

House Bill 1352

By: Representatives Smith of the 133rd, Efstration of the 104th, Stephens of the 164th, and Greene of the 151st

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 or trust instrument is included among the contents of a safe-deposit box or
 55 other safekeeping repository delivered to the commissioner, the commissioner shall retain
 56 the will or trust, and he or she shall provide a copy of the will or trust, and any codicils or
 57 amendments to such will or trust, upon request, to anyone who provides the commissioner
 58 with satisfactory, competent evidence of the death of the testator or settlor."

59 SECTION 3.

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

62 "44-12-218.

63 All funds received under this article, including the proceeds from the sale of abandoned
 64 property under Code Section 44-12-217, shall be deposited by the commissioner in the
 65 general fund; provided, however, that the commissioner may deduct moneys necessary to
 66 cover the direct administrative expenses required to identify, locate, secure, and transmit

67 abandoned property prior to depositing such funds; provided, further, that such
68 administrative expenses shall not be less than 1 percent of the funds deposited annually.
69 Before making a deposit he or she shall record the name and last known address of each
70 person appearing from the holders' reports to be entitled to the abandoned property and of
71 the name and last known address of each insured person or annuitant and, with respect to
72 each policy or contract listed in the report of an insurance ~~corporation~~ company, its
73 number, the name of the corporation, and the amount due."

74 **SECTION 4.**

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

78 "44-12-220.

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

84 (b) The commissioner shall consider each claim within 90 days after it is filed and give
85 written notice to the claimant or, if the person is utilizing the services of a designated
86 representative, to the claimant's designated representative if the claim is denied in whole
87 or in part. The notice may be given by mailing it to the claimant's designated
88 representative, if any, or to the claimant's last address, if any, stated in the claim as the
89 address to which notices are to be sent. If no address for notices is stated in the claim, the
90 notice may be mailed to the last address, if any, of the claimant as stated in the claim. No
91 notice of denial need be given if the claim fails to state either the last address to which
92 notices are to be sent or the address of the claimant.

93 (c) If a claim is allowed, the commissioner shall pay over or deliver to the claimant the
94 property or the amount the commissioner actually received or the net proceeds if it has
95 been sold by the commissioner. If the claim is made by a claimant's designated
96 representative, the commissioner shall pay over or deliver to the claimant the balance
97 remaining after deduction and payment of the amount due to the claimant's designated
98 representative by the commissioner; provided, however, that any payments made directly
99 to the claimant's designated representative shall be made only after a claim has been
100 approved, if the claimant's designated representative is registered pursuant to Code Section
101 44-12-239, and if the claimant's designated representative provides proof to the
102 commissioner of an agreement authorized by Code Section 44-12-239. The owner is not
103 entitled to receive income or other increments accruing after remittance to the
104 commissioner.

105 (d) ~~The commissioner may, after seven years following the receipt of property, destroy~~
106 ~~such records related to the property as deemed necessary; and after said seven-year period~~
107 ~~any claim relating to such property must be fully substantiated by a claimant, without~~
108 ~~recourse to such records~~ shall maintain an electronic copy of all records related to the
109 property. The commissioner may destroy the physical records after an electronic copy has
110 been made. Certified electronic copies of documents that are stored electronically pursuant
111 to this subsection shall be deemed an original pursuant to Chapter 10 of Title 24."

112 **SECTION 5.**

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

115 "44-12-221.

116 (a) Any person aggrieved by a decision of the commissioner or whose claim the
117 commissioner has failed to act upon within 90 days after the filing of the claim may appeal
118 such decision or lack of decision to the Superior Court of Fulton County. The proceeding

119 shall be brought within 90 days after the decision of the commissioner or within 180 days
 120 of the filing of the claim if the commissioner fails to act. The appeal shall be tried de novo
 121 without a jury. The record on appeal shall be limited to the evidence before the
 122 commissioner; provided, however, that the court may allow a party to supplement the
 123 record for good cause.

124 (b) In rendering a determination regarding the merits of an unclaimed property claim, the
 125 commissioner shall rely on the applicable statutes, regulations, and decisions of relevant
 126 courts. The commissioner shall consider evidence that would be admissible in contested
 127 cases arising under the 'Georgia Administrative Procedure Act' as set forth in Code Section
 128 50-13-15. In any proceeding for determination of a claim to property, the burden shall be
 129 upon the claimant to establish entitlement to the property by a preponderance of evidence."

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SECTION 6.

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

134 "44-12-224.

135 (a) All agreements to pay compensation to recover or assist in the recovery of property
 136 reported and delivered to the commissioner under this article shall be ~~unenforceable for 24~~
 137 ~~months after the date of payment or the delivery of property to the commissioner~~ written
 138 in at least ten-point type, shall describe the services to be performed, and shall state the
 139 estimated aggregate value of the property, if known, the percentage and estimated amount
 140 to be paid as compensation for services, and the estimated amount the owner will receive
 141 after compensation is deducted, in a format substantially similar to the following:

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

143 # _____ Number of unliquidated shares

144 \$ _____ / _____ % Estimated compensation expressed as a dollar amount and
 145 percentage

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

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

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

153 ~~(b) The fees charged by any person, firm, or corporation to recover or assist in the~~
 154 ~~recovery for and on behalf of a claimant of property reported and delivered to the~~
 155 ~~commissioner under this article shall not exceed 10 percent of the value of the property~~
 156 ~~recovered. All funds or property located by a person to be compensated by the payment~~
 157 ~~of such a fee shall be paid or delivered directly to the owner and may not be paid or~~
 158 ~~delivered to the person to receive the fee whether pursuant to a duly executed power of~~
 159 ~~attorney or otherwise. Contracts authorized by this Code Section shall not allow for~~
 160 ~~payment to a claimant's designated representative to exceed 30 percent of the unclaimed~~
 161 ~~property's value. The 30 percent compensation limit shall not apply if a judicial order,~~
 162 ~~judgment, or decree to document entitlement provides otherwise or if an owner sells the~~
 163 ~~unclaimed property to a third-party purchaser. To receive compensation, a claimant's~~
 164 ~~designated representative must be registered with the commissioner pursuant to Code~~
 165 ~~Section 44-12-239, unless exempt."~~

166 **SECTION 7.**

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

169 "44-12-225.
170 Any information or records required to be furnished to the commissioner shall be
171 confidential except as otherwise necessary in the proper administration of this article.
172 Confidential information includes social security numbers, federal tax identification
173 numbers, and holder account numbers."

174 **SECTION 8.**

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

176 "44-12-239.

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

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

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

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

187 (4) Cash amount;

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

191 (6) Safe-deposit box contents with descriptions utilized by the National Association of
192 Unclaimed Property Administrators;

193 (7) Property type descriptions utilized by the National Association of Unclaimed
194 Property Administrators;

195 (8) Date of last activity;

196 (9) Year property was reported to the commissioner; and

197 (10) Holder's name and contact information.

198 (b) To receive unclaimed property account information and to receive compensation for
199 services, a claimant's designated representative must register with the commissioner on a
200 form and in a manner prescribed by the commissioner and pay a \$1,200.00 fee to the
201 commissioner. The registration shall have a four-year term and may be renewed if the
202 claimant's designated representative continues to meet the applicable criteria. Upon
203 renewal, a claimant's designated representative shall pay a renewal fee of \$1,200.00. To
204 register, a claimant's designated representative shall provide the commissioner with a
205 primary business address and telephone number; the name, telephone number, and email
206 address of the individual who will be the primary point of contact with the commissioner;
207 and a document granting the commissioner or his or her designee authority to conduct a
208 criminal background check. A claimant's designated representative is ineligible for
209 registration if, within the immediately preceding ten years, the representative, or the
210 representative's officer, owner, or employee who performs or directs services, was
211 convicted of a felony involving dishonesty, deceit, or fraud, or a verdict finding a breach
212 of fiduciary duty.

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

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

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

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SECTION 9.

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