

1-1 By: Martinez Fischer (Senate Sponsor - Zaffirini) H.B. No. 3598  
 1-2 (In the Senate - Received from the House May 6, 2019;  
 1-3 May 8, 2019, read first time and referred to Committee on Business  
 1-4 & Commerce; May 20, 2019, reported favorably by the following vote:  
 1-5 Yeas 9, Nays 0; May 20, 2019, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			

1-17 A BILL TO BE ENTITLED  
 1-18 AN ACT

1-19 relating to certain unclaimed property that is presumed abandoned.  
 1-20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:  
 1-21 SECTION 1. Section 72.101(a), Property Code, is amended to  
 1-22 read as follows:  
 1-23 (a) Except as provided by this section and Sections 72.1015,  
 1-24 72.1016, 72.1017, 72.102, and 72.104, personal property is presumed  
 1-25 abandoned if, for longer than three years:  
 1-26 (1) the ~~[existence and]~~ location of the owner of the  
 1-27 property is unknown to the holder of the property; and  
 1-28 (2) according to the knowledge and records of the  
 1-29 holder of the property, a claim to the property has not been  
 1-30 asserted or an act of ownership of the property has not been  
 1-31 exercised.  
 1-32 SECTION 2. Section 74.001(a), Property Code, is amended to  
 1-33 read as follows:  
 1-34 (a) Except as provided by Subsection (b), this chapter  
 1-35 applies to ~~[a holder of]~~ property that is presumed abandoned under  
 1-36 Chapter 72, Chapter 73, or Chapter 75.  
 1-37 SECTION 3. Section 74.103(b), Property Code, is amended to  
 1-38 read as follows:  
 1-39 (b) Without regard to whether the property is reported in  
 1-40 the aggregate, the [The] record must be kept for 10 years from the  
 1-41 later of:  
 1-42 (1) the date on which the property is reportable; or  
 1-43 (2) the date the report is filed[, regardless of  
 1-44 whether the property is reported in the aggregate under Section  
 1-45 74.101].  
 1-46 SECTION 4. Subchapter B, Chapter 74, Property Code, is  
 1-47 amended by adding Sections 74.105 and 74.106 to read as follows:  
 1-48 Sec. 74.105. COMBINED REPORTING. (a) In this section:  
 1-49 (1) "Affiliated group" means a group of one or more  
 1-50 entities in which a controlling interest is owned by a common owner,  
 1-51 either corporate or noncorporate, or by one or more of the member  
 1-52 entities.  
 1-53 (2) "Controlling interest" means:  
 1-54 (A) for a corporation, more than 50 percent,  
 1-55 owned directly or indirectly, of the total voting power of all  
 1-56 classes of stock of the corporation;  
 1-57 (B) for a partnership, more than 50 percent,  
 1-58 owned directly or indirectly, of the capital or profits in the  
 1-59 partnership;  
 1-60 (C) for a limited liability company, more than 50  
 1-61 percent, owned directly or indirectly, of the total membership

2-1 interest of the limited liability company; and  
 2-2 (D) for an association, trust, or other entity,  
 2-3 more than 50 percent, owned directly or indirectly, of the  
 2-4 beneficial interest in the association, trust, or other entity.

2-5 (b) If a holder that is required to file a property report  
 2-6 under this chapter is a member of an affiliated group, the holder  
 2-7 shall file one report for the affiliated group.

2-8 Sec. 74.106. CONTINUING REPORTING REQUIREMENT. (a) A  
 2-9 person who is required to file a property report under Section  
 2-10 74.101 in any year shall file a property report in each successive  
 2-11 year.

2-12 (b) If a person required to file a property report under  
 2-13 this section is not holding any property that is reportable under  
 2-14 this chapter, the person shall certify that fact.

2-15 SECTION 5. Subchapter C, Chapter 74, Property Code, is  
 2-16 amended by adding Section 74.206 to read as follows:

2-17 Sec. 74.206. ADVERTISING AND PROMOTION. The comptroller  
 2-18 may advertise or otherwise promote the unclaimed property program  
 2-19 in any available media to further the purposes of this title and to  
 2-20 provide effective and efficient notice to reported owners.

2-21 SECTION 6. Section 74.401(a), Property Code, is amended to  
 2-22 read as follows:

2-23 (a) Except as provided by [~~Subsection (c) or~~] Section  
 2-24 74.404, the comptroller may [~~shall~~] sell at public sale any [~~all~~]  
 2-25 personal property, other than money and marketable securities,  
 2-26 delivered to the comptroller in accordance with Section 74.301.  
 2-27 The comptroller may [~~shall~~] conduct the sale at the location and in  
 2-28 the manner [~~city in this state~~] that the comptroller determines  
 2-29 affords the most favorable market for the particular property.

2-30 SECTION 7. Sections 74.501(d) and (e), Property Code, are  
 2-31 amended to read as follows:

2-32 (d) On receipt of a claim form and all necessary  
 2-33 documentation and as may be appropriate under the circumstances,  
 2-34 the comptroller may approve the claim of:

2-35 (1) the reported owner of the property;

2-36 (2) if the reported owner died testate:

2-37 (A) the appropriate legal beneficiaries of the  
 2-38 owner as provided by the last will and testament of the owner that  
 2-39 has been accepted into probate or filed as a muniment of title; or

2-40 (B) the executor of the owner's last will and  
 2-41 testament who holds current letters testamentary;

2-42 (3) if the reported owner died intestate:

2-43 (A) the legal heirs of the owner as provided by  
 2-44 Sections 201.001 and 201.002, Estates Code; or

2-45 (B) the court-appointed administrator of the  
 2-46 owner's estate, if the administrator was appointed before the  
 2-47 fourth anniversary of the date of the death of the owner;

2-48 (4) the legal heirs of the reported owner as  
 2-49 established by an affidavit of heirship order signed by a judge of  
 2-50 the county probate court or by a county judge;

2-51 (5) if the reported owner is a minor child or an adult  
 2-52 who has been adjudged incompetent by a court of law, the parent or  
 2-53 legal guardian of the child or adult;

2-54 (6) if the reported owner is a corporation:

2-55 (A) the president or chair of the board of  
 2-56 directors of the corporation, on behalf of the corporation; or

2-57 (B) any person who has legal authority to act on  
 2-58 behalf of the corporation;

2-59 (7) if the reported owner is a corporation that has  
 2-60 been dissolved or liquidated:

2-61 (A) the sole surviving shareholder of the  
 2-62 corporation, if there is only one surviving shareholder;

2-63 (B) the surviving shareholders of the  
 2-64 corporation in proportion to their ownership of the corporation, if  
 2-65 there is more than one surviving shareholder;

2-66 (C) the corporation's bankruptcy trustee; or

2-67 (D) the court-ordered receiver for the  
 2-68 corporation; or

2-69 (8) any other person that is entitled to receive the

3-1 unclaimed property under other law or comptroller policy.

3-2 (e) Except as provided by Subsection (f), the comptroller  
3-3 may not pay to the following persons a claim to which this section  
3-4 applies:

3-5 (1) a creditor, a judgment creditor, a lienholder, or  
3-6 an assignee of the reported owner or of the owner's heirs; ~~[or]~~

3-7 (2) a person holding a power of attorney from the  
3-8 reported owner or the owner's heirs; or

3-9 (3) a person attempting to make a claim on behalf of a  
3-10 corporation that was previously forfeited, dissolved, or  
3-11 terminated, if the comptroller finds that:

3-12 (A) the corporation was revived for the purpose  
3-13 of making a claim under this section; and

3-14 (B) the person submitting the claim was not an  
3-15 authorized representative of the corporation at the time of the  
3-16 corporation's forfeiture, dissolution, or termination.

3-17 SECTION 8. Section 74.702, Property Code, is amended by  
3-18 amending Subsection (a) and adding Subsection (c) to read as  
3-19 follows:

3-20 (a) For purposes of the application and enforcement of this  
3-21 title [To enforce this chapter and to determine whether reports  
3-22 have been made as required by this chapter], the comptroller, the  
3-23 attorney general, or an authorized agent of either, may at any  
3-24 reasonable time and place, [may] examine the books and records of  
3-25 any person to determine whether the person has complied with this  
3-26 title [holder].

3-27 (c) Subsection (a) applies to any books, records, papers,  
3-28 information, or other objects determined by the comptroller or  
3-29 attorney general to be necessary to conduct a complete examination  
3-30 under this title.

3-31 SECTION 9. Subchapter H, Chapter 74, Property Code, is  
3-32 amended by adding Section 74.7021 to read as follows:

3-33 Sec. 74.7021. LIMITATION PERIOD FOR EXAMINATION. (a) The  
3-34 comptroller or attorney general may not begin an examination  
3-35 relating to the reporting, payment, or delivery of property under  
3-36 this chapter after the seventh anniversary of the date a person  
3-37 filed a property report under this title.

3-38 (b) The limitation provided by this section does not apply  
3-39 if:

3-40 (1) the person has filed a false or fraudulent  
3-41 property report with the intent to avoid delivery of property as  
3-42 required by this title;

3-43 (2) a property report for a period has not been filed;  
3-44 or

3-45 (3) a court grants a petition to compel the person to  
3-46 submit to an examination under this chapter, deliver property, or  
3-47 file a property report.

3-48 (c) For purposes of Subsection (b)(1), a person is presumed  
3-49 to have acted with intent to avoid delivery of property as required  
3-50 by this title if, after correction of a report, the amount of  
3-51 property to be delivered under this title exceeds the amount  
3-52 initially reported by at least 25 percent.

3-53 SECTION 10. Section 74.704, Property Code, is amended to  
3-54 read as follows:

3-55 Sec. 74.704. ASSISTANCE IN ENFORCEMENT. (a) If the  
3-56 comptroller requests, the attorney general shall assist the  
3-57 comptroller in enforcing this title.

3-58 (b) If the comptroller or the attorney general requests, the  
3-59 state auditor [State Auditor], banking commissioner [Banking  
3-60 Commissioner of Texas], securities commissioner, commissioner of  
3-61 insurance, savings and mortgage lending commissioner, Credit Union  
3-62 Commission, Department of Public Safety of the State of Texas, or  
3-63 Texas Workforce Commission, a [or any] district or county attorney,  
3-64 or any other state agency or political subdivision of this state  
3-65 shall assist the comptroller or attorney general in enforcing this  
3-66 title.

3-67 (c) Notwithstanding any other law, a state agency or  
3-68 political subdivision may not impose a charge for providing a copy  
3-69 of public information requested by the comptroller under this

4-1 section.

4-2 SECTION 11. Section 74.709(a), Property Code, is amended to  
4-3 read as follows:

4-4 (a) On request of the comptroller, the attorney general  
4-5 shall bring an action in district court, in the name of the state,  
4-6 to compel a person [holder] to:

4-7 (1) permit examination of records in accordance with  
4-8 this chapter;

4-9 (2) deliver property; or

4-10 (3) [to] file a property report.

4-11 SECTION 12. Subchapter H, Chapter 74, Property Code, is  
4-12 amended by adding Sections 74.711 and 74.712 to read as follows:

4-13 Sec. 74.711. AUTHORITY TO TAKE TESTIMONY AND ISSUE  
4-14 ADMINISTRATIVE SUBPOENAS. (a) To enforce this title, the  
4-15 comptroller may:

4-16 (1) take testimony;

4-17 (2) administer oaths; and

4-18 (3) issue subpoenas to compel any person to:

4-19 (A) appear and give testimony under oath at a  
4-20 time and place reasonable under the circumstances; or

4-21 (B) produce relevant books, records, documents,  
4-22 or other data, in whatever form, for audit, inspection, and  
4-23 copying.

4-24 (b) The comptroller may delegate the authority granted  
4-25 under this section to take testimony, administer oaths, and issue  
4-26 subpoenas to an attorney employed by the comptroller.

4-27 (c) A person authorized to serve process under the Texas  
4-28 Rules of Civil Procedure may serve a subpoena issued under this  
4-29 section. The person shall serve the subpoena in accordance with the  
4-30 Texas Rules of Civil Procedure.

4-31 Sec. 74.712. ENFORCEMENT OF SUBPOENAS. (a) If the person  
4-32 to whom a subpoena is directed under Section 74.711 fails to comply  
4-33 with the subpoena, or fails to file a motion to quash or otherwise  
4-34 demand a pre-compliance review of the subpoena, within the return  
4-35 date specified in the subpoena, the attorney general shall, on the  
4-36 request of the comptroller, bring suit to enforce the subpoena. The  
4-37 suit may be brought in a district court of Travis County.

4-38 (b) A court that determines that the subpoena was issued in  
4-39 good faith shall order compliance with the subpoena. The court may  
4-40 apply penalties for civil and criminal contempt otherwise available  
4-41 at law if a person refuses to comply with the court's order.

4-42 SECTION 13. Section 74.401(c), Property Code, is repealed.

4-43 SECTION 14. The limitation provided by Section 74.7021,  
4-44 Property Code, as added by this Act, applies only to an examination  
4-45 commenced on or after the effective date of this Act. An  
4-46 examination commenced before the effective date of this Act is  
4-47 governed by the law in effect on the date the examination commenced,  
4-48 and the former law is continued in effect for that purpose.

4-49 SECTION 15. This Act takes effect immediately if it  
4-50 receives a vote of two-thirds of all the members elected to each  
4-51 house, as provided by Section 39, Article III, Texas Constitution.  
4-52 If this Act does not receive the vote necessary for immediate  
4-53 effect, this Act takes effect September 1, 2019.

4-54 \* \* \* \* \*