

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Banking and Insurance

BILL: SB 464

INTRODUCER: Senator Flores

SUBJECT: Disposition of Unclaimed Property

DATE: March 16, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Burgess	BI	Favorable
2.			GO	
3.				
4.				
5.				
6.				

I. Summary:

SB 464 authorizes the Department of Financial Services to adopt rules that allow an apparent owner of unclaimed property to electronically submit a claim to the department. The bill also applies the procedures of Ch. 717 F.S. to property reported or remitted by the Chief Financial Officer pursuant to: ss. 43.19, 45.032, 732.107, 733.816, and 744.534, F.S.

This bill substantially amends the following section of the Florida Statutes: 717.124, F.S.

II. Present Situation:

Chapter 717 of the Florida Statutes provides for disposition of unclaimed property. In general, all intangible property, including any income less any lawful charges, which is held in the ordinary course of the holder's business, is presumed to be unclaimed when the owner fails to claim the property for more than 5 years after the property becomes payable or distributable, unless otherwise provided in the chapter.¹ The time period for utility² deposits is different. Any deposit made by a subscriber with a utility to secure payment or any sum paid in advance for utility services to be furnished, including any interest less any lawful charges, that remains unclaimed by the owner for more than 1 year after termination of the services for which the deposit or

¹ s. 717.02(1), F.S.

² s. 717.101 (23), F.S., defines the term "utility" to mean a person who owns or operates, for public use, any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

advance payment was made is presumed unclaimed.³ Certain types of unclaimed property, including security deposits having a value of less than \$10, are not to be presumed unclaimed.⁴

Every person holding funds or other property, tangible or intangible, presumed unclaimed and subject to custody as unclaimed property must file an annual report with the Department of Financial Services (DFS or department) that includes information on the identity and last known address of the apparent owner of the property, a description of the property, and the date the property became payable or returnable.⁵ At the same time the report is filed, the holder must deliver to the department all unclaimed property required to be reported.⁶

Upon the payment or delivery of property to the department, the state assumes custody and responsibility for the safekeeping of the property.⁷ The department is required to use cost-effective means to make at least one active attempt to notify owners of unclaimed property accounts valued at more than \$250 with a reported address or taxpayer identification number. All other apparent owners get indirect or passive notice such as publication of the names of owners in the newspaper, on television, on the Internet, or through other promotional efforts.⁸

Generally, after the receipt of unclaimed property the department sells all non-cash property to the highest bidder at a public sale on the Internet or at a specified physical location wherever in the judgment of the department the most favorable market for the property involved exists.⁹ The department may decline the highest bid and reoffer the property for sale if in the judgment of the department the bid is insufficient. The department also has the discretion to withhold from sale any unclaimed property that the department deems to be of benefit to the people of the state. Finally, if in the judgment of the department the probable cost of sale exceeds the value of the property, it need not be offered for sale and may be disposed of as the department determines appropriate.

All funds received, including the proceeds from sales, are deposited into the Unclaimed Property Trust Fund.¹⁰ The department is allowed to retain an amount not exceeding \$15 million from which it must make prompt payment of claims it allows and must pay the costs it incurred in administering and enforcing the chapter. All remaining funds received must be deposited into the State School Fund.

The department must record the name and last known address of each person appearing from the holder's reports to be entitled to the unclaimed property in the total amounts of \$5 or greater; the name and the 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, its number, the name of the corporation, and the amount due. Any person claiming an interest in any property delivered to

³ s. 717.08, F.S.

⁴ s. 717.117(1)(h), F.S.

⁵ s. 717.117, F.S.

⁶ s. 717.119, F.S.

⁷ s. 717.1201, F.S.

⁸ s. 717.118, F.S.

⁹ s. 717.122, F.S.

¹⁰ s. 717.123, F.S.

the department may file a claim for the property.¹¹ The department is required to make a determination on the claim within 90 days. If a claim is determined in favor of the claimant, the department is to deliver or pay over to the claimant the property or the amount the department actually received or the proceeds if it has been sold by the department.

III. Effect of Proposed Changes:

The bill authorizes the Department of Financial Services to adopt rules that allow an apparent owner of unclaimed property to electronically submit a claim to the department. The department has indicated this will allow for greater efficiency,¹² which should help speed up the return of unclaimed property to owners.

The bill also applies the procedures of ch. 717, F.S., to property reported or remitted by the Chief Financial Officer pursuant to:

- Section 43.19, F.S., Money Paid into Court; unclaimed funds: Provides that unclaimed funds held in the court registry for 5 years shall be deposited with the Chief Financial Officer to the credit of the State School Fund. Accounts/funds held in perpetuity.
- Section 45.032, F.S., Disbursement of Surplus Funds after Judiciary Sale: Provides that unclaimed funds as a result of a property foreclosure are to be deposited with the Chief Financial Officer. Accounts/funds held in perpetuity.
- Section 732.107, F.S., Escheat: Property held by an Estate without Heirs ‘escheats’ to the state. Accounts/funds can be claimed for 10 years, after which the funds ‘permanently escheat’.
- Section 733.816, F.S., Disposition of Unclaimed Property Held by Personal Representatives: Property held by a Personal Representative that cannot be distributed to a beneficiary is deposited into the court registry and then deposited with the Chief Financial Officer. Accounts/funds can be claimed for 10 years, after which the funds ‘permanently escheat’.
- Section 744.534, F.S., Disposition of Unclaimed Funds Held by Guardian: Property held by a Legal Guardian that cannot be distributed to a ward or ward’s estate is deposited into the court registry and then is deposited with the Chief Financial Officer. Accounts/funds can be claimed for 5 years, after which the funds ‘permanently escheat’.

The bill takes effect July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹¹ s. 717.124, F.S.

¹² DFS bill analysis dated January 30, 2013 (On file with the Banking and Insurance committee.)

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Allowing for the electronic submission of claims should help speed up the return of unclaimed property to owners.

C. Government Sector Impact:

The bill should help DFS staff to analyze and process claims sooner.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.