

The Senate Committee on Agriculture and Consumer Affairs offered the following substitute to SB 103:

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 with certain requirements; to provide
5 for appeals; to provide for agreements for recovery; to provide for confidentiality; to provide
6 a searchable data base for account information; to provide for exemptions; to provide for the
7 denial, suspension, or cancellation of a license or permit; to provide for construction; to
8 provide for related matters; to provide for an effective date; to repeal conflicting laws; and
9 for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Article 5 of Chapter 12 of Title 44 of the Official Code of Georgia Annotated, relating to
13 disposition of unclaimed property, is amended by adding new paragraphs to Code Section
14 44-12-192, relating to definitions, to read as follows:

15 "(3.1) 'Claimant' means the person on whose behalf a claim is filed.

42 of the safe-deposit box will be delivered to the commissioner as abandoned property under
43 the provisions of Code Section 44-12-214.

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

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

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

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

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

67 (B) Deliver any will or codicil of a deceased testator to the probate court having
68 jurisdiction of such testator's estate in the same circumstances under which a financial

69 institution would deliver such will or codicil to such probate court pursuant to
70 paragraph (1) of subsection (a) of Code Section 7-1-356 upon the presentation to the
71 commissioner of satisfactory competent evidence of the death of the testator;

72 (C) Permit the removal of such will, codicil, trust instrument, or amendment to a trust
73 instrument in the same circumstances under which a financial institution would permit
74 the removal thereof pursuant to subsection (d) of Code Section 7-1-356; and

75 (D) Deliver any trust instrument or amendment to a trust instrument to the trustee of
76 the trust upon the presentation to the commissioner of satisfactory competent evidence
77 of the death of the settlor, satisfactory competent evidence of the identity of the trustee,
78 and a certification of trust by the trustee made under oath and containing all of the
79 information set forth in paragraph (3) of subsection (b) of Code Section 53-12-280; and

80 (2) Upon request and upon payment of reasonable charges therefor, provide a true and
81 correct photostatic or certified copy of:

82 (A) Any will or codicil to any person upon the presentation to the commissioner of
83 satisfactory competent evidence of the death of the testator and satisfactory competent
84 evidence of the identity of such person showing that, with respect to such will or
85 codicil, such person is an interested person within the meaning of subsection (a) of
86 Code Section 53-5-2 or is a registered claimant's designated representative pursuant to
87 Code Section 44-12-239; and

88 (B) Any trust instrument or amendment to a trust instrument to any person upon the
89 presentation to the commissioner of satisfactory competent evidence of the death of the
90 settlor and satisfactory competent evidence of the identity of such person showing that,
91 with respect to such trust or amendment, such person is a trustee, trust director, or
92 qualified beneficiary, as such terms are defined in Code Sections 53-12-2
93 and 53-12-500, or is a registered claimant's designated representative pursuant to Code
94 Section 44-12-239."

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SECTION 3.

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

"44-12-218.

All funds received under this article, including the proceeds from the sale of abandoned property under Code Section 44-12-217, shall be deposited by the commissioner in the general fund; provided, however, that the commissioner may deduct and retain moneys necessary to ~~cover~~ properly administer this article, including, but not limited to, the costs of personnel and the direct administrative expenses required to identify, locate, secure, and transmit abandoned property prior to depositing such funds; provided, further, that such administrative expenses shall not be less than 1 percent of the funds deposited annually.

Before making a deposit he or she shall record the name and last known address of each person appearing from the holders' reports to be entitled to the abandoned property and of the name and last known address of each insured person or annuitant and, with respect to each policy or contract listed in the report of an insurance ~~corporation~~ company, its number, the name of the corporation, and the amount due."

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SECTION 4.

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

"44-12-220.

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

121 (b) The commissioner shall consider each claim within 90 days after it is filed and give
122 written notice to the claimant or, if the person is utilizing the services of a designated
123 representative, to the claimant's designated representative if the claim is denied in whole
124 or in part. The notice may be given by mailing it to the claimant's designated
125 representative, if any, or to the claimant's last address, if any, stated in the claim as the
126 address to which notices are to be sent. If no address for notices is stated in the claim, the
127 notice may be mailed to the last address, if any, of the claimant as stated in the claim. No
128 notice of denial need be given if the claim fails to state either the last address to which
129 notices are to be sent or the address of the claimant.

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

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

148 (e)(1) The department shall promulgate rules and regulations to determine as to the
149 resolution procedures relative to
150 conflicting claims received by the department for the same unclaimed property. Such rules
151 and regulations shall consider, but shall not be limited to, the following and any other factors
152 consistent with the requirements and intent of this article:

153 (A) Preference shall be given to the person submitting the first claim that is complete
154 or made complete;

155 (B) When a claimant's claim and a claimant's representative's claim are received by the
156 department on the same day, and both claims are complete, the claimant shall be given
157 preference;

158 (C) Any attempts to revoke a properly executed contract between a claimant and
159 claimant's representative shall also be considered; and

160 (D) When two properly executed claimant's representative's claims are received by the
161 department on the same day, preference shall be given to the claimant's representative
162 that assesses the lowest fee.

163 (2) Nothing in this subsection shall extinguish, impair, or affect any private right of
164 action that one person may have against another for breach of contract, tort, or other
165 statutory or common-law remedy; provided, however, the department shall not be liable
166 to any person for acting in conformance with this article and its rules and regulations."

167 **SECTION 5.**

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

170 "44-12-221.

171 (a) Any person aggrieved by a decision of the commissioner or whose claim the
 172 commissioner has failed to act upon within 90 days after the filing of the claim may appeal
 173 such decision or lack of decision to the Superior Court of Fulton County. The proceeding
 174 shall be brought within 90 days after the decision of the commissioner or within 180 days
 175 of the filing of the claim if the commissioner fails to act. The appeal shall be tried de novo
 176 without a jury. The record on appeal shall be limited to the evidence before the
 177 commissioner; provided, however, that the court may allow a party to supplement the
 178 record for good cause.

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

186 **SECTION 6.**

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

190 "44-12-224.

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

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

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

199 # _____ Number of unliquidated shares

200 \$ _____ / _____ % Estimated compensation expressed as a dollar amount and
 201 percentage

202 (If the actual value of the unclaimed property paid is less than shown above, the
 203 amount of compensation shall be reduced to reflect the percentage of unclaimed
 204 property that is paid.)

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

207 The agreement shall be signed by the claimant, and electronic signatures shall be permitted
 208 pursuant to Code Section 10-12-7. The claimant shall also provide to the department
 209 sufficient proof of identity, as established by the department's rules and regulations,
 210 including proper identification as provided for in Code Section 44-12-240.

211 ~~(b) The fees charged by any person, firm, or corporation to recover or assist in the~~
 212 ~~recovery for and on behalf of a claimant of property reported and delivered to the~~
 213 ~~commissioner under this article shall not exceed 10 percent of the value of the property~~
 214 ~~recovered. All funds or property located by a person to be compensated by the payment~~
 215 ~~of such a fee shall be paid or delivered directly to the owner and may not be paid or~~
 216 ~~delivered to the person to receive the fee whether pursuant to a duly executed power of~~
 217 ~~attorney or otherwise. Contracts authorized by this Code Section shall not allow for~~
 218 ~~payment to a claimant's designated representative to exceed 30 percent of the unclaimed~~
 219 ~~property's value. The 30 percent compensation limit shall not apply if a judicial order,~~
 220 ~~judgment, or decree to document entitlement provides otherwise or if an owner sells the~~
 221 ~~unclaimed property to a third-party purchaser. To receive compensation, a claimant's~~

222 designated representative must be registered with the commissioner pursuant to Code
223 Section 44-12-239, unless exempt."

224 **SECTION 7.**

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

227 "44-12-225.

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

232 **SECTION 8.**

233 Said article is further amended by adding new Code Sections to read as follows:

234 "44-12-239.

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

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

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

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

245 (4) Cash amount;

246 (5) Unliquidated securities or mutual funds account; number of shares, name of the
247 issuer of the security or mutual funds account, and Committee on Uniform Securities
248 Identification Procedures number, if available;
249 (6) Safe-deposit box contents with descriptions utilized by the National Association of
250 Unclaimed Property Administrators;
251 (7) Property type descriptions utilized by the National Association of Unclaimed
252 Property Administrators;
253 (8) Date of last activity;
254 (9) Year property was reported to the commissioner; and
255 (10) Holder's name and contact information.

256 (b) To receive unclaimed property account information and to receive compensation for
257 services, a claimant's designated representative must register with the commissioner on a
258 form and in a manner prescribed by the commissioner and pay a \$1,200.00 fee to the
259 commissioner. The form shall contain information the department deems reasonably
260 necessary to administer the requirements of this article. The registration shall have a
261 four-year term and may be renewed if the claimant's designated representative continues
262 to meet the applicable criteria. Upon renewal, a claimant's designated representative shall
263 pay a renewal fee of \$1,200.00. To register, a claimant's designated representative shall
264 provide the commissioner with a primary business address and telephone number; the
265 name, telephone number, and email address of the individual who will be the primary point
266 of contact with the commissioner; a form of proper identification, as provided for in Code
267 Section 44-12-240; and a document granting the commissioner or his or her designee
268 authority to conduct a criminal background check. A claimant's designated representative
269 is ineligible for registration if, within the immediately preceding 20 years, the
270 representative, or the representative's officer, owner, or employee who performs or directs
271 services, was convicted of a misdemeanor or felony involving dishonesty, deceit, or fraud,
272 or a verdict finding a breach of fiduciary duty. Nothing in this Code section shall be

273 construed to reduce or otherwise alter requirements of claimants to prove their identity to
274 the department.

275 (c) The submission of any knowingly false information by any person to the commissioner
276 pursuant to this article may be punishable by law, including as a false statement prohibited
277 by Code Section 16-10-20.

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

283 (e) A claimant's designated representative, and any person claiming an exemption from
284 registration pursuant to subsection (d) of this Code section, is required to provide the
285 commissioner of any change in the primary business address or telephone number or any
286 change in the name, telephone number, or email address of the individual who will be the
287 primary point of contact for the commissioner, or of any new convictions of such
288 individual. Such information shall be provided to the commissioner within 30 days of the
289 described change. Failure to comply with this subsection shall result in immediate
290 revocation of the registration as a claimant's designated representative or the person's
291 ability to represent claimants before the department.

292 (f) The registration requirement imposed by subsection (b) of this Code section shall not
293 apply to an attorney licensed to practice law in Georgia or a person representing an active
294 corporate entity seeking to recover the entity's unclaimed property; provided, however, that
295 the department shall require a person claiming an exemption pursuant to subsection (d) of
296 this Code section to establish such persons's identity to the department. Verification shall
297 include, but shall not be limited to, providing proof of the person's license to practice law,
298 if applicable, and employment status as may be determined by the department through rule
299 or regulation.

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

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

310 44-12-240.

311 Each claimant's designated representative shall present proper identification to the
312 commissioner at the time of registering as a claimant's designated representative and at any
313 time thereafter requested by the department. Proper identification shall consist of any one
314 of the following:

315 (1) A valid driver's license which was properly issued by an appropriate state agency;

316 (2) A valid United States passport;

317 (3) A valid employee identification card containing a photograph of the claimant's
318 designated representative and issued by any branch, department, agency, or entity of the
319 United States government, this state, or any county, municipality, board, authority, or
320 other entity of this state;

321 (4) A valid United States military identification card, provided that such identification
322 card contains a photograph of the claimant's designated representative;

323 (5) A valid tribal identification card containing a photograph of the claimant's designated
324 representative; or

325 (6) Another type of government issued photo identification set forth in the rules and
326 regulations of the department.

327 44-12-241.

328 (a)(1) In addition to his or her other duties and responsibilities to administer this article,
329 the commissioner may deny, suspend, or cancel any exemption authorized by or license
330 or permit required pursuant to this article if:

331 (A) The license application is not filed in good faith or is filed by some person as a
332 subterfuge for any other person;

333 (B) Any applicant for a license or permit or any licensee or permit holder under this
334 article willfully fails to comply with any provisions of this article or with rules and
335 regulations adopted by the commissioner; or

336 (C) Any person to whom a license or permit has been issued is no longer engaged in
337 work being a claimant's designated representative, as defined in Code
338 Section 44-12-192, or no longer qualifies as a licensee or permit holder pursuant to the
339 provisions of this article.

340 (2) Before any denial, suspension, or cancellation of a license or permit granted pursuant
341 to this title, the applicant, licensee, or permit holder shall be afforded a hearing in the
342 manner and subject to the conditions and procedures established by this article and the
343 commissioner. The commissioner shall notify an applicant, licensee, or permit holder in
344 writing of the denial, suspension, or cancellation by registered or certified mail or
345 statutory overnight delivery to the last known address of the applicant, licensee, or permit
346 holder appearing in the commissioner's files or by personal service upon the applicant,
347 licensee, or permit holder by an authorized agent of the commissioner. Upon cancellation
348 of a license or permit for cause under this paragraph, there shall be no renewal or
349 reissuance of the canceled license or permit for a period of two years from the date of
350 cancellation."

351

SECTION 9.

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This Act shall become effective on January 1, 2024.

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SECTION 10.

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