

Legislative Analysis



ESCHEATS: LOCATORS

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5339 as enrolled and vetoed
Sponsor: Rep. Michael Webber

Analysis available at
<http://www.legislature.mi.gov>

House Bill 5340 as enrolled and vetoed
Sponsor: Rep. Wendell L. Byrd

1st House Committee: Regulatory Reform
2nd House Committee: Ways and Means
Senate Committee: Regulatory Reform
Complete to 11-4-20

SUMMARY:

House Bills 5339 and 5340 would amend provisions of the Uniform Unclaimed Property Act that deal with *locators* of escheated property. Taken together, the bills would do all of the following:

- Require the state, upon request, to provide all unclaimed property account information to a locator after 12 months of its being turned over to the state and regardless of its value.
- Provide a \$250 cap on the fee for a request for that information.
- Require the state to distribute unclaimed property to a locator if the owner entered into a written agreement with the locator for assistance in claiming the property and requested that payment be mailed to the locator's address.
- Allow an agreement to pay compensation to a locator made within 12 months after property is delivered to the state treasurer to be enforceable if the owner signed a waiver.

Locator refers to a person who, for compensation, locates owners of unclaimed property and enters into a written agreement with an owner to document entitlement to property and to locate, deliver, recover, or claim property presumed abandoned or assist in locating, delivering, recovering, or claiming such property. A locator must be registered with the Department of Treasury under the act.

Under the act, generally speaking, property that remains unclaimed or dormant for a certain number of years, as provided by the act, is transferred to the state (that is, "escheated"). Unclaimed property or its equivalent value is maintained by the state for property owners in perpetuity; owners or heirs always have the right to claim it.

House Bill 5339

Currently, section 36a of the act allows the state treasurer¹ to sell or otherwise provide information to a locator for unclaimed accounts that have remained unclaimed for 24 months or more after being delivered or paid to the state treasurer, if the value of the unclaimed property is \$10,000 or more.

¹ The act refers to the state treasurer as "the administrator."

The bill would revise this provision to instead require the state treasurer, upon written request, to sell or provide all unclaimed property account information to a locator for all unclaimed accounts that remain unclaimed for 12 months after being delivered or paid to the state treasurer. The requirement that information be provided to a locator only if it were valued of at least \$10,000 would be deleted. The bill would prohibit the state treasurer from charging more than \$250 for each request.

Currently, the unclaimed property account information must be provided in an electronic searchable format and may include the apparent owner's name; the apparent owner's last known address, as reported by the holder of the property; the relationship code, if any;² and the type, amount, and cash value of property.

Under the bill, information would have to be provided in a searchable digital or electronic format and would have to include all of the following:

- The name of the apparent owner or owners.
- The complete last known address of the apparent owner(s), as reported by the holder.
- The relationship code, if any.
- The type of property.
- The cash value of the property.
- The year the property was reported to the state treasurer.
- The name and contact information of the holder that is on file with the state treasurer.

In addition, under the bill, if an owner had entered into a written agreement that authorized a registered locator to assist the owner in claiming the property, the state treasurer would have to make payment to the owner. However, if requested by the owner, the state treasurer could mail payment to the locator's address.

MCL 567.256a

House Bill 5340

The act currently provides that an agreement to pay compensation to recover or assist in the recovery of property that is made within 24 months after the property has been delivered or paid to the state treasurer is unenforceable. The bill would amend this provision to apply it to an agreement made within 12 months and would add that the agreement is unenforceable unless waived by the owner in writing. The owner would have to sign a waiver that stated substantially the following for it to be effective under these provisions:

I hereby waive the unenforceability provision contained in section 36 of the Uniform Unclaimed Property Act, 1995 PA 29, MCL 567.256, and agree to compensate the locator for all properties paid to me by the administrator, regardless of how long the property has been held by the administrator.

² Relationship codes, as described in the Department of Treasury's "Manual for Reporting Unclaimed Property," are used to describe the property owner(s). They include "P" for primary owner, "BF" for beneficiary, and "CN" for conservator, among others. See https://www.michigan.gov/documents/2013i_2598_7.pdf

In addition, the bill would require a written agreement between a locator and an owner to be in writing in at least 10-point font and to include all of the following:

- The aggregate estimated value of the unclaimed property accounts being claimed before and after deduction of compensation and costs, if known.
- A description of the service to be provided.
- A statement that the owner acknowledges that he or she has the right to recover his or her property without paying a fee.

In addition, an agreement that compensation to be paid by an owner to a locator to recover or assist in the recovery of unclaimed property could not exceed 25% of the amount of the claim approved by the state treasurer.

Finally, an electronically signed agreement would be considered original for all purposes under the act.

MCL 567.256

BRIEF DISCUSSION:

Many people are unaware that money owed to them, either directly (e.g., a utility deposit) or as a beneficiary to an insurance policy or inheritance, is being held by the state treasury as unclaimed property. Others may know of such money, but be unable to locate necessary documentation or be intimidated by the process, and so fail to make or decide not to pursue a claim. Businesses known as “locators” or “finders” offer services to help consumers make successful claims in return for a fee.

Arguments supporting the bills

Currently, the Department of Treasury may, but is not required to, provide information to locators regarding unclaimed property that is over \$10,000 that has been held by the department for at least two years. Locators, and others, feel that information on all accounts in the department’s possession, and more detailed information, should have to be provided to locators upon request and payment of a nominal fee. For some consumers, there may not be a single unclaimed property that would meet the \$10,000 threshold to be made available to locators, but there could be several smaller properties that would add up to a significant amount. A locator could alert the consumer and offer its services to assist in reclaiming the money. A consumer would not be under any obligation to enter into an agreement with a locator. The information required to be released to locators could make it easier for them to identify, locate, and inform property owners of unclaimed property they may not know about or have given up on trying to claim. Reportedly, similar information is provided to locators in other states without increasing fraudulent claims. Regarding shortening the current two-year waiting period to one year before a locator can receive information on an account from the department, and allowing an owner to waive any waiting period, some feel that allowing locators to access unclaimed property lists sooner than two years can result in consumers being reunited with their property earlier.

Arguments opposing the bills

Others say that the system is operating well and is improving in the amount of money returned to consumers. Unlike locators or finders, which charge 35% to 40% on average of the recovered

amount, the Department of Treasury provides a free service and has more recently updated its online tool to make it easier for consumers to identify unclaimed property and file claims. The department reports that yearly amounts returned to consumers have been growing in recent years and anticipates returning close to \$120 million this year. During the two-year time period between when the Department of Treasury takes possession of an unclaimed fund and when information may be released to a locator or finder, the department uses various means to reunite the property with the rightful owner. Preservation of the two-year window reduces the chance a consumer agrees to use a locator thinking it is required or is the only way a claim can be made. The current system also protects certain information related to an unclaimed property, such as address information, that is used to verify the validity of a claim and prevent fraud. Under the bill, such information would have to be disclosed. Further, the bills' requirements could lengthen the time needed by the department to verify and process a claim. Currently, the department is able to process most claims in less than 90 days.

Governor's veto message

In her message explaining to the legislature why she vetoed HBs 5339 and 5340, Governor Whitmer stated that the bills would make it "easier and cheaper" for locators, who are for-profit property finders, to access the private data of Michiganders, whereas the state treasury does not charge property owners a fee to return lost or unclaimed property to its rightful owner. In addition, the governor stated that the changes made by the bills would "put an increased administrative burden" on the treasury and would do so "at the expense of consumer privacy."³

FISCAL IMPACT:

House Bills 5339 and 5340 would have an unknown net fiscal impact on the Department of Treasury and would likely reduce available general fund revenue by an unknown amount. The department would be required to provide account information for all Treasury held accounts to locators, upon request, if held by Treasury for 12 months; the department currently has the discretion to provide account information on a much smaller subset of accounts (those in the possession of the department for two years and exceeding \$10,000 in unclaimed property). In addition to broadening the accounts subject to locator requests, HB 5339 would likely lengthen the claims process by requiring additional information to be released to the locator for each account in the request that subsequently must be verified by the department when the claimant makes a claim. Therefore, administrative costs, including fraud detection, would increase under the provisions of the bill. However, the magnitude of the costs is unknown. It is also unknown how many locators would register and pay the \$1,200 fee used to offset the costs of registering and monitoring unclaimed property locators.

HB 5339 would cap the amount the department could charge for each request at \$250, which would have an unknown impact on total fee revenues collected by the department. Any fiscal impact would be directly related to the number and size of requests compared to current law. It is uncertain whether the locator registration fee and request fee sufficiently offset the projected increased costs.

Coupled with the changes in HB 5340, the bills also would include downside risks for general fund revenue due to increased unclaimed property being claimed either by individual claimants

³ https://content.govdelivery.com/attachments/MIEOG/2020/10/15/file_attachments/1571567/Veto%20Letters%20101520.pdf

or locators purchasing unclaimed property from claimants, assuming the property would not have been claimed but for the changes provided in the bills. While always subject to claimant requests, unclaimed property is deposited in the general fund under statute. Because the bill would subject all unclaimed property to locator requests, and not just a subset of accounts exceeding \$10,000, the revenue impact could be significant.

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