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ESCHEATS; EXEMPT UNCLAIMED PAYROLL CHECKS

House Bill 5540 (Substitute H-1)
First Analysis (2-20-02)

Sponsor: Rep. Clark Bisbee
Committee: Employment Relations,
Training and Safety

THE APPARENT PROBLEM:

According to a spokesman for the Michigan Restaurant Association, employers in low-wage high-turnover businesses sometimes carry the uncollected paychecks of short-term employees on their accounts for months after the employees abruptly quit. Generally the amounts of the uncollected paychecks are small--near \$50--and many can accumulate. For example, according to committee testimony one restaurateur with six businesses was holding \$3,000 of uncollected paychecks. In this case, the average unclaimed payroll check was in the amount of \$21.

Under Michigan law employers generally keep uncollected payroll checks for up to one year, since the Wage and Hour Division of the Department of Consumer and Industry Services will investigate an employee's claim for unpaid wages for twelve months after the employee stops working. During this period, the holder of the unclaimed or abandoned property--in this case the employer--is required to find the true owner of the property, before the holder reports the property to the state. If the owner does not respond or contact the holder within five years, and does not respond to the due diligence notice sent by the holder, the account must be turned over to the state treasurer. Reports are filed once each year before November 1, and the holders of abandoned property are encouraged to file electronically, although paper reporting is possible and forms are made available to the holders of abandoned property. [The software for electronic filing is available at www.wagers.net/hrs]

Generally, the Michigan Uniform Unclaimed Property Act protects accounts belonging to owners whose whereabouts are unknown. Michigan has an Unclaimed Property Act to protect abandoned property and return it to its rightful owners or their heirs. The state treasurer takes custody of the property so the owner can claim it, even if the original holder (like a financial institution or an employer) is no longer in business. The law also

centralizes the search for lost property. For example, citizens trying to locate forgotten bank accounts and other property can look in one place: the Unclaimed Property Division of the Department of Treasury.

The legal concept of property reversion--called escheats--is several centuries old. See *BACKGROUND INFORMATION* below. The state holds the unclaimed or escheated property for periods of time that are specified under law, and attempts to notify its owners of their right to claim it. If the property goes unclaimed, a portion of it is set aside in reserve, in the event of future claims, but most reverts to the general fund of the state. According to committee testimony, \$24 million escheated to the general fund during the last year. Despite the fact that money never claimed is transferred into the general fund for the benefit of all Michigan citizens, owners or heirs can always claim their property. There is no time limit for making a claim to the state treasurer.

Some have argued that when small paychecks go unclaimed, employers should not be required to file unclaimed property reports, and legislation has been introduced to achieve that end.

THE CONTENT OF THE BILL:

House Bill 5540 would amend the Uniform Unclaimed Property Act to exempt unclaimed payroll checks under \$100 from escheats. Currently under the law, unpaid wages, including wages represented by unrepresented 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, and escheated to the state. Under the bill, this provision would be retained but would apply to unpaid wages "greater than \$100, including wages represented by unrepresented payroll checks greater than \$100." More specifically and under the bill, unpaid wages of

House Bill 5540 (2-20-02)

\$100 or less owing in the ordinary course of the holder's business that remain unclaimed by the owner for more than one year after becoming payable would not be subject to the act.

MCL 567.236

BACKGROUND INFORMATION:

The concept of escheats--the reversion of property--has existed since the days of English feudal law when land reverted to the lord of the fee if there were no heirs capable of inheriting under the original grant. [The word comes from an Old French term, "eschete," which meant devolve, or fall to, and that word was adapted in Middle English as "escheat."] In modern times, the unclaimed property reverts to the crown in England, or to the state in the United States. In the glossary of the "Manual for Reporting Unclaimed Property" published by the Michigan Department of Treasury, "escheat" is defined as a transfer of property that makes the state the legal custodian of the property.

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

When employers must carry checks for relatively small sums of unclaimed payroll on their books, their bookkeeping and mailing costs can sometimes exceed the amount of the unclaimed checks. Sending the unclaimed checks to the Unclaimed Property Division of the Department of Treasury also is expensive, bearing a cost in terms of the time that must be expended to process the unclaimed property in the manner prescribed by the department. If the amount of an unclaimed payroll check is small--under \$100--it should not have to be escheated to the state. Instead, it should revert to the employer's personal business account.

Against:

Employees should be able to claim property that is rightfully theirs from the Unclaimed Property Division, despite a delay in their claim to a former employer. Delayed payroll claims are sometimes unavoidable, and an employee's right to his or her wages should not be foregone, but instead entrusted to the custody of the state treasurer.

Against:

The total amount of the unclaimed payroll checks under \$100 is unknown; however, the amount could be quite high, given the fact that a single restaurateur has accumulated \$3,000 in unclaimed paychecks, according to committee testimony. Eventually, all unclaimed property that is escheated to the Unclaimed Property Division of the Department of Treasury is transferred to the state's general fund, and is available to benefit all citizens. For example, last year nearly \$24 million in unclaimed property was remitted to the state's general fund, according to committee testimony. As a matter of policy, the state should continue to use all unclaimed payroll checks, however small, to fund programs with a public purpose.

POSITIONS:

The Michigan Chamber of Commerce supports the bill. (2-19-02)

The National Federation of Independent Businesses-Michigan supports the bill. (2-19-02)

The Michigan Restaurant Association supports the bill. (2-19-02)

The Department of Treasury opposes the bill. (2-20-02)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.