owner must be (1) an heir or legatee of the owner of unclaimed funds or (2) have been retained as an unclaimed funds finder to recover the unclaimed funds by an heir, legatee, or creditor of the owner of unclaimed funds.¹³

¹⁰ 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.

¹¹ R.C. 169.01(J) and R.C. 135.45, not in the bill.

¹² R.C. 169.05(A).

¹³ R.C. 169.08.

Statute of limitations

The bill prohibits the Director from commencing an action or proceeding against a holder more than ten years after the holder filed a report with the Director. This ten-year limitation does not apply if the holder fails to file such a report or files a fraudulent report. (See also, “**Records retention**,” above.)¹⁴

Penalties

The bill amends the penalties imposed for violating the Unclaimed Funds Law. 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.¹⁵

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 the lesser of 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 the lesser of 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 \$10,000.¹⁶

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.

¹⁴ R.C. 169.03(l)(2).

¹⁵ R.C. 169.12 and 169.99; R.C. 169.10, not in the bill.

¹⁶ R.C. 169.12 and 169.99; R.C. 169.10, not in the bill.

The bill addresses this situation by authorizing the Director to liquidate and dispose of any intangible or tangible property the Director receives in the course of administering the Unclaimed Funds Law that the Director, following all reasonable efforts, is unable to return to the holder or owner. Any proceeds from the sale of the property must be deposited into the Unclaimed Funds Trust Fund and treated as unclaimed funds. The bill specifies that an unclaimed funds owner has no recourse against either the holder or the Director for any gain or diminution in value after liquidation of any intangible or tangible property.¹⁷

Published notice of unclaimed funds

Under continuing law, the Director must publish a notice of names and addresses of those persons that holders have reported are the owners of unclaimed funds. The law, revised in part by the bill, requires that the notice have the title “Notice of Names of Persons Appearing to be Owners of Unclaimed Funds,” and must contain the names in alphabetical order, the last known address of the owner, and information relating to the amount of the fund. The bill removes the requirement that the notice contain that specific title.

The bill also eliminates a separate requirement that with respect to items of unclaimed funds each having a value of \$10 or more, the Director have available in the Director’s office during business hours an alphabetical list of owners and where a holder is a person providing life insurance coverage, beneficiaries, and their last known addresses, if any, whose funds are being held by the state.¹⁸

Finders of unclaimed funds

Under continuing law, a person who on behalf of any other person, engages 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, must be registered with the Director. The bill requires that such finders be a natural person, not a business entity. The bill specifies that a finder may be an attorney whose performance of services to locate, deliver, recover or assist in the recovery of unclaimed funds or the contents of the safe deposit box is one of the primary purposes to the attorney’s representation of the attorney’s clients.¹⁹

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 two years of the bill’s effective date.²⁰ Although an online platform currently exists to facilitate the claiming of unclaimed

¹⁷ R.C. 169.09.

¹⁸ R.C. 169.06(B) and (C).

¹⁹ R.C. 169.16(D)(4) and (F).

²⁰ R.C. 169.091.

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.²¹

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. Under current law, the Department of Taxation is generally prohibited from sharing such confidential taxpayer information with other state agencies, the bill, however, explicitly provides an exception for purposes of this provision.²²

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;
- 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.²³

Procedure

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

- A certified death certificate of the deceased owner;

²¹ See MissingMoney.com, available at <https://missingmoney.com/en/> (accessed May 20, 2021).

²² R.C. 169.18 and 5703.21.

²³ R.C. 169.19(A)(1) and (2) and R.C. 2113.03, not in the bill.

- 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;
 - 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.²⁴

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.²⁵

HISTORY

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²⁴ R.C. 169.19(A)(3) and (4).

²⁵ R.C. 169.19(B) and (C).