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Bill Analysis

Version: As Introduced

Primary Sponsor: Rep. Merrin

Yosef Schiff, Attorney

SUMMARY

- Establishes a minimum threshold of \$100 for what constitutes unclaimed funds, replacing the current requirements under which there is no threshold.
- Includes unclaimed Ohio tax refunds as unclaimed funds.
- Provides that preauthorizing electronic debit or credit transfers constitutes activity preventing funds from becoming unclaimed.
- Changes the triggering date of automatically renewing investments from the date a second shareholder notification or communication mailing is returned to the holder as undeliverable to the date the automatic reinvestment matures.
- Provides that an owner's consent to renew an automatic reinvestment at the time of renewal prevents the investment from qualifying as being unclaimed.
- 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.
- 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 Mortgage Insurance Fund, the Minority Business Bonding Fund, and the Housing Development Fund.
- 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

Types of items – monetary threshold and Ohio tax refunds

The bill establishes a threshold value of \$100 for an item to qualify as unclaimed funds and therefore be subject to the requirements of the Unclaimed Funds Law. Under current law, there is no minimum threshold, 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. Establishing a \$100 threshold eliminates the following duties of the holder of unclaimed funds:

- The duty to send a notice to the last known address of the owners of unclaimed funds having a value of \$50 or more, but less than \$100;
- The duty to report to the Director of Commerce certain information relating to unclaimed funds having a value of less than \$100;

¹ R.C. 169.01(B) and 169.02.

- The duty to pay to the Director of Commerce all unclaimed funds less than \$50;
- The duty to pay to the Director of Commerce 10% of unclaimed funds worth \$50 or more.

Similarly, these funds 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 \$100 or more that are not presented for payment (cash) within five years after they are issued.²

Keeping the account active

Automated transfers

The bill clarifies that preauthorizing electronic debit or credit transfers initiated by the owner, such as Automated Clearing House (ACH) transfers, constitutes activity preventing funds from becoming unclaimed. The ACH Network is an electronic funds transfer system that is used for many types of transactions such as payroll, direct deposit, and tax refunds. When your employer pays you via direct deposit, that transaction is typically handled through the ACH Network. To initiate a regularly occurring transaction like this, your employer would preauthorize an amount to be moved from its bank account to your bank account on a regular basis. Individual consumers also use preauthorized electronic transfers to pay regularly recurring expenses, such as mortgage payments.

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. The bill clarifies that funds in such an account do not become unclaimed funds.³

Automatically reinvesting and renewing investments

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 become unclaimed funds if they are unclaimed for a period of five years. The bill makes two changes for determining when such funds are “unclaimed.”

First, the triggering date for such investments is changed to the date the automatic reinvestment matures. Under current law, the five-year time period after which an

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

³ R.C. 169.01(B)(1)(a) and Automated Clearing House (ACH), *Investopedia*, available at <https://www.investopedia.com/terms/a/ach.asp> (accessed August 6, 2019).

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. The bill instead specifies that the time period commences on the date that the investment matures, and the maturity date is five years after the expiration of the initial time period. Following maturity, an owner has five years to take an action or respond to a mailing before the investment must be reported as unclaimed (see **COMMENT**).⁴

The second change the bill makes with respect to automatically renewing investments is that it provides that when an owner consents to reinvestment at or about the time the underlying investment is due for renewal, the consent is enough to prevent the investment from qualifying as unclaimed prior to the next renewal date, even if the next renewal date is more than five years in the future.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 \$100 or more) must be paid to the Director 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.

⁴ R.C. 169.02(R)(2).

⁵ R.C. 169.02(R)(1).

⁶ R.C. 169.01(B)(1), 169.05(A) and (C), 169.07, 169.08, 169.10, 169.12, and 122.58 and Section 3 of the bill and R.C. 135.143(A)(10)(a), not in the bill.

The bill revises these allocations to maintain as much consistency as possible with previous allocations, as the percentage now applies to all unclaimed funds, some of which were previously retained by holders and not subject to the allocation (retained funds invested in U.S. obligations do not appear to be currently subject to the allocation provisions). Under the bill, the percentage allocated to the Mortgage Insurance Fund must equal the percentage of funds so allocated in FY 2019, but not more than 50%. Similarly, after allocation of moneys to the Minority Business Bonding Fund, funds must be allocated to the Housing Development Fund in a percentage at least equal to the percentage of funds so allocated in FY 2019, but not more than 50%.⁷

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. It requires that any proceeds from the sale of such property be treated as if they were unclaimed funds.⁸

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.⁹ 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.¹⁰

Information sharing

The bill requires state and local government agencies to share information relating to unclaimed funds with the Director of Commerce, and requires the Director to share information with those agencies and with federal agencies. The bill provides that any confidential or privileged information that is shared retains its status as confidential or privileged.¹¹

⁷ R.C. 169.05(A).

⁸ R.C. 169.09.

⁹ R.C. 169.091.

¹⁰ See MissingMoney.com, available at <https://missingmoney.com/en/> (accessed August 7, 2019).

¹¹ R.C. 169.18 and 5703.21.

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, letter of administration, or an Ohio estate tax release, when all of the following conditions are met:

- The item of unclaimed funds is 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.
- Either of the following is met:
 - An executor or administrator has not been appointed and no petition for such an appointment is pending in any jurisdiction (no executor or administrator is required if the estate is worth \$35,000 or less).
 - The executor, administrator, or personal representative has been discharged and two or more years have elapsed since a closing statement has been filed.¹²

Procedure

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

- A certified death certificate of the deceased owner;
- A sworn affidavit under penalty of perjury setting forth the relationship of the claimant to the deceased owner, the existence or nonexistence of a duly appointed executor, administrator, or personal representative of the deceased owner's estate, and a list of any other persons that may be entitled to claim the item;
- Other information or documentary evidence the Director determines necessary to distribute the property or pay funds to the proper person;
- A list of the deceased owner's successors;

¹² R.C. 169.052(A)(1) to (3) and R.C. 2113.03, not in the bill.

- An affidavit 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 45 days have passed since the deceased owner's death;
 - A statement that either:
 - ❖ An executor, administrator, or personal representative has not been appointed and no petition for such appointment is pending in any jurisdiction; or
 - ❖ The executor, administrator, or personal representative has been discharged and two or more years have elapsed since a closing statement has been filed.
 - A description and dollar value of the item;
 - A statement that either:
 - ❖ The claimant is the deceased owner's successor and specifies the claimant's relationship to the deceased owner;
 - ❖ The claimant is authorized to act on behalf of the deceased owner's successor with respect to the decedent's interest in the item;
 - 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;
 - The claimant's affirmation under penalty of perjury that the foregoing affidavit is true and correct.¹³

Effect of distribution

Distributing funds in response to such an affidavit releases the Director to the same extent as if the distribution had been made to a duly appointed executor, administrator, or personal representative. 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.¹⁴

¹³ R.C. 169.052(A)(4) and (5).

¹⁴ R.C. 169.052(B) and (C).

COMMENT

In an apparent drafting error, the requirements described in “**Automatically reinvesting and renewing investments**” above were applied to securities and investment company ownership interests in addition to certificates of deposit. It appears that the requirements were intended to only apply to certificates of deposit.

HISTORY

Action	Date
Introduced	05-30-19
