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BILL



ANALYSIS

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Senate Bill 538 (as enacted)
Sponsor: Senator Jack Brandenburg
Senate Committee: Finance
House Committee: Commerce and Trade

PUBLIC ACT 242 of 2015

Date Completed: 1-4-16

CONTENT

The bill amended the Uniform Unclaimed Property Act to do the following:

- **Establish a streamlined audit process and allow an "eligible holder" who is 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's receipt of the audit notice.**
- **Provide that, for an eligible holder participating in the streamlined audit process, the Treasurer may not begin an action or proceeding more than four years after any duty of a holder under the Act arose.**
- **Specify that examinations may not include checks voided within 180 days of their issuance, for eligible holders participating in the streamlined process.**
- **Provide that property worth \$25 or less is not subject to the custody of the State as unclaimed property, with certain exceptions.**

The bill was enacted on December 22, 2015. The bill states that it is retroactive and applies to audits in progress as of August 15, 2015, but does not apply retroactively to contested determinations in litigation before the bill's effective date.

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

- Is a business whose principal place of business is in Michigan as evidenced by 20% or more of its payroll or 20% or more of its real and tangible personal property, except inventory, owned or rented in this State during the period subject to examination, or the majority of officers who direct, control, and coordinate the activities of the business being employed in this State.
- Is a corporation that wholly owns a corporation that has incorporated in Michigan and the corporation incorporated in this State meets the criteria for a business described above.
- Is a corporation that is wholly owned by a corporation that is incorporated in Michigan and the corporation incorporated in this State meets the criteria for a business described above.

(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 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 may elect to follow the streamlined audit process described below. Eligible holders may 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 must 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) required the State Treasurer, by September 14, 2014, 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 may 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 elects to follow the streamlined process, examinations may not include checks voided within 180 days from the date they were issued.

In addition, the bill specifies that property is not subject to the custody of the State as unclaimed property if its value is \$25 or less. This provision does 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 may result in savings to the State and will have no impact on local government. The ability of the Department of Treasury and eligible holders to enter into a streamlined audit process may result in less time and resources being devoted to unclaimed property audits. If a significant number of eligible holders participate in the streamlined audit process, there may 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 will 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.