
DEPARTMENT OF COMMERCE

Unclaimed Funds Law

- Provides for the payment of interest to claimants of unclaimed funds in accordance with a formula devised in the 2009 Ohio Supreme Court case of *Sogg v. Zurz*, 121 Ohio St.3d 449 (2009), its progeny, and final settlement agreement.
- Removes the current prohibition against the payment of interest on unclaimed funds in the possession of the state.
- Specifies time frames and amounts of interest allowed to claimants who otherwise are entitled to the unclaimed funds.
- Provides that the contents of unclaimed safe-deposit boxes are unclaimed funds and authorizes the Superintendent of Financial Institutions to report to the Superintendent of Unclaimed Funds the proceeds from the sale of property removed from safe-deposit boxes unclaimed for three years after the closing, liquidation, or dissolution of a financial institution.
- Establishes the reporting deadline for safe-deposit contents as a date that is not earlier than the first day of February and not later than the first day of April of each year for property dormant as of the preceding thirtieth day of June.
- Includes references to the Attorney General's recently created authority to request owner information and claim unclaimed funds when collecting verified amounts owed to the state and creates a setoff priority for state claims filed by the Attorney General's office under this authority.
- Creates a setoff priority for claims for unclaimed funds that the Department of Job and Family Services currently is allowed to collect for child support enforcement.
- Removes the requirement for newspaper publication for out-of-state addresses and addresses in foreign countries, and replaces it with authority to post the notice on the Department of Commerce's Internet web site or the state public notice web site.
- Increases from \$10 to \$50 the threshold value of unclaimed funds that triggers the Director of Commerce's duty to maintain the owner's name on a list available in the Director's office indicating whose funds are being held by the state under the Unclaimed Funds Law.



- Requires an FBI background check for persons applying for a certificate of registration to serve in the capacity of a "finder" of unclaimed funds on behalf of others.

Underground Storage Tank Revolving Loan Program

- Creates the Underground Storage Tank Revolving Loan Program, to be administered by the State Fire Marshal (or designee).
- Requires that interest-free loans be made under the Underground Storage Tank Revolving Loan Program to political subdivisions that seek to take action with regard to underground storage tanks when the tanks' owners or operators cannot be identified or cannot pay the costs of the action.
- Requires that the loans under the Underground Storage Tank Revolving Loan Program be financed exclusively through penalties and repaid loan amounts.
- Permits a political subdivision to take legal action to recover costs incurred if the tank owner or operator is identified or is determined to have been or be able to pay the costs of action taken by the political subdivision.

Other provisions

- Reduces from two to one the number of reports that bedding and stuffed toy manufacturers and importers must submit annually to the Superintendent of Industrial Compliance.
- Requires the Director of Commerce to fill mid-term vacancies on the Historical Boilers Licensing Board, but does not require the advice and consent of the Senate for the Director's appointments.
- Changes the index used to calculate biennial changes to the threshold levels that are used to determine whether a horizontal public improvement project is subject to Ohio's Prevailing Wage Law.

Unclaimed Funds Law

Interest payments on unclaimed funds

(R.C. 169.08)

In 2009, the Ohio Supreme Court determined that the prohibition in R.C. 169.08 against the payment of interest to claimants for unclaimed funds constituted an unlawful taking. The bill, therefore, removes the prohibition, and provides that interest earned by the state will be payable in accordance with final court orders derived from the *Sogg v. Zurz*, 121 Ohio St.3d 449 (2009), line of cases and final settlement agreement. The bill states that for properties received by the state on or before July 26, 1991, interest must be paid at a rate of 6% per annum from the date the state received the property up to and including July 26, 1991. No interest will be payable on any properties for the period from July 27, 1991, up to and including August 2, 2000. For properties held by the state on August 3, 2000, or after, interest must be paid at the applicable required rate per annum for the period held from August 3, 2000, or the date of receipt, whichever is later, up to and including the date the claim is paid.

The final settlement agreement requires the Department of Commerce to make payments to future claimants (any persons whose unclaimed funds are returned to them on or after October 10, 2012) as well as to members of the *Sogg* class. Applicable required rates per annum are specified for years 2001 to 2011 in the final settlement agreement with direction for the Department to continue future calculations based on certain testimony in the case and other factors used in determining the chart provided for years 2000 to 2011.

Contents of safe-deposit boxes as unclaimed funds

(R.C. 169.02 and 169.03)

The bill provides that, notwithstanding the provisions of current law that generally provide that moneys received or collected under color of office are not unclaimed funds, moneys reported by the Superintendent of Financial Institutions to the Superintendent of Unclaimed Funds as proceeds from the sale of property removed from a safe-deposit box or safekeeping repository will be unclaimed funds if unclaimed for three or more years from the date of the closing, liquidation, or dissolution of a financial institution.

Current law includes, as a form of unclaimed funds, all moneys, rights to money, or other intangible property removed from a safe-deposit box or other safekeeping repository located in this state or removed from a safe-deposit box or other safekeeping repository of a holder, on which the lease or rental period has expired, or any amount



arising from the sale of such property, less any lawful claims, that are unclaimed for three years from the date on which the lease or rental period expired. The bill removes the specification for the safe-deposit box or safekeeping repository to be located in the state and includes a termination of a lease.

The bill establishes a reporting deadline for properties removed from safe-deposit boxes or safekeeping repositories as a date that is not earlier than the first day of February and not later than the first day of April of each year for property dormant as of the preceding thirtieth day of June. Under current law, holders of unclaimed funds generally are required to report to the Director of Commerce with respect to those funds before the first day of November of each year as of the preceding thirtieth day of June. Holders providing life insurance coverage must file before the first day of May of each year as of the preceding thirty-first day of December.

References to Attorney General collection authority; setoff priority

(R.C. 169.01, 169.03, and 169.08)

In H.B. 153 of the 129th General Assembly, the Attorney General was authorized to seek unclaimed funds of obligors in default to the state when the Attorney General is collecting unpaid funds due the state. The bill includes appropriate references in the Unclaimed Funds Law in similar manner to that currently afforded to the Department of Job and Family Services when collecting unclaimed funds under its current authority to collect child support. For example, both of these are exceptions to the provision making amounts received or collected under color of office (R.C. 9.39) not unclaimed funds. And while social security numbers generally cannot be used by the Department for any purpose other than to carry out the purposes of the Unclaimed Funds Law, they also may be used for child support purposes under the Department of Job and Family Services child support enforcement authority (R.C. 3123.88) and also for response to a request from the Attorney General under the newly acquired authority to obtain unclaimed funds of an obligor in default.

The bill creates priority setoffs for the Attorney General and the Department of Job and Family Services as follows: the Director of Commerce must deduct, for the purpose of setoff, amounts determined due by the Attorney General or the Director of Job and Family Services before payment of any claim or order of attachment, order in aid of execution, and any other legal process issued for payment of a claim for unclaimed funds. If a claimant owes both child support and an amount certified by the Attorney General, the setoff against child support must be applied first, and any remaining amount must be applied next to the payment of delinquent state taxes, penalties or interest, or other amounts certified to the Attorney General.



Internet publication authority

(R.C. 169.06)

The bill authorizes the Director of Commerce annually to notify owners of unclaimed funds with out-of-state or out-of-country addresses by Internet notice, either on the Department's Internet web site or on the state public notice web site for a reasonable period of time as determined by the Director. Under current law, the Director is required to give annual notice by newspaper publication in the county or parish of any state in the United States in which the last known address is known. If the last known address is in a foreign country, the Director has discretion to make publication by the most effective means. The bill removes the current publication requirements for out-of-state or out-of-country addresses and substitutes the Internet provisions; the bill retains the newspaper publication requirements for in-state addresses.

Criminal records check for "finders"

(R.C. 109.572 and 169.16)

The bill requires the Superintendent of Unclaimed Funds to request 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 and FBI information for any person seeking a certificate of registration to locate, deliver, recover, or assist in recovery of unclaimed funds on behalf of other persons (commonly referred to as serving in the capacity of a "finder"). The bill requires the applicant to pay any fee associated with the criminal records check.

Current law requires the applicant to state that he or she has not violated specified provisions or been convicted of, or pleaded guilty to any felony offense involving moral turpitude. Although the division may investigate the applicant to verify the information provided in the application, the division is not required to have a criminal records check conducted of all applicants. Information from the Department indicates this may be done now only for out-of-state applicants; the bill would extend this to all applicants.

Threshold value of unclaimed funds for identification on Director's list

(R.C. 169.06)

The bill increases from \$10 to \$50 the threshold value of unclaimed funds that triggers the Director's duty to list the owner's name on the Director's list of owners of identified unclaimed funds. The list is required to be available during business hours in



the Director's office listing owners and beneficiaries if the holder is a person providing life insurance coverage and their last known addresses, if any.

Underground Storage Tank Revolving Loan Program

(R.C. 3737.02 and 3737.883; conforming changes in R.C. 3737.88 and 3737.884 (renumbered from 3737.883))

Program overview and explanation of "corrective actions"

The bill creates the Underground Storage Tank Revolving Loan Program, to be administered by the State Fire Marshal or the Fire Marshal's designee. The program is designed to assist political subdivisions seeking to take action with regard to underground storage tanks if the tanks' owners or operators⁶ cannot be identified or cannot pay the costs of taking action. An underground storage tank is a stationary containment device (including the connected underground pipes) used to contain an accumulation of petroleum or any substance classified as hazardous by the Fire Marshal, the volume of which, including the volume of connecting pipes, is 10% or more beneath the surface of the ground.⁷ Under the program, the Fire Marshal is required to issue an interest-free loan to a political subdivision that meets the bill's application requirements and plans to spend from its own funds an amount equal to at least 5% of the requested loan amount.

The bill expressly permits political subdivisions to take the actions for which the loans may be requested. Specifically, it permits a political subdivision to do any of the following for an underground storage tank within the subdivision's territorial boundaries, provided the tank owner or operator is unidentifiable or was determined by the Fire Marshal as being unable to pay the costs of the action:

- Initiate, continue, or properly complete the removal of an underground storage tank system;
- Initiate, continue, or properly complete an assessment of the site of an underground storage tank or the site of an underground storage tank system;
- Initiate, continue, or properly complete a "corrective action."

"Corrective action" is extensively defined in continuing law. Therefore, by permitting a subdivision to take a corrective action, the bill permits the subdivision to

⁶ R.C. 3737.87(N) (not in the bill).

⁷ R.C. 3737.87(L), (O), and (P) (not in the bill).



take any action necessary to protect human health and the environment in the event of a release of petroleum into the environment. This includes any action necessary to monitor, assess, and evaluate the release. For a suspected release, "corrective action" includes an investigation to confirm or disprove the occurrence of the release. For a confirmed release, "corrective action" includes any action taken consistent with a remedial action to clean up contaminated ground water, surface water, soils, and subsurface material and to address the residual effects of a release after the initial corrective action is taken.⁸ Despite the bill's grant of authority, continuing law grants the Fire Marshal exclusive jurisdiction, in most cases, to regulate the storage, treatment, and disposal of petroleum-contaminated soil generated from corrective actions. Therefore, the bill's grant of authority may be limited by this exclusive jurisdiction.

Definition of "political subdivision"

The bill defines a "political subdivision" as a municipal corporation, township, county, school district, or other body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state. The term includes certain hospital commissions and boards, certain local planning commissions and councils, port authorities, certain regional councils, certain emergency and fire and ambulance districts, solid waste management districts, community schools, and certain community-based correctional facilities and programs and their facility governing boards.⁹ The bill also expressly states that the term includes a community improvement corporation, which is defined as an economic development corporation or a county land reutilization corporation.¹⁰

Loan applications

In the loan application, the political subdivision must describe the action for which it is requesting the loan, state the requested loan amount, explain how it plans to spend at least 5% of the requested loan amount out of its own funds, and provide any other information requested by the Fire Marshal. The subdivision must also agree to written terms and conditions of the Fire Marshal. The bill prohibits loans from having terms of more than ten years.

Loan repayment and funding

The interest-free loans must be repaid to the Fire Marshal. The repaid amounts are to be credited to the Underground Storage Tank Administration Fund, which is

⁸ R.C. 3737.87(B) (not in the bill).

⁹ R.C. 2744.01(F) (not in the bill).

¹⁰ R.C. 1724.01(A)(1) (not in the bill).



created in current law. The Fire Marshall must make the loans exclusively from those repaid amounts and from penalties collected for violations of current law governing underground storage tanks, including rules and orders of the Fire Marshal.¹¹ The bill also permits repaid loan amounts to be used by the Fire Marshal for implementation and enforcement of underground-storage-tank, corrective-action, and installer-certification programs.

Recovery of costs from tank owners or operators

The bill allows that if the Fire Marshal or any law enforcement agency identifies the tank owner or operator or determines, for any reason, that a previously identified owner or operator was or is able to pay the costs of the action for which the loan was issued, the political subdivision may bring any appropriate proceedings against the owner or operator to recover its incurred costs. The identification or determination must be made after the political subdivision has spent loan funds. The proceedings may be brought in either the court of common pleas having jurisdiction where the tank is located or the Court of Common Pleas of Franklin County.

Program administration

The bill requires the Fire Marshal to adopt, and permits the Fire Marshal to amend or rescind, rules as necessary for the administration and operation of the loan program. The rules may do any of the following:

- further define the entities considered "political subdivisions" eligible to receive loans;
- establish qualifying criteria for loan recipients;
- establish criteria for awarding loans, loan amounts, loan payment terms, and permissible expenditures of loan funds, including methods that the Fire Marshal may use to verify the proper use of loan funds or to obtain reimbursement for or the return of improperly used loan funds.

The bill requires the Fire Marshal to consult with the Director of Development Services before issuing any loan under the program.

The bill also permits the Fire Marshal to adopt, amend, or rescind rules for the issuance of emergency underground storage tank revolving loans to qualifying entities during a natural disaster or another similar event, as defined in rules.

¹¹ R.C. 3737.882(C) (not in the bill).



Facilities excluded from the program

The following are excluded from the definition of "underground storage tank," and therefore not subject to the bill's revolving loan program:

- pipeline facilities, including gathering lines, regulated under federal law;
- farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;
- tanks used for storing heating fuel for consumptive use on the premises where stored;
- surface impoundments, pits, ponds, or lagoons;
- storm or waste water collection systems;
- flow-through process tanks;
- storage tanks located in underground areas, including basements, cellars, mine workings, drifts, shafts, or tunnels, when the tanks are located on or above the surface of the floor;
- septic tanks;
- liquid traps or associated gathering lines directly related to oil or gas production and gathering operations.¹²

Bedding and stuffed toys – reporting requirements

(R.C. 3713.06)

The bill reduces the number of reports that a bedding and stuffed toy manufacturer or importer must submit annually to the Superintendent of Industrial Compliance. Current law requires a registered toy manufacturer or importer who manufactures or imports bedding or stuffed toys for retail sale or use in Ohio to submit a report showing the total number of items of bedding or stuffed toys imported or manufactured in Ohio once every six months. The bill requires a registered toy manufacturer or importer to submit the report once every year.

¹² R.C. 3737.87(P)(1) to (9) (not in the bill).



Historical Boilers Licensing Board vacancies

(R.C. 4104.33)

The bill requires the Director of Commerce to fill mid-term vacancies on the Historical Boilers Licensing Board, but does not require the advice and consent of the Senate for the Director's appointments. Current law requires mid-term vacancies to be filled in the manner provided for during initial appointments, which gives the Governor, the President of the Senate, and the Speaker of the House of Representatives appointment authority.

Prevailing wage threshold index

(R.C. 4115.034; R.C. 4115.03, not in the bill)

Under continuing law and unless an exception applies, the construction of a public improvement in which the total overall project cost is fairly estimated to exceed a statutory price threshold is subject to Ohio's Prevailing Wage Law. The statutory threshold for horizontal projects (projects that involve roads, streets, alleys, sewers, ditches, and other works connected to road or bridge construction) is adjusted biennially by the Director of Commerce. Current law requires the Director to adjust the threshold level based on the Implicit Price Deflator for Construction established by the federal government, with a maximum adjustment of 3% of the threshold level in existence at the time of the adjustment. The federal government no longer establishes that index. The bill instead requires the Director to use the Construction Cost Index published by the Engineering News-Record. If that index ceases being published, a similar recognized industry index chosen by the Director must be used.

