SUBJECT: Allowing financial representatives to stop property abandonment process

COMMITTEE: Investments and Financial Services — committee substitute recommended

VOTE: 7 ayes — Parker, Longoria, Capriglione, Flynn, Landgraf, Pickett, Stephenson

0 nays

WITNESSES: For — Stephen Scurlock, Independent Bankers Association of Texas; Carlos Higgins, Texas Silver Haired Legislature; David Rhodes

Against — None

BACKGROUND: Property Code, sec. 72.101 stipulates that personal property is presumed abandoned after three years of inactivity if the existence and whereabouts of the owner are unknown. Under sec. 73.101, bank accounts and safe deposit boxes under the same circumstances are presumed abandoned after five years of inactivity.

According to Property Code, sec. 74.1011, a holder, i.e., a depository, with property valued at more than $250 that is presumed abandoned must mail to the last known address of the property owner written notice that the holder is holding the property, and the holder may be required to deliver the property to the comptroller if the property is not claimed.

DIGEST: CSHB 1454 would allow the owner of a bank account, safe deposit box, or share of a mutual fund to designate a financial representative. The comptroller would have to provide a form for designating a financial representative. The financial representative would not have any rights to the property.

If a bank account, safe deposit box, or mutual fund was presumed to be abandoned and the property holder was unable to reach the owner, the holder would have to notify the financial representative, if one was designated, that the holder could be required to deliver the property to the comptroller if it was not claimed. The abandonment process would cease immediately if the financial representative was able to communicate the owner’s location and that the owner existed and had not abandoned the property.

The holder of property presumed to be abandoned would have to include in the property report the last known mailing or e-mail address of the financial representative, if one was provided. The holder also would have to keep a record of this information.

The bill would take effect January 1, 2016.

SUPPORTERS SAY:

CSHB 1454 would give financial planners more ability to protect the interests of their clients by allowing these representatives to prevent the remittance to the state of property presumed to be abandoned. The current property abandonment procedure can too hastily allow property to be declared abandoned. This increases the risk that owners who have difficulty receiving or understanding notifications could lose property that they had no intention of abandoning.

This risk falls disproportionately on the elderly. Some senior citizens live in remote parts of the state or may not understand the significance of the mail they receive regarding finances. For this reason, many seniors rely on financial planners and other financial representatives to manage their finances.

The bill's committee substitute would change the effective date from September 2015 to January 2016, which would address concerns about the ability of banks and other institutions to comply with the bill’s proposed requirements. It also would make clear that designated financial representatives had no rights of access to their clients’ accounts, safe deposit boxes, or mutual fund shares. If the owner previously had given the financial representative access to or control of the property, any risk of fraud or abuse was a risk that the owner assumed outside the scope of this bill.

OPPONENTS SAY:

CSHB 1454 could create ambiguity in the form of communication that was required for a financial representative to prevent the abandonment process. Current law requires property owners to communicate in writing that they have not abandoned the property. The bill would not specify how a financial representative was required to communicate a property owner's intentions.

Under current law, an account from which fees automatically are withdrawn for a financial representative could be presumed abandoned because this would not constitute account activity. This could allow the financial representative of an owner who had passed away to prevent remittance to the state by indicating falsely that the owner had not abandoned the account.

NOTES:

According to the Legislative Budget Board’s fiscal note, the fiscal impact of CSHB 1454 cannot be determined at this time because, according to the Comptroller’s Office, no data is available upon which to estimate the number and value of accounts that would be affected under the bill. If the bill delayed the remittance to the state of 25 percent of individual accounts and 50 percent of business accounts that otherwise would have been considered abandoned, the Comptroller's Office projects a potential loss to the general revenue fund of $19.8 million in fiscal 2016 and $30.9 million in fiscal 2017.

The committee substitute differs from the bill as introduced in that CSHB 1454 would:

- require the comptroller to create a form for the owner of a mutual fund, bank account, or safe deposit box to designate a financial representative;
- not require a property holder to request a representative for a mutual fund, bank account, or safe deposit box;
- specify that designated financial representatives would have no rights or access to their clients’ personal property; and
- change the effective date from September 1, 2015, to January 1, 2016.