

2023 Regular Session

HOUSE BILL NO. 430

BY REPRESENTATIVE COUSSAN

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

PROPERTY/UNCLAIMED: Authorizes payments from unclaimed funds to certain agents for locating, delivering, recovering, or assisting in the recovery of unclaimed property

1 AN ACT

2 To amend and reenact R.S. 9:177 and to enact R.S. 9:153(16), relative to unclaimed  
3 property; to provide with respect to contracts to locate, deliver, recover, or assist in  
4 the recovery of unclaimed property; to provide exceptions for certain agents; to  
5 provide requirements and exclusions; to provide definitions; to provide with respect  
6 to the powers and duties of the state treasurer relative to the unclaimed property  
7 program; to provide with respect to the powers and duties of the Louisiana State Law  
8 Institute relative to changes made in this Act; to provide for an effective date; and  
9 to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 9:177 is hereby amended and reenacted and R.S. 9:153(16) is hereby  
12 enacted to read as follows:

13 §153. Definitions

14 As used in this Chapter:

15 \* \* \*

16 (16) "Fiduciary agent" means a representative of an owner whose services  
17 provided to the owner include locating, delivering, recovering, or assisting in the  
18 recovery of property to the owner.

19 \* \* \*

1 §177. Agreement to locate property

2 A. ~~An~~ Except as provided in this Section, an agreement by an owner to pay  
3 compensation to locate, deliver, recover, or assist in the recovery of property that is  
4 presumed abandoned is void and unenforceable if it was entered into during the  
5 period commencing on the date the property was presumed abandoned and extending  
6 to a time that is twenty-four months after the date the property is paid or delivered  
7 to the administrator.

8 B. For his services, a fiduciary agent shall be entitled to compensation of an  
9 amount not to exceed ten percent of the total claim value.

10 C. A fiduciary agent who seeks compensation pursuant to this Section shall  
11 submit to the administrator a payment request. The payment request shall be  
12 submitted with the abandoned property claim. The payment request shall be sworn  
13 to and signed by the fiduciary agent and the owner before a notary public and contain  
14 both of the following:

15 (1) A clear disclosure of any amount that may be paid pursuant to the  
16 provisions of this Section.

17 (2) The signature of the owner below a statement that the owner is aware that  
18 a portion of his unclaimed property may be used by the unclaimed property  
19 administrator to pay the fiduciary agent.

20 D.(1) If the property claimed is cash or has been converted to cash through  
21 sale as provided in this Chapter, the administrator shall pay the fiduciary agent from  
22 the claim proceeds otherwise due the owner.

23 (2) If the property claimed has not been converted to cash as provided in this  
24 Chapter, the owner shall be responsible for payment to the fiduciary agent.

25 E. The provisions of this Section do not apply to:

26 (1) Any claim made by another state.

27 (2) Any claim totaling less than one thousand dollars.

28 F. A fiduciary agent shall have a fiduciary duty to the owner until the  
29 owner's claim is paid.

1           B: G. Any agreement by an owner to pay compensation to locate, deliver,  
2 recover, or assist in the recovery of property is enforceable only if the agreement is  
3 in writing, clearly sets forth the nature of the property and the services to be  
4 rendered, is signed by the apparent owner, and states the value of the property before  
5 and after the fee or other compensation has been deducted.

6           C: H. If an agreement covered by this Section is applicable to mineral  
7 proceeds and the agreement contains a provision to pay compensation that includes  
8 a portion of the underlying minerals or any production payment, overriding royalty,  
9 compensating royalty, or similar payment, the provision is void and unenforceable.

10           ~~D. Any agreement by an owner to pay compensation to locate, deliver,~~  
11 ~~recover, and assist in the recovery of property which is entered into on a date that is~~  
12 ~~twenty-four months or more after the date the property is paid or delivered to the~~  
13 ~~administrator shall not provide for compensation exceeding ten percent of the value~~  
14 ~~of the recoverable property.~~

15           I. An owner who has agreed to pay compensation that is unconscionable, or  
16 the administrator on behalf of the owner, may maintain an action to reduce the  
17 compensation to a conscionable amount. The court may award reasonable attorney  
18 fees to an owner who prevails in the action.

19           ~~E. An~~ J. At any time an owner may ~~at any time~~ assert that an agreement  
20 covered by this Section is otherwise invalid.

21           Section 2. The state treasurer is authorized and directed to make changes to the  
22 forms used to claim abandoned property pursuant to the Uniform Unclaimed Property Act  
23 of 1997 to conform to the provisions of this Act.

24           Section 3. The Louisiana State Law Institute is hereby authorized and directed to  
25 arrange in alphabetical order and renumber the definitions provided in R.S. 9:153 as  
26 amended by this Act and to correct any cross-references to the renumbered paragraphs,  
27 including those in R.S. 40:2811(D).

28           Section 4. The provisions of this Act shall apply only to contracts entered into on  
29 or after the effective date of this Act.

1 Section 5. This Act shall become effective upon signature by the governor or, if not  
2 signed by the governor, upon expiration of the time for bills to become law without signature  
3 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
4 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
5 effective on the day following such approval.

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#### 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)]

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HB 430 Engrossed

2023 Regular Session

Coussan

**Abstract:** Authorizes certain agents acting in a fiduciary capacity to be compensated for helping recover unclaimed property for an owner and sets forth the requirements for any such contract.

Present law establishes the Uniform Unclaimed Property Act of 1997 to provide for collection, administration, and distribution of abandoned property in the state.

Present law (R.S. 9:177) sets out prohibitions and requirements with respect to agreements to locate abandoned property on behalf of an owner.

Proposed law prohibits any agreements to locate abandoned property on behalf of an owner except for contracts for fiduciary agents as provided in proposed law. Further defines "fiduciary agent" to mean a representative of an unclaimed property owner whose services provided to the owner involve locating, delivering, recovering, or assisting in the recovery of unclaimed property to the owner.

Proposed law authorizes a fiduciary agent to receive compensation for his services in an amount not to exceed 10% of the total claim value.

Proposed law requires a fiduciary agent who seeks compensation to submit to the administrator a payment request. Requires each request submitted for payment pursuant to proposed law to be submitted with the abandoned property claim. Further requires such request to be sworn to and signed by the fiduciary agent and the owner before a notary public and contain both of the following:

- (1) A clear disclosure of amounts that may be paid pursuant to the provisions of proposed law.
- (2) The signature of the owner below a statement that the owner is aware that a portion of his unclaimed property may be used to pay the fiduciary agent.

Proposed law further provides that if the property claimed is cash or has been converted to cash through sale as provided in present law, the payment to the fiduciary agent is made by the administrator from the claim proceeds otherwise due the owner. If the property claimed has not been converted to cash as provided in present law, the owner is responsible for payment to the fiduciary agent.

Proposed law further prohibits application of proposed law to any claim made by another state under present law (Uniform Unclaimed Property Act of 1997).

Present law prohibits an agreement to locate abandoned property entered into within 24 months of delivery to the state treasurer as administrator of the Unclaimed Property Program. Proposed law retains present law.

Present law provides that any agreement to locate abandoned property that is entered into after a date that is 24 months after the property is paid or delivered to the administrator may be valid, but cannot require compensation exceeding 10% of the value of the recoverable property. Proposed law repeals present law.

Present law authorizes action by an owner and recovery of attorney fees if the rate charged the owner is unconscionable. Proposed law retains present law.

Present law requires any agreement by an owner to pay compensation to locate, deliver, recover, or assist in the recovery of property to be in writing, clearly set forth the nature of the property and services to be rendered, be signed by the apparent owner, and state the value of the property before and after the fee or other compensation has been deducted. Proposed law retains present law.

Present law prohibits any contract dealing with abandoned mineral proceeds that would require compensation that includes a portion of the underlying minerals or mineral production payment, overriding royalty, compensating royalty, or similar payment. Proposed law retains present law.

Present law authorizes an owner at any time to assert that an agreement covered by present law is otherwise invalid. Proposed law retains present law.

Proposed law establishes a fiduciary duty on the fiduciary agent until the owner's claim is paid.

Proposed law directs the state treasurer to make any necessary changes to the forms used to claim abandoned property pursuant to present and proposed law.

Proposed law directs the La. State Law Institute to alphabetize and renumber definitions in proposed law and correct any cross-references in present law to the renumbered paragraphs.

Proposed law further provides that proposed law applies only to contracts entered into on or after the effective date of proposed law.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 9:177; Adds R.S. 9:153(16))

#### Summary of Amendments Adopted by House

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

1. Reinstates present law prohibition on a contract to locate abandoned property if such contract is entered into within 24-months of the property being paid or delivered to the unclaimed property administrator.