

2017 Regular Session

HOUSE BILL NO. 325

BY REPRESENTATIVE THIBAUT

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CLERKS OF COURT: Provides relative to the repayment or retention of unused court costs

1 AN ACT

2 To amend and reenact R.S. 9:154(A)(10) and R.S. 13:842 and to repeal R.S. 13:843.1,
3 relative to unused advanced court costs; to provide procedures for the repayment and
4 retention of unused advanced court costs; to provide relative to the presumption of
5 abandonment under the Uniform Unclaimed Property Act; to provide an exception
6 to abandonment; to repeal certain provisions for the refunding of unused advanced
7 court costs; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 13:842 is hereby amended and reenacted to read as follows:

10 §842. Advance costs

11 A. The clerks of the district courts shall demand and receive from the
12 ~~plaintiff or plaintiffs~~ parties in each ordinary suit, whether accompanied by
13 conservatory writs or not, not less than twenty dollars or such other amount as may
14 be fixed by law for advanced costs, to be disbursed to the clerk's salary fund or to
15 others as their fees accrue. Whenever the costs have exhausted the amount of the
16 original advance deposit, the clerk may refuse to perform any further function in the
17 proceeding until the additional costs for the function have been paid, in accordance
18 with the fees set forth in R.S. 13:841 or, in Orleans Parish, in R.S. 13:1213.

19 B. ~~After an ordinary suit has been filed, if a period of five years elapses~~
20 ~~without any pleadings being filed and the suit has been completely inactive during~~

1 ~~this five-year period, the clerk shall refund any unused balance remaining in the~~
2 ~~clerk's advance deposit fund (to the credit of this particular suit) to the person who~~
3 ~~made the original deposit, after paying all fees or other charges of record in the suit.~~
4 ~~Probate matters are specifically excepted from the provisions of this Subsection.~~

5 (1) In any civil proceeding initiated by ordinary suit, with the exception of
6 a succession proceeding, the clerk shall refund to the person who made the deposit
7 any unused balance of more than ten dollars remaining in the clerk's advance deposit
8 fund to the credit of this particular suit, after paying all fees or other charges of
9 record in the suit that are considered legally enforceable under any of the following
10 circumstances:

11 (a) Within ninety days after receipt of written verification of final
12 termination of the proceeding from a person who is a party, an authorized
13 representative of a party, or counsel of record for a party to the proceeding.

14 (b) Upon the issuance of a judgment dismissing the case as abandoned
15 pursuant to Code of Civil Procedure Article 561, where no appeal has been lodged,
16 and the unused balance remains unclaimed for a period of at least six months from
17 the date of such judgment.

18 (c) Where no pleading or other document has been filed in the proceeding
19 in excess of five years.

20 (2) The clerk shall comply with the refund procedure set forth in Paragraph
21 (B)(1) of this Section by sending payment of any unused balance to the last known
22 address of the person who made the deposit. If the unused balance thereafter
23 remains unclaimed for a period of more than six months, the clerk shall move for an
24 order from the district court to transfer the unclaimed funds to the clerk's operating
25 account after first advertising notice of the intention to so utilize the unclaimed funds
26 by publication in the official journal for the parish of the clerk, which shall occur
27 during the months of either January or July of each year. This publication need be
28 made only once but shall contain an itemized list of all such unclaimed funds, the
29 names and last known addresses of the persons who made the deposit, and the docket

1 numbers of the cases involved. The clerk shall remain liable for the full amount of
2 any unclaimed funds to the person who made the deposit for one year following their
3 transfer into his operating account, after which time he shall then be relieved of all
4 liability for the funds. All such unclaimed funds held within the operating account
5 shall be maintained as a separately identified line item until the one year period has
6 passed.

7 C. If the unused balance remaining in the clerk's advance deposit fund is ten
8 dollars or less after paying all fees or other charges of record in the suit that are
9 considered legally enforceable and the person who made the deposit does not claim
10 the balance prior to the expiration of the periods set forth in Paragraph (B)(1) of this
11 Section, the clerk is not required to refund the unused balance but shall then be
12 permitted to transfer all such funds to the clerk's operating account.

13 D. Compliance with this Section shall exempt the clerk from any obligations
14 respecting these unclaimed funds under the Uniform Unclaimed Property Act, R.S.
15 9:151 et seq. Nothing in this Section shall prevent the clerk from issuing a demand
16 for payment to the person primarily liable for any costs that may have accrued in
17 excess of the advance deposit in any civil proceeding. Any such demand shall be
18 supported by an itemized account of the accrued costs.

19 Section 2. R.S. 9:154(A)(10) is hereby amended and reenacted to read as follows:
20 §154. Presumptions of abandonment

21 A. Property is presumed abandoned if it is unclaimed by the apparent owner
22 during the time set forth below for the particular property for the following:

23 * * *

24 (10) Property held by a court, state or other government, governmental
25 subdivision or agency, public corporation, or other public authority, one year after
26 the property becomes distributable, except as provided in R.S. 13:842 and R.S.
27 15:86.1.

28 * * *

29 Section 3. R.S. 13:843.1 is hereby repealed in its entirety.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 325 Reengrossed

2017 Regular Session

Thibaut

Abstract: Provides procedures for the repayment and retention of unused advanced court costs by the clerks of court, and provides an exception to the application of the Uniform Unclaimed Property Act to abandoned advanced court costs.

Present law requires the clerks of the district courts to collect from the plaintiff advanced costs in each ordinary suit.

Proposed law requires the clerks of the district courts to collect the advanced costs from the parties.

Present law provides that if a period of five years elapses without any pleadings being filed during which time the suit is inactive, the clerk shall refund any unused balance remaining after paying all fees or other charges of record in the suit. Probate matters are excepted from the provisions of present law.

Proposed law deletes present law and requires the clerk to refund any unused advanced deposits in excess of \$10 within 90 days of receipt of written verification of final termination of the proceeding, upon a judgment of dismissal based on abandonment, or where no document has been filed for more than five years.

Proposed law requires the clerk to send payment to the last known address of the person who made the deposit, and further provides that the clerk, after publishing a notice of intent, shall move that the district court order any unused balance remaining for more than six months to be transferred to the clerk's operating account.

Proposed law provides that the clerk shall remain liable for the unclaimed funds for a period of one year after the transfer of the money to the operating account, after which the clerk shall be relieved of all liability.

Proposed law authorizes the clerk to retain any account balance under \$10 unless the person who made the deposit claims the balance prior to the expiration of the delays established by proposed law.

Compliance with proposed law exempts the clerk from any obligations established by the Uniform Unclaimed Property Act.

Present law (R.S. 9:154) provides for the Uniform Unclaimed Property Act which establishes presumptions of abandonment based on different classifications of property, and requires that, upon reaching the period of abandonment, the holder of the abandoned property shall report and transfer the abandoned property to the state treasurer who shall hold the property until the owner files and establishes a claim for the return of the property.

Present law provides that, except for unclaimed bail bonds, property held by the court for one year after it becomes distributable is deemed abandoned and is required to be transferred to the state treasurer.

Proposed law provides an additional exception to present law for advanced deposits held by the clerk of court.

Present law (R.S. 13:843.1) provides that not later than 90 days after receipt of written verification of final termination of a civil suit, the clerk of each district court shall either: (1) refund any unused balance remaining in the clerk's advance deposit fund to the plaintiff, or (2) issue to the party primarily liable a demand for payment of any accrued costs in excess of the advance deposit.

Proposed law repeals present law.

(Amends R.S. 9:154(A)(10) and R.S. 13:842; Repeals R.S. 13:843.1)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Judiciary to the original bill:

1. Removes requirement that clerks of courts collect advance costs from authorized representatives or counsels of record.