

The House Committee on Judiciary offers the following substitute to HB 1352:

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 5 of Chapter 12 of Title 44 of the Official Code of Georgia Annotated,
2 relating to disposition of unclaimed property, so as to provide for the handling of certain
3 wills; to provide for definitions; to provide for administrative expenses of the commissioner;
4 to provide for a claimant's designated representative; to provide for related matters; to repeal
5 conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Article 5 of Chapter 12 of Title 44 of the Official Code of Georgia Annotated, relating to
9 disposition of unclaimed property, is amended by adding two new subsections to Code
10 Section 44-12-192, relating to definitions, to read as follows:

11 "(3.1) 'Claimant' means the person on whose behalf a claim is filed.

12 (3.2) 'Claimant's designated representative' means a person who has successfully
13 registered with the commissioner pursuant to Code Section 44-12-239."

SECTION 2.

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Said article is further amended by revising Code Section 44-12-209, relating to rent due on safe-deposit boxes, notice of opening of box and sealing of contents when contents deemed abandoned, and delivery to commissioner, as follows:

"44-12-209.

(a) If the rental due on a safe-deposit box has not been paid for one year, the lessor shall send a notice by registered mail or statutory overnight delivery to the last known address of the lessee stating that the safe-deposit box will be opened and its contents stored at the expense of the lessee unless payment of the rental is made within 30 days. If the rental is not paid within 30 days from the mailing of the notice, the holder shall provide written notification to the commissioner of the drilling date not less than 30 days prior to this time. The commissioner may designate a representative to be present during the opening of the safe-deposit box. The safe-deposit box shall be opened in the presence of an officer of the lessor. The contents shall be sealed in a package by the officer who shall write on the outside the name of the lessee and the date of the opening. The officer shall execute a certificate reciting the name of the lessee, the date of the opening of the safe-deposit box, and a list of its contents. The certificate shall be included in the package and a copy of the certificate shall be sent by registered mail or statutory overnight delivery to the last known address of the lessee. The package shall then be placed in the general vaults of the lessor at a rental not exceeding the rental previously charged for the safe-deposit box.

(b) If the contents of the safe-deposit box have not been claimed within two years of the mailing of the certificate, the lessor may send a further notice to the last known address of the lessee stating that, unless the accumulated charges are paid within 30 days, the contents of the safe-deposit box will be delivered to the commissioner as abandoned property under the provisions of Code Section 44-12-214.

(c) The lessor shall submit to the commissioner a verified inventory of all of the contents of the safe-deposit box upon delivery of the contents of the safe-deposit box or such part

41 thereof as shall be required by the commissioner under Code Section 44-12-214, but the
42 lessor shall not deduct from any cash of the lessee in the safe-deposit box an amount equal
43 to accumulated charges for rental but shall submit to the commissioner a verified statement
44 of such charges and deductions. If there is no cash, or insufficient cash to pay accumulated
45 charges, in the safe-deposit box, the commissioner shall remit to the lessor the charges or
46 balance due, up to the value of the property in the safe-deposit box delivered to ~~him~~ the
47 commissioner, less any costs or expenses of sale; but, if the charges or balance due exceeds
48 the value of such property, the commissioner shall remit only the value of the property, less
49 costs or expenses of sale. Any accumulated charges for safe-deposit box rental paid by the
50 commissioner to the lessor shall be deducted from the value of the property of the lessee
51 delivered to the commissioner.

52 (d) ~~On and after January 1, 1991, a~~ A copy of this Code section shall be printed on every
53 contract for rental of a safe-deposit box.

54 (e) If a will, codicil, trust instrument, or amendment to a trust instrument is included
55 among the contents of a safe-deposit box or other safekeeping repository delivered to the
56 commissioner, the commissioner shall:

57 (1) Retain each original will, codicil, trust instrument, or amendment to a trust
58 instrument; provided, however, that, upon request, the commissioner shall:

59 (A) Deliver any will, codicil, trust instrument, or amendment to a trust instrument to
60 the testator or settlor upon the presentation to the commissioner of satisfactory
61 competent evidence of the identity of such testator or settlor;

62 (B) Deliver any will or codicil of a deceased testator to the probate court having
63 jurisdiction of such testator's estate in the same circumstances under which a financial
64 institution would deliver such will or codicil to such probate court pursuant to
65 paragraph (1) of subsection (a) of Code Section 7-1-356 upon the presentation to the
66 commissioner of satisfactory competent evidence of the death of the testator;

67 (C) Permit the removal of such will, codicil, trust instrument, or amendment to a trust
68 instrument in the same circumstances under which a financial institution would permit
69 the removal thereof pursuant to subsection (d) of Code Section 7-1-356; and
70 (D) Deliver any trust instrument or amendment to a trust instrument to the trustee of
71 the trust upon the presentation to the commissioner of satisfactory competent evidence
72 of the death of the settlor, satisfactory competent evidence of the identity of the trustee,
73 and a certification of trust by the trustee made under oath and containing all of the
74 information set forth in paragraph (3) of subsection (b) of Code Section 53-12-280; and
75 (2) Upon request and upon payment of reasonable charges therefor, provide a true and
76 correct photostatic or certified copy of:
77 (A) Any will or codicil to any person upon the presentation to the commissioner of
78 satisfactory competent evidence of the death of the testator and satisfactory competent
79 evidence of the identity of such person showing that, with respect to such will or
80 codicil, such person is an interested person within the meaning of subsection (a) of
81 Code Section 53-5-2 or is a registered claimant's designated representative pursuant to
82 Code Section 44-12-239; and
83 (B) Any trust instrument or amendment to a trust instrument to any person upon the
84 presentation to the commissioner of satisfactory competent evidence of the death of the
85 settlor and satisfactory competent evidence of the identity of such person showing that,
86 with respect to such trust or amendment, such person is a trustee, trust director, or
87 qualified beneficiary, as such terms are defined in Code Sections 53-12-2 and
88 53-12-500, or is a registered claimant's designated representative pursuant to Code
89 Section 44-12-239."

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SECTION 3.

91 Said article is further amended by revising Code Section 44-12-218, relating to disposition
92 of funds received as proceeds of sales and administrative expenses, as follows:

H. B. 1352 (SUB)

93 "44-12-218.

94 All funds received under this article, including the proceeds from the sale of abandoned
95 property under Code Section 44-12-217, shall be deposited by the commissioner in the
96 general fund; provided, however, that the commissioner may deduct moneys necessary to
97 cover the direct administrative expenses required to identify, locate, secure, and transmit
98 abandoned property prior to depositing such funds; provided, further, that such
99 administrative expenses shall not be less than 1 percent of the funds deposited annually.
100 Before making a deposit he or she shall record the name and last known address of each
101 person appearing from the holders' reports to be entitled to the abandoned property and of
102 the name and last known address of each insured person or annuitant and, with respect to
103 each policy or contract listed in the report of an insurance ~~corporation~~ company, its
104 number, the name of the corporation, and the amount due."

105 **SECTION 4.**

106 Said article is further amended by revising Code Section 44-12-220, relating to claims for
107 property paid or delivered to commissioner, procedure, and destruction of records after seven
108 years, as follows:

109 "44-12-220.

110 (a) A person, ~~excluding another state, claiming~~ including a claimant's designated
111 representative, who claims an interest in any property paid or delivered to the
112 commissioner may file with ~~him~~ the commissioner a claim on a form prescribed by ~~him~~ the
113 commissioner and verified by the claimant or the claimant's designated representative.
114 This subsection shall not apply to claims made by another state.

115 (b) The commissioner shall consider each claim within 90 days after it is filed and give
116 written notice to the claimant or, if the person is utilizing the services of a designated
117 representative, to the claimant's designated representative if the claim is denied in whole
118 or in part. The notice may be given by mailing it to the claimant's designated

119 representative, if any, or to the claimant's last address, if any, stated in the claim as the
120 address to which notices are to be sent. If no address for notices is stated in the claim, the
121 notice may be mailed to the last address, if any, of the claimant as stated in the claim. No
122 notice of denial need be given if the claim fails to state either the last address to which
123 notices are to be sent or the address of the claimant.

124 (c) If a claim is allowed, the commissioner shall pay over or deliver to the claimant the
125 property or the amount the commissioner actually received or the net proceeds if it has
126 been sold by the commissioner. If the claim is made by a claimant's designated
127 representative, the commissioner shall pay over or deliver to the claimant the balance
128 remaining after deduction and payment of the amount due to the claimant's designated
129 representative by the commissioner; provided, however, that any payments made directly
130 to the claimant's designated representative shall be made only after a claim has been
131 approved, if the claimant's designated representative is registered pursuant to Code Section
132 44-12-239, and if the claimant's designated representative provides proof to the
133 commissioner of an agreement authorized by Code Section 44-12-239. The owner is not
134 entitled to receive income or other increments accruing after remittance to the
135 commissioner.

136 (d) ~~The commissioner may, after seven years following the receipt of property, destroy~~
137 ~~such records related to the property as deemed necessary; and after said seven-year period~~
138 ~~any claim relating to such property must be fully substantiated by a claimant, without~~
139 ~~recourse to such records shall maintain an electronic copy of all records related to the~~
140 ~~property. Certified electronic copies of documents that are stored electronically pursuant~~
141 ~~to this subsection shall be deemed an original pursuant to Chapter 10 of Title 24."~~

142 **SECTION 5.**

143 Said article is further amended by revising Code Section 44-12-221, relating to judicial
144 review of decision of commissioner, as follows:

H. B. 1352 (SUB)

145 "44-12-221.

146 (a) Any person aggrieved by a decision of the commissioner or whose claim the
147 commissioner has failed to act upon within 90 days after the filing of the claim may appeal
148 such decision or lack of decision to the Superior Court of Fulton County. The proceeding
149 shall be brought within 90 days after the decision of the commissioner or within 180 days
150 of the filing of the claim if the commissioner fails to act. The appeal shall be tried de novo
151 without a jury. The record on appeal shall be limited to the evidence before the
152 commissioner; provided, however, that the court may allow a party to supplement the
153 record for good cause.

154 (b) In rendering a determination regarding the merits of an unclaimed property claim, the
155 commissioner shall rely on the applicable statutes, regulations, and decisions of relevant
156 courts. The commissioner shall consider evidence that would be admissible in contested
157 cases arising under the 'Georgia Administrative Procedure Act' as set forth in Code Section
158 50-13-15. In any proceeding for determination of a claim to property, the burden shall be
159 upon the claimant to establish entitlement to the property by a preponderance of evidence."

160 **SECTION 6.**

161 Said article is further amended by revising Code Section 44-12-224, relating to agreement
162 and fees for recovery or assistance in recovery of property reported and delivered to
163 commissioner, as follows:

164 "44-12-224.

165 (a) All agreements to pay compensation to recover or assist in the recovery of property
166 reported and delivered to the commissioner under this article shall be ~~unenforceable for 24~~
167 ~~months after the date of payment or the delivery of property to the commissioner~~ written
168 in at least ten-point type, shall describe the services to be performed, and shall state the
169 estimated aggregate value of the property, if known, the percentage and estimated amount

170 to be paid as compensation for services, and the estimated amount the owner will receive
 171 after compensation is deducted, in a format substantially similar to the following:

172 \$ _____ Estimated dollar value of the unclaimed property, if known

173 # _____ Number of unliquidated shares

174 \$ _____ / _____ % Estimated compensation expressed as a dollar amount and
 175 percentage

176 (If the actual value of the unclaimed property paid is less than shown above, the
 177 amount of compensation will be reduced to reflect the percentage of unclaimed
 178 property that is paid.)

179 \$ _____ Estimated net amount to be paid to claimant(s), if known
 180 (PENDING will appear when claimant's interest is pending judicial determination.)

181 The agreement must be signed by the claimant, and electronic signatures shall be permitted
 182 pursuant to Code Section 10-12-7.

183 ~~(b) The fees charged by any person, firm, or corporation to recover or assist in the~~
 184 ~~recovery for and on behalf of a claimant of property reported and delivered to the~~
 185 ~~commissioner under this article shall not exceed 10 percent of the value of the property~~
 186 ~~recovered. All funds or property located by a person to be compensated by the payment~~
 187 ~~of such a fee shall be paid or delivered directly to the owner and may not be paid or~~
 188 ~~delivered to the person to receive the fee whether pursuant to a duly executed power of~~
 189 ~~attorney or otherwise. Contracts authorized by this Code Section shall not allow for~~
 190 ~~payment to a claimant's designated representative to exceed 30 percent of the unclaimed~~
 191 ~~property's value. The 30 percent compensation limit shall not apply if a judicial order,~~
 192 ~~judgment, or decree to document entitlement provides otherwise or if an owner sells the~~
 193 ~~unclaimed property to a third-party purchaser. To receive compensation, a claimant's~~
 194 ~~designated representative must be registered with the commissioner pursuant to Code~~
 195 ~~Section 44-12-239, unless exempt."~~

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SECTION 7.

197 Said article is further amended by revising Code Section 44-12-225, relating to
198 confidentiality of information or records required by this article, as follow:

199 "44-12-225.

200 Any information or records required to be furnished to the commissioner shall be
201 confidential except as otherwise necessary in the proper administration of this article.

202 Confidential information includes social security numbers, federal tax identification
203 numbers, and holder account numbers."

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SECTION 8.

205 Said article is further amended by adding a new Code Section to read as follows:

206 "44-12-239.

207 (a) Upon written request, the commissioner shall provide a registered claimant's designated
208 representative the following account information in a searchable and sortable electronic or
209 digital format for all unclaimed accounts:

210 (1) Name of the apparent owner. If the property is from an insurance policy, provide the
211 name of the insured and beneficiary, including the beneficiary's relation to the insured,
212 if applicable;

213 (2) Last known address of the apparent owner. If the apparent owner is the insured under
214 an insurance policy, the address of the beneficiary, if applicable;

215 (3) Owner account relation/vesting codes utilized by the National Association of
216 Unclaimed Property Administrators;

217 (4) Cash amount;

218 (5) Unliquidated securities or mutual funds account; number of shares, name of the
219 issuer of the security or mutual funds account, and Committee on Uniform Securities
220 Identification Procedures number, if available;

221 (6) Safe-deposit box contents with descriptions utilized by the National Association of
222 Unclaimed Property Administrators;
223 (7) Property type descriptions utilized by the National Association of Unclaimed
224 Property Administrators;
225 (8) Date of last activity;
226 (9) Year property was reported to the commissioner; and
227 (10) Holder's name and contact information.

228 (b) To receive unclaimed property account information and to receive compensation for
229 services, a claimant's designated representative must register with the commissioner on a
230 form and in a manner prescribed by the commissioner and pay a \$1,200.00 fee to the
231 commissioner. The registration shall have a four-year term and may be renewed if the
232 claimant's designated representative continues to meet the applicable criteria. Upon
233 renewal, a claimant's designated representative shall pay a renewal fee of \$1,200.00. To
234 register, a claimant's designated representative shall provide the commissioner with a
235 primary business address and telephone number; the name, telephone number, and email
236 address of the individual who will be the primary point of contact with the commissioner;
237 and a document granting the commissioner or his or her designee authority to conduct a
238 criminal background check. A claimant's designated representative is ineligible for
239 registration if, within the immediately preceding ten years, the representative, or the
240 representative's officer, owner, or employee who performs or directs services, was
241 convicted of a felony involving dishonesty, deceit, or fraud, or a verdict finding a breach
242 of fiduciary duty.

243 (c) A claimant's designated representative who receives unclaimed property information
244 from the commissioner is prohibited from distributing such information except for the
245 purpose of soliciting owners of unclaimed property to offer claim services. Any violation
246 of this Code section shall be a misdemeanor, and the commissioner may refer a suspected
247 violation to the Attorney General for prosecution.

248 (d) The registration requirement imposed by subsection (b) of this Code section shall not
249 apply to an attorney licensed to practice law in Georgia or a person representing an active
250 corporate entity seeking to recover the entity's unclaimed property.

251 (e) A registered claimant's designated representative is authorized to submit claims and
252 respond to requests for additional information on behalf of an apparent owner and to
253 receive information related to accounts claimed directly from the commissioner."

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SECTION 9.

255 All laws and parts of laws in conflict with this Act are repealed.