



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bill 390 (as enrolled)
 Senate Bill 391 (as enrolled)
 Senate Bill 392 (as enrolled)
 Senate Bill 393 (as enrolled)
 Senate Bill 394 (as enrolled)
 Senate Bill 395 (as enrolled)
 Senate Bill 396 (as enrolled)
 Sponsor: Senator Joanne G. Emmons
 Senate Committee: Finance
 House Committee: Tax Policy

PUBLIC ACT 29 of 1995
PUBLIC ACT 44 of 1995
PUBLIC ACT 45 of 1995
PUBLIC ACT 46 of 1995
PUBLIC ACT 47 of 1995
PUBLIC ACT 48 of 1995
PUBLIC ACT 49 of 1995

Date Completed: 7-17-95

RATIONALE

Article X, Section 4 of the Michigan Constitution requires the procedures relating to escheats and the custody and disposition of escheated property to be prescribed by law: These laws are contained in the Michigan Code of Escheats. The Code, originally adopted in 1947 and amended several times since, provides for the disposition of escheated property, that is, tangible or intangible property that reverts to the State in the absence of legal owners or claimants because the owner died leaving no known heirs, has disappeared, or is missing for a continuous period of at least five years, or has abandoned the property. A person may file a claim for redemption of his or her property at any time (even after it has escheated to the State and been disposed of), and the State must keep property (or its equivalent in money) for potential claimants in perpetuity.

The value of abandoned or unclaimed property has risen dramatically in recent years. The Department of Treasury reports that the average unclaimed and abandoned property reported to the Department for 1989, 1990, and 1991 totaled \$22 million per year. In 1992, property reported to the Department totaled \$45.5 million; in 1993, \$71 million; and in 1994, \$54 million. Escheated property can include many different types of property, such as estates and inheritances with no known heir; unclaimed race track tickets; insurance benefits; inactive bank accounts; travelers checks; and abandoned real property. The Code prescribes an extensive process that must be followed for abandoned or unclaimed property to descend from an owner or holder

(typically a business such as a bank or insurance company that is in possession of an owner's assets) to the State, for eventual disposition and deposit of the asset in the State's General Fund. Some people contend, however, that the Code is not simply extensive, but is overcomplicated and inefficient, and that the State's escheat laws are out of step with those of many other states. Reportedly, 27 states have adopted the Uniform Unclaimed Property Act proposed by the National Conference on Uniform State Laws. It has been suggested that this State adopt the Uniform Act in order to update its escheat procedures and to align them with many other states.

CONTENT

Senate Bill 390 repeals the Michigan Code of Escheats and creates the "Uniform Unclaimed Property Act" to specify the conditions under which property is considered abandoned; create a general presumption of abandonment of unclaimed property after five years; provide for public notice of abandoned property; provide for the disposition, sale, reclaiming, and reimbursement for sale of abandoned property; make the State Treasurer the successor to the State Board of Escheats and specify his or her powers concerning abandoned property; and specify penalties for violations of the bill.

Senate Bill 391 amended the Executive Organization Act to repeal provisions that transferred the State Board of Escheats to the

Department of Treasury.

Senate Bill 392 amended Public Act 90 of 1951, which regulates racing meets, to replace references to the State Board of Escheats, the Michigan Code of Escheats, and Public Act 63 of 1949 (which pertains to unclaimed personal property) with references to the State Treasurer and the Uniform Unclaimed Property Act.

Senate Bill 393 amended Public Act 238 of 1957, which provides for the sale or disposition of abandoned property in the custody of the State, to replace references to the Code of Escheats with references to the Uniform Unclaimed Property Act.

Senate Bill 394 amended Public Act 194 of 1947, which provides for the administration of the estates of deceased persons in certain cases, to replace references to the State Board of Escheats with references to the State Treasurer.

Senate Bill 395 amended the credit union Act to replace references to Public Act 63 of 1949 with references to the Uniform Unclaimed Property Act.

Senate Bill 396 amended the Nonprofit Health Care Corporation Reform Act to replace references to the Code of Escheats with references to the Uniform Unclaimed Property Act.

Except for Senate Bill 390, the bills will take effect January 1, 1996. Senate Bill 390 contains an effective date of January 1, 1996; however, the bill was not given immediate effect. The bill will take effect 91 days after the Legislature adjourns for the year.

Senate Bills 391 through 396 are tie-barred to Senate Bill 390, which is described in detail below.

General Abandonment Conditions

The bill provides generally that all property, whether tangible or intangible, including any income or increment derived from the property, less any lawful charges, that is held, issued, or owing in the ordinary course of a holder's business and remains unclaimed by the owner for more than five years after it becomes payable or

distributable is presumed abandoned. "Holder" means a trustee or a person who possesses property belonging to another or is indebted to another on an obligation. The property is payable or distributable for the purpose of the bill, in spite of the owner's failure to make demand or to present any instrument or document required to receive payment.

Unless otherwise provided, the property is subject to the custody of the State as unclaimed property if the conditions raising a presumption of abandonment are satisfied and one or more of the following requirements are met:

- The last known address of the apparent owner, as shown on the records of the holder, is in this State.
- The holder's records do not reflect the identity of the person entitled to the property and it is established that the last known address of the person entitled to the property is in Michigan.
- The holder's records do not reflect the last known address of the apparent owner and either the last known address of the person entitled to the property is in Michigan or it is established that the holder is domiciled in Michigan or is a government or governmental subdivision or agency of Michigan and has not previously paid or delivered the property to the state of the last known address of the apparent owner or the person entitled to the property.
- The last known address of the apparent owner is in a state that does not provide by law for the escheat or custodial taking of the property, or its escheat or unclaimed property law is not applicable to the property and the holder is domiciled in this State or is a government or governmental subdivision or agency of this State.
- The last known address of the apparent owner is in a foreign nation and the holder is domiciled in this State or is a government or governmental subdivision or agency of this State.
- The transaction out of which the property arose occurred in this State, and either the last known address of the apparent owner or person entitled to the property is unknown or is in a state that does not provide by law for the escheat or custodial taking of the property or its escheat or unclaimed property law is inapplicable; or the holder is domiciled in such a state.

The bill does not apply to any property held, due, and owing in a foreign country and arising out of a foreign transaction.

The bill does not apply to unclaimed, lost, or abandoned property, if the loss, abandonment, or failure to claim the property is the subject of another statute of this State specifying to whom ownership of the property devolves.

The bill must be applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of the bill among states enacting it.

Travelers Checks and Money Orders

The bill specifies that any sum payable on a travelers check that is outstanding for more than 15 years after its issuance and any sum payable on a money order or similar written instrument, other than a third party bank check, that is outstanding for more than seven years after its issuance is presumed abandoned unless the owner, within that time, communicates in writing with the issuer concerning the check or otherwise indicates an interest as evidenced by a memorandum or other record on file prepared by an employee of the issuer.

A holder may not deduct from the amount of a travelers check or money order any charge imposed by reason of the failure to present the instrument for payment unless there is an enforceable written contract between the issuer and the owner of the instrument under which the issuer may impose a charge and the issuer regularly imposes such charges and does not regularly reverse or otherwise cancel them.

A sum payable on a travelers check, money order, or similar written instrument, other than a third party bank check, may not be subjected to the custody of the State as unclaimed property unless one or more of the following requirements are met:

- The travelers check, money order, or similar written instrument was purchased in this State.
- The issuer has its principal place of business in this State and its records do not show the state in which the travelers check, money order, or similar written instrument was purchased.
- The issuer has its principal place of business in this State, its records show the state in which the instrument was

purchased, and either the laws of the state of purchase do not provide for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property.

These provisions apply to sums payable on travelers checks, money orders, and similar written instruments presumed abandoned on or after February 1, 1965, except to the extent that those sums have been paid over to a state prior to January 1, 1974.

Checks and Drafts

Any sum payable on a check, draft, or similar instrument on which a banking or financial organization is directly liable, including a cashier's check and a certified check, which is outstanding for more than five years after it was payable or after its issuance if payable on demand, is presumed abandoned, unless the owner, within five years, communicates in writing with the organization or otherwise indicates an interest.

The holder may not impose any charge for failure to present the instrument for payment unless there is an enforceable written contract under which the holder imposes a charge, and the holder regularly imposes such charges.

Demand, Savings, Time Deposits

Any demand, savings, or matured time deposit, including interest and dividends with a banking or financial organization, including a deposit that is automatically renewable, and any funds paid toward the purchase of a share, a mutual investment certificate, or any other interest in a banking or financial organization must be presumed abandoned unless the owner, within five years, has met one or more of the following requirements:

- Increased or decreased the deposit or presents the passbook or other similar evidence of the deposit for the crediting of interest.
- Communicated, in writing, with the banking or financial organization concerning the property that includes interest and dividends.
- Otherwise indicated an interest in the property.
- Owned other property to which one of the previous three requirements applies and unless the banking or financial organization

communicates in writing with the owner with regard to the property that otherwise would be presumed abandoned at the address to which communications regarding the other property regularly are sent.

- Had another relationship with the banking or financial organization concerning which the owner communicated, in writing, with the organization or otherwise indicated an interest.

A holder may not impose any charge due to dormancy or inactivity or cease payment of interest unless certain conditions specified in the bill are met.

Any property that is automatically renewable will mature 15 years after the expiration of its initial time period, unless otherwise provided. If, at the time provided for delivery to the State Treasurer, a penalty or forfeiture in the payment of interest results from the delivery of the property, the time for delivery is extended until no penalty or forfeiture results.

An account established pursuant to the Michigan Uniform Gifts To Minors Act, or an "in trust for" account is presumed abandoned 15 years after the owner or the person entitled to the funds last communicated in writing with the banking or financial organization concerning the funds or otherwise indicated an interest by a memorandum or other record on file.

Life Insurance/Annuities

The bill specifies that any funds held or owing under a life or endowment insurance policy or annuity contract that mature or terminate are presumed abandoned if they have not been claimed for five years after they became due and payable according to the records of the insurer holding or owing the funds.

If a person other than the insured or annuitant is entitled to the funds and the person's address is not known to the insurer or it is not definite and certain from the insurer's records who is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records.

A life or endowment insurance policy or annuity contract not matured by actual proof of the death

of the insured or annuitant according to the insurer's records must be matured and the proceeds due and payable if certain conditions specified in the bill are met.

The application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent a policy from being matured or terminated if the insured has died or he or she or the beneficiary of the policy otherwise has become entitled to the proceeds of the policy before the depletion of the cash surrender value of the policy by the application of that provision.

If the laws of this State or the terms of the life insurance policy require the insurer to give notice to the insured or owner that an automatic premium loan provision or other nonforfeiture provision has been exercised and the notice is undeliverable, the insurer must make a reasonable search to ascertain the policyholder's correct address to which the notice must be mailed.

In spite of any other provision of law, if the insurer learns of the death of the insured or annuitant and the beneficiary has not communicated with the insurer within four months after the death, the insurer must take reasonable steps to pay the proceeds to the beneficiary.

Within two years of the bill's effective date, every change of beneficiary form, issued by an insurer under a life or endowment policy or annuity contract to an insured or owner who is a resident of Michigan, must request the relationship of each beneficiary to the insured; the address of each beneficiary; and the name of each beneficiary or, if a class of beneficiaries is named, the name of each current beneficiary.

Prepaid Funeral Contract Funds

Funds held by a provider under the Prepaid Funeral Contract Funding Act that remain unclaimed for five years after the death of the contract beneficiary or, if no contract beneficiary has been designated, five years after the death of the owner of the prepaid funeral contract are presumed abandoned.

Funds held pursuant to Public Act 70 of 1954, which pertains to agreements for the disposition of dead human bodies, are presumed abandoned after 15 years unless the owner or person entitled to the funds has communicated in writing with the

banking or financial organization concerning the funds or otherwise has indicated an interest by a memorandum or other record.

Utility Deposits

A deposit, including interest, made by a subscriber with a utility to secure payment or any sum paid in advance for utility services to be furnished, less any lawful deductions, that remains unclaimed by the owner for more than one year after termination of the services for which the deposit or advance payment was made is presumed abandoned.

Business Associations--Refunds and Stock Ownership

Except to the extent otherwise ordered by the court or administrative agency, any sum that a business association is ordered to refund by the court or agency that remains unclaimed by the owner for more than one year after it became payable in accordance with the final determination or order providing for the refund, whether or not the final determination or order requires any person entitled to a refund to claim it, is presumed abandoned.

In addition, any stock or other intangible ownership interest in a business association, whose existence is evidenced by records available to the association, is presumed abandoned and, with respect to the interest, the business association is the holder, if a dividend, distribution, or other sum payable as a result of the interest remains unclaimed by the owner for seven years and the owner, within seven years, has not communicated in writing with the business association regarding the interest or a dividend, distribution, or other sum payable as a result of the interest.

The interest may not be presumed abandoned unless during the seven-year period there have been at least seven dividends, distributions, or other sums paid during the period, none of which has been claimed by the owner.

At the time an interest is presumed abandoned any dividend, distribution, or other sum then held for or owing to the owner as a result of the interest, and not previously presumed abandoned, is presumed abandoned.

The bill does not apply to any stock or other intangible ownership interest enrolled in a plan that provides for the automatic reinvestment of

dividends, distributions, or other sums payable as a result of the interest unless the records available to the administrator of the plan show, with respect to any intangible ownership interest not enrolled in the reinvestment plan, that the owner has not, within 15 years, communicated in any manner.

Property distributable in the course of a dissolution of a business association that remains unclaimed by the owner for more than one year after the date specified for final distribution is presumed abandoned.

IRAs and Fiduciary Trusts

Property and any income or increment derived from the property or income held in a fiduciary capacity for the benefit of another person is presumed abandoned unless the owner, within five years after it has become payable or distributable, has increased or decreased the principal, accepted payment of principal or income, communicated concerning the property, or otherwise indicated an interest by a memorandum or other record on file prepared by the fiduciary. Funds in an individual retirement account, however, or a qualified retirement plan for self-employed individuals or similar account or qualified plan established under the Internal Revenue Code are not payable or distributable unless, under the terms of the account or qualified plan, distribution of all or part of the funds would then be mandatory.

For purposes of these provisions, a person who holds property as an agent for a business association is deemed to hold the property in a fiduciary capacity for that business association alone, unless the agreement between him or her and the business association provides otherwise. For purposes of the bill, a person who is deemed to hold property in a fiduciary capacity for a business association alone is the holder of the property only to the extent that the interest of the business association in the property is concerned, and the business association is the holder of the property to the extent that the interest of any other person in the property is concerned.

Property Held by the Court or Government

Property held for the owner by a court, state, or other government, governmental subdivision or agency, public corporation, or public authority that remains unclaimed by the owner for more than one year after becoming payable or distributable is presumed abandoned.

Gift Certificates

A gift certificate or a credit memo issued in the ordinary course of an issuer's business that remains unclaimed by the owner for more than five years after becoming payable or distributable is presumed abandoned. The amount presumed abandoned is the price paid by the purchaser for the gift certificate or the amount credited to the recipient of the memo.

Unpaid Wages

Unpaid wages, including wages represented by un-presented payroll checks, owing in the ordinary course of the holder's business that remain unclaimed by the owner for more than one year after becoming payable are presumed abandoned.

Safe Deposit Box Contents

All property held in a safe deposit box or any other safekeeping repository in this State in the ordinary course of the holder's business and proceeds resulting from the sale of the property permitted by law, that remain unclaimed by the owner for more than five years after the lease or rental period on the box or other repository has expired, are presumed abandoned.

Reporting Requirements

A person holding property presumed abandoned and subject to the State's custody as unclaimed property must report annually to the State Treasurer the name, Social Security number, and last known address of each owner of property with a value of \$50 or more, excluding travelers checks and money orders, presumed abandoned; the name of an insured or annuitant or beneficiary of an abandoned insurance policy or annuity contract if the unclaimed funds equal \$50 or more; in the case of the contents of a safe deposit box or safekeeping repository, or of other tangible property, a description of the property and the place where it is held and may be inspected by the administrator (the State Treasurer), and any amounts owed to the holder; the nature and identifying number, if any, or description of the property and the amount that appears due (although items valued under \$50 may be reported in the aggregate); the date the property became payable or returnable, and the date of the last transaction with the apparent owner; and other information the State Treasurer requires by rule as necessary for the administration of the bill.

In addition, if the person holding property presumed abandoned and subject to the State's custody as unclaimed property is a successor to other persons who previously held the property for the apparent owner, or the holder has changed its name while holding the property, the holder must file with the report all known names and addresses of each previous holder of the property.

The report must be filed before November 1, each year for the 12-month period ending on the preceding June 30; however, the administrator may postpone the date to file the report upon the written request of a person required to file a report.

Notice of Abandoned Property

Not more than 120 days before filing a report the holder of abandoned property must send to the apparent owner written notice that the holder is in possession of abandoned property if the holder has an address for the apparent owner that the holder's records do not disclose to be inaccurate, the claim of the apparent owner is not barred by the statute of limitations, and the property has a value of \$50 or more.

Prior to June 2 of the year following receipt of a report, the State Treasurer must publish a notice, at least once a week for two consecutive weeks in a newspaper of general circulation in the county in which is located the last known address of a person named in the notice. If no address is listed, or the address is outside the State, the notice must be published in the county in which the holder of the property has its principal place of business in Michigan. The notice does not have to list any items of less than \$50 unless the State Treasurer considers their publication to be in the public interest; further, the notice requirement does not apply to travelers checks, money orders, or other written instruments presumed to be abandoned. The notice must contain the following: the names (in alphabetical order) and last known address, if any, of persons listed in the report and entitled to notice; a statement that information on the property may be obtained by any person possessing an interest in the property, by addressing an inquiry to the State Treasurer; and a statement informing an owner of property held by the State Treasurer on how to file a claim.

The initial report filed under the bill for property that was not required to be reported before the effective date of the bill but that will be subject to the bill must include all items of property that

would have been presumed abandoned during the 10-year period preceding the effective date of the bill as if the bill had been in effect during that period.

Payment or Delivery/Custody and Liability

A person who is required to file a report must pay or deliver to the State Treasurer at the time for filing, all abandoned property required to be reported.

The holder of stock or other intangible interest in a business association must deliver a duplicate certificate or other evidence of ownership if he or she does not issue certificates of ownership to the State Treasurer. Upon delivery of a duplicate certificate to the State Treasurer, the holder and any transfer agent, registrar, or other person acting for or on behalf of a holder in executing or delivering the duplicate certificate is relieved of all liability of every kind to every person, including any person acquiring the original certificate or the duplicate of the certificate issued to the State Treasurer, for any losses or damages resulting to any person by the issuance and delivery of the duplicate certificate.

Upon the payment or delivery of property to the State Treasurer, the State assumes custody and responsibility for the safekeeping of the property. A person who pays or delivers property to the State Treasurer in good faith is relieved of all liability to the extent of the value of the property paid or delivered for any claim then existing or that may arise or be made in respect to the property after the payment or delivery. Further, if the holder pays or delivers property to the State Treasurer in good faith and another person claims the property from the holder or another state claims the money or property under its laws relating to escheat or abandoned or unclaimed property, the Treasurer, upon written notice of the claim, must defend the holder against the claim and indemnify the holder against any liability on the claim.

The Treasurer may decline to receive property that he or she considers to have a value less than the expense of giving notice and of public sale. If the Treasurer declines to receive the property, he or she must authorize the holder to destroy or otherwise dispose of it at any time the holder chooses. Further, if the Treasurer determines that any property delivered has insubstantial commercial value, he or she may destroy or otherwise dispose of the property at any time. An action or proceeding may not be maintained

against a holder for or on account of any action taken by the holder in destroying or otherwise disposing of the property pursuant to the authorization of the Treasurer, or against the State or any officer or the holder for or on account of any action taken by the Treasurer under these provisions.

A holder may report and deliver property to the State Treasurer before the property is presumed abandoned if the owner fails to exercise dominion or control, assert a right of ownership or possession, make presentment or demand payment, or do any other act in relation to or concerning that property for a period of two years. The property must be held by the Treasurer and is presumed abandoned; the property must be sold to the highest bidder three years after receipt.

Reimbursement/Reclaim Property

A holder who has paid money to the State Treasurer may make payment to any person appearing to the holder to be entitled to payment and, upon the filing of proof of payment and proof that the payee was entitled to the payment, the State Treasurer must reimburse promptly the holder for the payment without imposing any fee or other charge. If reimbursement is sought for a payment made on a negotiable instrument, including a travelers check or money order, the holder must be reimbursed upon filing proof that the instrument was duly presented and that payment was made to a person who appeared to the holder to be entitled to payment. The holder must be reimbursed even if the payment was made to a person whose claim was barred under the bill.

A holder who has delivered property, including a certificate of interest in a business association, other than money, to the State Treasurer, may reclaim the property if it is still in the possession of the Treasurer, without paying any fee or other charge, upon filing proof that the owner has claimed the property from the holder.

Property removed from a safe deposit box or other safekeeping repository is received by the State Treasurer subject to the holder's right to be reimbursed for the actual cost of the opening and to any valid lien or contract providing for the holder to be reimbursed for unpaid rent or storage charges. The Treasurer must reimburse or pay the holder out of the proceeds remaining after deducting the Treasurer's selling cost.

If property other than money is paid or delivered to the State Treasurer, the owner is entitled to receive any dividends, interest, or other increments realized or accruing on the property at or before liquidation or conversion of the property into money.

The expiration, before or after the effective date of the bill, of any period of time specified by contract, statute, or court order, during which a claim for money or property may be made or during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or to recover property, does not prevent the money or property from being presumed abandoned or affect any duty to file a report or to pay or deliver abandoned property to the Treasurer as required.

Sale of Abandoned Property

Generally, within three years after receiving abandoned property, the State Treasurer is required to sell it to the highest bidder at public sale in whatever city in the State, in his or her judgment, affords the most favorable market for the property involved. The Treasurer may decline the highest bid and reoffer the property for sale if he or she judges the bid to be insufficient. If the probable cost of sale exceeds the value of the property, the property does not have to be offered for sale. Notice of the impending sale must be published at least three weeks in advance in a newspaper of general circulation in the county in which the property is to be sold.

Securities listed on an established stock exchange must be sold at prices prevailing at the time of sale on the exchange. Securities not listed on an established stock exchange may be sold over the counter at prices prevailing at the time of sale or by any other method the Treasurer considers advisable. Unless the Treasurer considers it to be in the best interest of the State to do otherwise, all securities, other than stock and other intangible interests in a business association that are presumed abandoned, that are delivered to the Treasurer must be held for at least one year before they can be sold. All stock and other intangible interests in a business association that are presumed abandoned and delivered to the Treasurer must be held for at least three years before being sold, unless the Treasurer considers it to be in the best interest of the State to do otherwise. If the Treasurer sells any of the securities before the three-year period expires, any person making a claim before the end of the period is entitled to either the proceeds of the sale

of the securities or the market value of the securities at the time the claim is made, whichever amount is greater, less any necessary deductions. A person making a claim after the period expires is entitled to receive either the securities delivered to the Treasurer by the holder, if they are still in the hands of the Treasurer, or the proceeds received from the sale, less any necessary deductions. No person, however, has any claim against the State, the holder, any transfer agent, registrar, or other person acting for or on behalf of a holder for any appreciation in the value of the property occurring after delivery by the holder to the Treasurer.

The purchaser of property at any sale conducted by the Treasurer takes the property free of all claims of the owner or previous holder of the property and of all persons claiming through or under the owner or previous holder.

Sale Proceeds/General Fund

The bill requires the Treasurer to deposit promptly in the General Fund all funds received under the bill, including the proceeds from the sale of abandoned property. The Treasurer must retain in a separate trust fund at least \$100,000 from which prompt payment of claims allowed under the bill must be made. When making the deposit, the Treasurer must record the name and last known address of each person appearing from the holders' reports to be entitled to the property and the name and last known address of each insured person or annuitant and beneficiary and with respect to each policy or contract listed in the report of an insurer the number of the policy or contract, the name of the insurer, and the amount due. The owner's or apparent owner's name and a gross description of the property only must be available for public inspection at all reasonable business hours.

Before making any deposit to the credit of the General Fund, the Treasurer may deduct administrative costs.

Senior Care Respite Fund

As is currently provided under the Older Michiganians Act, the bill requires the State Treasurer to transfer to the Senior Care Respite Fund funds that escheated to the State pursuant to Section 403a of the Nonprofit Health Care Corporation Reform Act. Section 403a of that Act provides that payments by a health care corporation to a subscriber or provider by check or other written instrument, that is not cashed within

the period before it is considered abandoned, escheat to the State.

Property Claims

A person, excluding another state, claiming an interest in any property paid or delivered to the Treasurer is allowed to file a claim. The Treasurer must consider each claim within 90 days after it is filed and give written notice to the claimant if the claim is denied in whole or in part. No notice of denial must be given if the claim fails to state either the last address to which notices are to be sent or the address of the claimant.

If a claim is allowed, the Treasurer must pay over or deliver to the claimant the property or the amount the Treasurer actually received, or the net proceeds if it has been sold by the Treasurer, plus any additional dividends, interest, or increments required. If the claim is for stocks or business ownership interests presumed abandoned that were sold within three years after the date of delivery, the amount payable for the claim is the value of the property at the time the claim was made or the net proceeds of sale, whichever is greater. If the property claimed was interest-bearing to the owner on the date of surrender by the holder, the Treasurer also must pay 6% annual interest or any lesser rate the property earned while in the possession of the holder. No interest on interest-bearing property is payable for any period before the effective date of the bill. Any holder who pays the owner for property that has been delivered to the State and that, if claimed from the Treasurer, would be subject to the interest provisions must add interest, but the interest must be repaid to the holder by the Treasurer in the same manner as the principal.

Recovery of Property by Another State

At any time after property has been paid or delivered to the Treasurer, another state may recover it if certain requirements specified in the bill are met, and under the laws of that state the property has escheated to or become subject to a claim of abandonment by that state.

The State Treasurer must decide the claim within 90 days after it is presented and must allow the claim if it is determined that the other state is entitled to the property. Before recovering property, the other state must agree to indemnify Michigan and its officers and employees against any liability on a claim for the property.

Grievance Procedures

A person who is aggrieved by a decision of the Treasurer or whose claim is not acted upon within 90 days after its filing may sue to establish the claim in the circuit court, naming the Treasurer as a defendant. The action must be brought within 90 days after the decision of the Treasurer or within 180 days after the filing of the claim if the Treasurer fails to act on it. If the aggrieved person establishes the claim in a suit, the court must award the claimant costs and reasonable attorney's fees.

Examinations

The Treasurer may require a person who has not filed a report under the bill to file a verified report stating whether the person is holding any unclaimed property reportable or deliverable under the bill. Further, the Treasurer may examine the records of a person to determine whether he or she has complied with the bill. The examination may be conducted even if the person believes he or she does not possess any property reportable or deliverable.

If an examination results in the disclosure of property reportable and deliverable, the Treasurer may assess the cost of the examination against the holder at the rate of \$50 a day for each examiner; however, the charges cannot exceed the value of the property found to be reportable and deliverable.

If a holder fails to maintain the required records and the available records are insufficient to permit the preparation of a report, the Treasurer may require the holder to report and pay an amount as may reasonably be estimated from any available records. A holder required to file a report must maintain a record of the name and last known address of the owner for 10 years after the property becomes reportable.

A business association that sells in this State its travelers checks, money orders, or other similar written instruments, other than third-party bank checks on which the business association is directly liable, or that provides those instruments to others for sale in this State, must maintain a record of those instruments while they remain outstanding, indicating the state and date of issue for three years after the date the property is reportable.

Powers of the Treasurer

The State Treasurer may:

- Bring an action in a court of competent jurisdiction to enforce the bill.
- Enter into an agreement with another state to exchange information needed to enable this or another state to audit or otherwise determine unclaimed property that this State or another state may be entitled to subject to a claim of custody.
- Join with other states to seek enforcement of the bill against a person who is or may be holding property reportable under the bill.
- Request that the attorney general of another state or any other person bring an action in the name of the Treasurer in the other state.

At the request of another state, the Attorney General of this State may bring an action in the name of the treasurer of the other state in a court of competent jurisdiction to enforce the unclaimed property laws of the other state against a holder in this State of property subject to escheat or a claim of abandonment by the other state, if the other state agrees to pay expenses incurred by the Attorney General in bringing the action.

Penalties/Other Provisions

A person who fails to pay or deliver property within the time prescribed by the bill must pay to the Treasurer interest at the monthly rate of one percentage point above the adjusted prime rate per annum per month on the property or value of the property from the date the property should have been paid or delivered.

Willful failure to render any report or perform other duties required under the bill will result in a civil penalty of \$100 for each day the report is withheld or the duty is not performed, up to \$5,000. Willful failure to pay or deliver property to the Treasurer will result in a civil penalty equal to 25% of the value of the property that should have been paid or delivered. Willful refusal after written demand by the Treasurer to pay or deliver property as required will constitute a misdemeanor punishable by a fine of at least \$500, but not more than \$25,000, imprisonment for up to six months, or both.

The Treasurer, however, may waive interest and civil fines imposed.

An agreement to pay compensation to recover or assist in the recovery of property reported as abandoned made within 24 months after the date payment or delivery is made to the Treasurer is unenforceable.

The bill does not relieve a holder of a duty that arose before the effective date of the bill to report, pay, or deliver property. A holder who does not comply with the law in effect before the effective date of the bill is subject to the applicable enforcement and penalty provisions that existed and they will continue in effect for the purpose of this provision.

An action or proceeding may not be commenced by the Treasurer with respect to any duty of a holder under the bill more than 10 years after the duty arose.

State Employees/Contractors

The bill prohibits the State Treasurer and the Department of Treasury from increasing the number of full-time equivalent State employee positions in the Abandoned and Unclaimed Property Division of the Department beyond the number of full-time equivalent State employee positions that exist on December 31, 1995, in that division. If additional personnel are needed to administer the provisions of the bill, the Treasurer and the Department will have to hire independent contractors, as provided by Article XI, Section 5 of the State Constitution and as provided by the Civil Service Commission, if hiring those independent contractors is more cost effective than hiring State employees. If hiring independent contractors is not cost efficient as compared to hiring State employees, the Department may hire additional personnel as needed.

An independent contractor who is hired must not have made a contribution to a candidate for State elective office within the immediately preceding four-year period from the date his or her employment begins. In addition, an independent contractor must certify to the Treasurer and the Department that as a condition of employment he or she will not make a contribution to a candidate for State elective office during the period that he or she are employed as an independent contractor.

MCL 567.221-567.265 (S.B. 390)
16.178 (S.B. 391)
431.255 and 431.256 (S.B. 392)
434.152 (S.B. 393)
720.218 (S.B. 394)
490.5a (S.B. 395)
550.1403a (S.B. 396)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The State escheat laws have long been in need of revision. Through the years, after numerous amendments to the Code, the escheats process has become a layered bureaucracy requiring several cumbersome steps. Currently, in general, holders of unclaimed or abandoned property obtain reporting forms from the Department of Treasury; the holder fills out the reports and sends them with the property to the Department, which records the property on a schedule and sends it to the Attorney General, who sends it to local county public administrators. County public administrators publish the schedules of property in newspapers, schedule hearings in probate court or circuit court on the disposition of the property, and send initial and final court documents to the Department. The Department sends payment for publication costs, and a fee, to the county public administrator, publishes the schedule of unclaimed property in the newspapers, and either refunds the property to its owner if he or she is found or places the property in a trust fund, where it remains until it reverts to the General Fund. Senate Bill 390 skips all of these steps involving the Attorney General, county public administrators, and the courts, by simply having the Department receive and maintain the reports from the holders of unclaimed or abandoned property. The Department will be responsible for publishing the schedules of abandoned or unclaimed property in the newspapers, and either refunding the property to owners who are found or placing the property in the trust fund for deposit in the General Fund.

By enacting the Uniform Unclaimed Property Act, Senate Bill 390 simplifies and streamlines the escheats process, while preserving the ability of rightful owners to claim their property at any time. Eliminating numerous steps from the process will both enable holders to turn property over to the State more quickly, and enable owners of abandoned property to recover the property from the State sooner. In addition to setting forth general rules of abandonment, the Uniform Act

delineates specific rules detailing how different types of property are presumed to be abandoned, states what the holder and the state must do with the abandoned property, and contains enforcement provisions for failure to comply with the rules. The Act also protects consumers by imposing strict record-keeping obligations on property holders, with penalties for noncompliance, and requiring that intensified publication efforts be made to notify missing owners. In addition, the Act includes reporting procedures that better enable administrators to keep track of what becomes unclaimed property.

Supporting Argument

While at first glance, it may seem that the State has no business claiming the property of persons who may have misplaced or forgotten their possessions, the escheats process is actually a system under which the State becomes the perpetual custodian of abandoned or unclaimed property until the owner claims it, and the owner can do so at any time. This ensures that, no matter how long an item or asset remains unclaimed, if a person can prove ownership he or she can redeem the property or at least the value of the property. If an escheats process did not exist, these assurances could not be made because the asset would remain in the custody of the holder. This would allow the holder, eventually, to assume ownership of the asset, or dissipate its value through the imposition of holding charges to the point at which the value of the property was less than the charges needed to redeem it. It is essential for the State to have an efficient, well-run escheats process.

It also is important that the process have a degree of uniformity with the system in other states. Large interstate banks, holding companies, and insurance companies may, particularly upon the death of an owner, hold significant assets that need to be dispersed to an heir or a beneficiary. In some instances, if the holder cannot find an heir or beneficiary, the holder has little incentive to disperse the assets to an owner's last known state of residence, particularly if by doing so the holder would comply with the laws of one state while violating those of another. Adoption of the Uniform Act will increase the uniform treatment of unclaimed property among the states and thus benefit owners, or the state where they reside, rather than an asset's holder. In addition, the Uniform Act promotes interstate cooperation by providing for the exchange of information between enacting states, authorizing enacting states to sue on each other's behalf, and permitting the recovery of property by one state after the property has been delivered to another state.

Opposing Argument

The current system has been in place for many years and works just fine. In each county there are county public administrators, appointed by the Attorney General, who handle all of the problems associated with disposing of unclaimed or abandoned property. These administrators do their jobs efficiently and with little cost except for minimal fees. The bills replace this system with a State bureaucracy, which will require the use of State employees and, of course, payment of their salaries and benefits. Though the State is one of the few left to have public administrators, it is a system that works well. Why change it?

Response: The escheats process under the Uniform Act should be more inexpensive and efficient than that which exists today. As noted above, the current system requires many steps and the efforts of many people at various levels, and does not allow the disposal of property without court action. Senate Bill 390 relieves the courts of this responsibility, thus freeing them up perform more important tasks. While having a county public administrator in each county may seem like a good policy in instances in which problems arise, in most cases the administrators simply copy court documents and move them on to the State. The bill will eliminate these inefficiencies, eliminate the need to pay fees to county public administrators, and thus improve the efficiency and cost of the process rather than impair it.

Opposing Argument

Senate Bill 390 forbids an independent contractor hired to administer provisions of the bill from having made, or making, a contribution to a candidate for State elective office. While this gives the appearance of avoiding improper behavior by contractors who might attempt to gain favor with contributions, it falls short of preventing improper contributions; an independent contractor still could give money to a political action committee or to a political party which then could pass the money on to a candidate. Further, while the spirit of the prohibition is good, if such a prohibition is to be applied to independent contractors in this case, it should be applied to other contractors as well. The prohibition against contributions should be strengthened and expanded.

Legislative Analyst: G. Towne

FISCAL IMPACT

The bills will have minimal fiscal impact on State and local governments. Costs will be reduced as a result of more efficient handling of abandoned or unclaimed property. These bills will reduce State payments, by an annual amount of approximately

\$900,000, to counties and to probate courts, which will no longer be involved with escheat lawsuits. By eliminating the local unit's responsibilities with abandoned or unclaimed property, the bills will require the Department of Treasury to take on those duties and incur minimal costs. If additional personnel are needed, costs associated with utilizing additional people must be the lesser of hiring independent contractors or hiring State employees.

Minor changes in the amount of time certain categories of property are considered abandoned and escheated to the State will have minimal impact on the escheat revenue. Many entities affected by escheat laws presently follow the smaller time periods these bills will implement.

Fiscal Analyst: R. Ross

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.