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BILL ANALYSIS



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Senate Bill 538 (Substitute S-1 as passed by the Senate)
Sponsor: Senator Jack Brandenburg
Committee: Finance

Date Completed: 10-29-15

CONTENT

The bill would amend the Uniform Unclaimed Property Act to do the following:

- **Establish a streamlined audit process and allow an "eligible holder" who was being examined by the State Treasurer for compliance with the Act to choose to follow that process.**
- **Set a goal of completing a streamlined audit within 18 months after the holder received the audit notice.**
- **Provide that, for an eligible holder participating in the streamlined audit process, the Treasurer could not begin an action or proceeding more than four years after any duty of a holder under the Act arose.**
- **Specify that examinations could not include checks voided within 180 days of their issuance, for eligible holders participating in the streamlined process.**
- **Provide that property worth \$50 or less would not be subject to the custody of the State as unclaimed property, subject to certain exceptions.**

The bill would define "eligible holder" as a holder that meets one or more of the following:

- Is a corporation whose parent corporation is incorporated in Michigan.
- Is a corporation that has a subsidiary incorporated in Michigan.
- Is a corporation that is not incorporated in Michigan but is wholly owned by a corporation that is incorporated in this State.

(A "holder" is a person, wherever organized or domiciled, that is in possession of property belonging to another; a trustee; or a person indebted to another on an obligation.)

The bill would be retroactive and apply to audits in progress as of August 15, 2015, but would not apply retroactively to contested determinations in litigation before the bill's effective date.

The Act specifies the conditions under which property is considered abandoned, and creates a general presumption of abandonment of property that is held, issued, or owing in the ordinary course of business and remains unclaimed by the owner for more than three years. The Act requires a person holding property presumed to be abandoned to report it to the State Treasurer (the "administrator"); pay or deliver to the Treasurer abandoned property that must be reported; and maintain records. Abandoned property may be disposed of, sold, or reclaimed, and reimbursement to the owner may be required for property that has been disposed of or sold.

The Act authorizes the State Treasurer, at reasonable times and upon reasonable notice, to examine the records of a person to determine whether the person has complied with the Act.

Under the bill, eligible holders being examined by the State Treasurer under this provision could elect to follow the streamlined audit process described below. Eligible holders could make this election by executing a nondisclosure agreement acceptable to the Treasurer within 30 days from receiving the audit notice.

An audit conducted under the streamlined process would have to meet both of the following:

- Be completed within a time frame jointly developed by the holder and the Treasurer, with the goal of completing the audit within 180 months from the receipt of the audit notice.
- Be conducted according to standards set forth in rules and regulations promulgated in accordance with Section 31(4).

(Section 31(4) was enacted by Public Act 148 of 2013, which took effect on March 14, 2014. The section required the State Treasurer, within six months after that date, to file a request for rule-making to initiate rules on auditing standards.)

The Act prohibits the State Treasurer from commencing an action or proceeding with respect to any duty of a holder under the Act more than 10 years after the duty arose, or, for the holder of records of transactions between two or more associations, more than five years after the duty arose. Under the bill, for eligible holders electing to participate in the streamlined audit process, an action or proceeding could not be commenced with respect to any duty of a holder more than four years after the duty arose.

Also, for an eligible holder that elected to follow the streamlined process, examinations could not include checks voided within 180 days from the date they were issued.

In addition, the bill specifies that property would not be subject to the custody of the State as unclaimed property if its value were \$50 or less. This provision would not apply to dividends or to property described in Section 11a. (That section provides for a presumption of abandonment of any stock, share, or other intangible ownership interest in a business association, if the interest is owned by a person who has not taken certain actions with respect to it for more than three years and the association does not know the location of the owner at the end of the three-year period.)

MCL 567.222 et al.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill could result in savings to the State and would have no impact on local government. The ability of the Department of Treasury and eligible holders to enter into a streamlined audit process could result in less time and resources being devoted to unclaimed property audits. If a significant number of eligible holders participated in the streamlined audit process, there could be significant savings to the Department. However, since the unclaimed property unit is paid for with a restricted fund, Escheats Revenue, which charges holders for the cost of the audit, the savings would affect only this unit and not result in General Fund savings.

Fiscal Analyst: Cory Savino

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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.