



# Ohio Legislative Service Commission

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## Bill Analysis

Meredith L. Rockwell

### Sub. H.B. 126

128th General Assembly  
(As Passed by the House)

**Reps.** S. Williams, Letson, Domenick, Murray, Hagan, Foley, Harwood, Mallory, Brown, Stewart, Boyd, DeBose, Dyer, Harris, Heard, Luckie, Pillich, Weddington, B. Williams, Winburn

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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 an agreement with another person to locate, deliver, recover, or assist in the recovery of those unclaimed funds.
- Requires the Director of Budget and Management, when making a payment as described above, to pay from the unclaimed funds any legal amount specified in the agreement to compensate a person for services performed in recovering the funds pursuant to the agreement and to pay such amount directly to that person, less any fee charged by the Director of Commerce, and to pay any remaining unclaimed funds directly to the owner of the unclaimed funds.
- Requires each person that files a claim for unclaimed funds with the Director of Commerce pursuant to an agreement as described above 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.

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## **CONTENT AND OPERATION**

### **Compensation under an unclaimed funds recovery assistance agreement**

#### **Current law**

Under current law unchanged by the bill, all holders of unclaimed funds are required to file an annual report with the Director of Commerce providing certain information with respect to the unclaimed funds (Revised Code § 169.03).<sup>1</sup> A person entitled to receive the unclaimed funds (the owner) may seek to hire a person to help recover the funds. Current law provides that 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 by the holder of unclaimed funds with the Director of Commerce are invalid (R.C. 169.13(A)(1)).

Following the two-year time period, an owner and an entity may enter into a paid agreement to locate, deliver, recover, or assist in the recovery of unclaimed funds only if the following conditions are met:

(1) The agreement includes an aggregate fee, compensation, commission, or other remuneration not in excess of 10% of the amount recovered and paid to the owner by the Director of Budget and Management;

(2) The agreement is in writing, signed by the owner, and notarized;

(3) The agreement discloses certain items such as the name, address, and telephone number of the owner, the name and address of the person or entity holding the funds, and the nature and value of the unclaimed funds;

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<sup>1</sup> The report must include information such as the name and last known address of the owner of the unclaimed funds and a description of the amount of the funds (R.C. 169.03).

(4) The agreement does not include a power of attorney for the payment of the unclaimed funds to any person other than the owner;

(5) If the agreement involves recovery of the contents of a safe deposit box, certain additional requirements must be included in the agreement, such as stipulating that the person recovering the contents of the safe deposit box must make arrangements to have an appraiser and the Director of Commerce view the box contents together;

(6) The agreement discloses that the Auditor of State will pay the unclaimed funds directly to the owner, or that the Director of Commerce will deliver the contents of a safe deposit box to the owner. (R.C. 163.13(B).)

### **The bill**

The bill requires an unclaimed funds recovery assistance agreement to include a provision notifying the parties that the Director of Commerce will direct the Office of Budget and Management (instead of the Auditor of State) to do, and requires the Office 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 pursuant to 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;<sup>2</sup>

(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 pursuant to such an agreement to include with that claim a copy of the agreement. (R.C. 169.13(B)(2)(f) and 169.14(A), (C), and (D).)

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

The bill generally replaces the term "unclaimed funds" with "property presumed abandoned," although the bill does retain "unclaimed funds" in certain sections of the

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<sup>2</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 (R.C. 169.16).

Revised Code (R.C. 169.01(B)(1)). The bill defines "unclaimed funds" to mean property presumed abandoned (R.C. 169.01(B)(2)). (R.C. 169.01, 169.02, 169.03, 169.06, 169.08, and 169.16.)

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

Under existing law, interest is not payable to claimants of unclaimed funds held by the state. The bill instead provides that if a claim is allowed, the Director of Commerce must pay over 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. (R.C. 169.08(D).)

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

As noted above, persons who assist in the recovery of property presumed abandoned for compensation must be issued a certificate of registration by the Director of Commerce (R.C. 169.16(A)). Current law allows the investigation of an applicant to verify the information provided in the application and to determine the applicant's eligibility for a certificate of registration (R.C. 169.16(C)).

The bill requires the Superintendent of Unclaimed Funds 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 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. (R.C. 169.16(C).)<sup>3</sup>

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<sup>3</sup> 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

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

Current law requires the Director of Commerce by November 1 of each year to cause notice to be published in an English language newspaper of general circulation in the county in Ohio in which is located the last known address of any person who appears to be an owner of property presumed abandoned. If no address is listed and if the holder has no principal place of business in Ohio, publication must be made as the Director determines most effective. If the person's address is outside Ohio, notice must be published in a newspaper of general circulation in the county or parish of any state in the United States in which the last known address is located. If the last known address is in a foreign country, publication must be made as the Director determines most effective. (R.C. 169.06(A).)

The bill removes the provisions discussed above regarding notice to owners whose address is unknown or who live outside Ohio or in a foreign country and instead requires that, if an owner's address is outside Ohio, publication be made on the Department of Commerce's web site for a period of time the Director determines. (R.C. 169.06(A).)

Current law provides that with respect to items of unclaimed funds each having a value of \$10 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. The bill increases this threshold amount from \$10 to \$50. (R.C. 169.06(C).)

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## HISTORY

ACTION	DATE
Introduced	04-08-09
Reported, H. State Gov't	12-03-09
Passed House (86-9)	12-17-09

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determine whether the person who is the subject of 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)).

