

Senate Bill 103

By: Senators Goodman of the 8th, Burns of the 23rd, Anderson of the 24th, Merritt of the 9th, Anderson of the 43rd and others

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 appeals; to provide for
5 agreements for recovery; to provide for confidentiality; to provide a searchable data base for
6 account information; to provide for related matters; to provide for an effective date; to repeal
7 conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

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

13 "(3.1) 'Claimant' means the person on whose behalf a claim is filed.

14 (3.2) 'Claimant's designated representative' means a person who has successfully
15 registered with the commissioner pursuant to Code Section 44-12-239."

16

SECTION 2.

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

20 "44-12-209.

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

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

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

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

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

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

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

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

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

- 69 (C) Permit the removal of such will, codicil, trust instrument, or amendment to a trust
70 instrument in the same circumstances under which a financial institution would permit
71 the removal thereof pursuant to subsection (d) of Code Section 7-1-356; and
72 (D) Deliver any trust instrument or amendment to a trust instrument to the trustee of
73 the trust upon the presentation to the commissioner of satisfactory competent evidence
74 of the death of the settlor, satisfactory competent evidence of the identity of the trustee,
75 and a certification of trust by the trustee made under oath and containing all of the
76 information set forth in paragraph (3) of subsection (b) of Code Section 53-12-280; and
77 (2) Upon request and upon payment of reasonable charges therefor, provide a true and
78 correct photostatic or certified copy of:
- 79 (A) Any will or codicil to any person upon the presentation to the commissioner of
80 satisfactory competent evidence of the death of the testator and satisfactory competent
81 evidence of the identity of such person showing that, with respect to such will or
82 codicil, such person is an interested person within the meaning of subsection (a) of
83 Code Section 53-5-2 or is a registered claimant's designated representative pursuant to
84 Code Section 44-12-239; and
- 85 (B) Any trust instrument or amendment to a trust instrument to any person upon the
86 presentation to the commissioner of satisfactory competent evidence of the death of the
87 settlor and satisfactory competent evidence of the identity of such person showing that,
88 with respect to such trust or amendment, such person is a trustee, trust director, or
89 qualified beneficiary, as such terms are defined in Code Sections 53-12-2 and
90 53-12-500, or is a registered claimant's designated representative pursuant to Code
91 Section 44-12-239."

92

SECTION 3.

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

95 "44-12-218.
96 All funds received under this article, including the proceeds from the sale of abandoned
97 property under Code Section 44-12-217, shall be deposited by the commissioner in the
98 general fund; provided, however, that the commissioner may deduct moneys necessary to
99 cover the direct administrative expenses required to identify, locate, secure, and transmit
100 abandoned property prior to depositing such funds; provided, further, that such
101 administrative expenses shall not be less than 1 percent of the funds deposited annually.
102 Before making a deposit he or she shall record the name and last known address of each
103 person appearing from the holders' reports to be entitled to the abandoned property and of
104 the name and last known address of each insured person or annuitant and, with respect to
105 each policy or contract listed in the report of an insurance ~~corporation~~ company, its
106 number, the name of the corporation, and the amount due."

107 **SECTION 4.**

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

111 "44-12-220.

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

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

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

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

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

144 **SECTION 5.**

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

147 "44-12-221.

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

156 (b) In rendering a determination regarding the merits of an unclaimed property claim, the
157 commissioner shall rely on the applicable statutes, regulations, and decisions of relevant
158 courts. The commissioner shall consider evidence that would be admissible in contested
159 cases arising under the 'Georgia Administrative Procedure Act' as set forth in Code Section
160 50-13-15. In any proceeding for determination of a claim to property, the burden shall be
161 upon the claimant to establish entitlement to the property by a preponderance of evidence."

162

SECTION 6.

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

166 "44-12-224.

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

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

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

175 # _____ Number of unliquidated shares

176 \$ _____ / _____ % Estimated compensation expressed as a dollar amount and
 177 percentage

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

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

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

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

198

SECTION 7.

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

201 "44-12-225.

202 Any information or records required to be furnished to the commissioner shall be
203 confidential except as otherwise necessary in the proper administration of this article.
204 Confidential information includes social security numbers, federal tax identification
205 numbers, and holder account numbers."

206

SECTION 8.

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

208 "44-12-239.

209 (a) Upon written request, the commissioner shall provide a registered claimant's designated
210 representative the following account information in a searchable and sortable data base for
211 all unclaimed accounts:

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

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

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

219 (4) Cash amount;

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

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

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

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

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

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

256 (f) Any solicitation from a claimant's designated representative to an owner of unclaimed
257 property shall include the following notice in all capital letters in at least 12 point type or
258 in a font larger than the font utilized in the solicitation, whichever is larger: 'THIS IS A
259 SOLICITATION. THIS IS NOT A BILL OR OFFICIAL GOVERNMENT DOCUMENT
260 AND HAS NOT BEEN SENT BY THE GEORGIA DEPARTMENT OF REVENUE.
261 YOU ARE NOT REQUIRED TO USE THE SERVICES OFFERED IN THIS
262 SOLICITATION.'

263 **SECTION 9.**

264 This Act shall become effective on January 1, 2024.

265 **SECTION 10.**

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