

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 Judiciary

BILL: CS/SB 970

INTRODUCER: Banking and Insurance Committee and Senator Richter

SUBJECT: Unclaimed Property

DATE: February 15, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

PLEASE MAKE SELECTION

I. Summary:

CS/SB 970 amends the Florida Disposition of Unclaimed Property Act (the act). Unclaimed property consists of any funds or other property, including insurance proceeds, that remains unclaimed by the owner for a certain period of time. The act requires holders of unclaimed property to exercise due diligence to locate owners and pay them the funds. If the owner cannot be located, the holder must report and remit the unclaimed property to the Department of Financial Services (DFS) Bureau of Unclaimed Property. The bill makes the following changes to the act:

- Eliminates several exceptions to the general 20 percent fee cap on the compensation that may be paid to a claimant's representative who recovers unclaimed property;
- Requires that the purchase agreement for unclaimed property which compensates the buyer through a flat fee show the fee as a percentage of the property;
- Requires DFS to deny a claim for unclaimed property submitted by a purchaser of the property if the purchase agreement shows that the property was discounted by more than 20 percent;
- Requires that agreements to recover unclaimed property other than an original limited power of attorney be executed by the claimant no earlier than the date the claimant executed the original limited power of attorney;
- Requires a claim for unclaimed property to include certified copies of all court pleadings to establish entitlement to the property which were filed within 180 days before the claim form is signed;

- Repeals a provision giving DFS the exclusive right to notify owners of the existence of unclaimed property valued at more than \$250 within the first 45 days after the property is added to the unclaimed property database;
- Allows for unclaimed property in a campaign account for public office to escheat to the state;
- Increases the aggregate value of the unclaimed property held by DFS to \$10,000 from \$5,000 which may be claimed by the beneficiary of the estate of a deceased owner without initiating probate proceedings;
- Authorizes DFS to estimate the value of unclaimed property held by the holder of the property if the holder fails to provide records after being requested to do so; and
- Increases to 30 days from 10 days the time by which a purchaser of unclaimed property must pay the seller, and voids the claim by the purchaser, if proof of payment is not filed with DFS.

II. Present Situation:

Unclaimed Property

According to the Bureau of Unclaimed Property, in fiscal year 2014-2015, the bureau processed over 500,000 claims and returned \$253 million worth of property to Floridians.¹ Unclaimed property constitutes any funds or other property, tangible or intangible, that has remained unclaimed by the owner for more than 5 years. Unclaimed property may include savings and checking accounts, money orders, travelers' checks, uncashed payroll or cashiers' checks, stocks, bonds, other securities, insurance policy payments, refunds, security and utility deposits, and contents of safe deposit boxes.²

In 1987, Florida adopted the Uniform Unclaimed Property Act³ and enacted the Florida Disposition of Unclaimed Property Act (ch. 717, F.S., "the act").⁴ The act serves to protect the interests of missing owners of property, while the state derives a benefit from the unclaimed and abandoned property until the property is claimed, if ever. Under the act, the Department of Financial Services, Bureau of Unclaimed Property (DFS) is responsible for receiving property, attempting to locate the rightful owners, and returning the property or proceeds to them. There is no statute of limitations in the act, and citizens may claim their property at any time and at no cost.

Generally, 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 act.⁵ Holders of unclaimed property (which typically include

¹ Email from Elizabeth Boyd, Legislative Affairs Director, Office of the Chief Financial Officer (Feb. 25, 2016) (on file with the Senate Committee on Judiciary).

² Sections 717.104 – 717.116, F.S.

³ UNIFORM LAW COMMISSION, *Unclaimed Property Act (1952)(1981)*, [http://www.uniformlaws.org/Act.aspx?title=Unclaimed Property Act \(1952\)\(1981\)](http://www.uniformlaws.org/Act.aspx?title=Unclaimed%20Property%20Act%20(1952)(1981)) (last visited Feb. 15, 2016).

⁴ Chapter 87-105, Laws of Fla. See also UNIFORM LAW COMMISSION, *Unclaimed Property Act Summary*, <http://www.uniformlaws.org/ActSummary.aspx?title=Unclaimed%20Property%20Act> (last visited Feb. 15, 2016).

⁵ Section 717.102(1), F.S.

banks and insurance companies) of \$50 or more are required to use due diligence to locate and notify apparent owners of inactive accounts, at least 60 days but not more than 120 days, prior to filing a report with DFS.⁶ If the owners cannot be located, holders must file an annual report with DFS for all property, valued at \$50 or more, which is presumed unclaimed for the preceding year.⁷ The report must contain certain identifying information, such as the apparent owner's name, social security number or federal employer identification number, and last known address of apparent owners.⁸ The holder must deliver all reportable unclaimed property to DFS when it submits its annual report.⁹

Upon the payment or delivery of unclaimed property to DFS, the state assumes custody and responsibility for the safekeeping of the property.¹⁰ The original property owner retains the right to recover the proceeds of the property, and any person claiming an interest in the property delivered to DFS may file a claim for the property, subject to certain requirements.¹¹ DFS is required to make a determination on a claim within 90 days. If a claim is determined in favor of the claimant, DFS is to deliver or pay over to the claimant the property or the amount DFS actually received or the proceeds, if it has been sold by DFS.¹²

If the property remains unclaimed, all proceeds from abandoned property are then deposited by DFS into the Unclaimed Property Trust Fund.¹³ DFS is allowed to retain up to \$15 million to make prompt payment on verified claims and to cover costs incurred by DFS in administering and enforcing the act. All remaining funds received must be deposited into the State School Fund to be used for public education.¹⁴

Claims for recovery of unclaimed property held by DFS under the act may be filed by or on behalf of any person with an interest in the property.¹⁵ While the act provides the opportunity for anyone to recover the full value of their property at no cost, provision is made for claimants to designate someone who may perfect the claim for them. The claimant may designate and empower a representative to pursue the claim by executing a power of attorney agreement. The claimant may also sell the right to the property to certain individuals who are registered with DFS for this purpose.¹⁶ In either case, the transaction is subject to a fee limitation, unless a

⁶ Section 717.117(4), F.S.

⁷ Section 717.117, F.S.

⁸ For unclaimed funds owing under any life or endowment insurance policy or annuity contract, the report must also include the last known address of the insured or annuitant and of the beneficiary according to records of the insurance company holding or owing the funds. Section 717.117(1)(b), F.S.

⁹ Section 717.119, F.S.

¹⁰ Section 717.1201, F.S. Like many other states' unclaimed property acts, the act is based on the common-law doctrine of escheat and is a "custody" statute, rather than a "title" statute, in that the DFS does not take title to abandoned property, but instead obtains its custody and beneficial use pending identification of the property owner.

¹¹ Sections 717.117 and 717.124, F.S.

¹² Section 717.124, F.S.

¹³ Section 717.123, F.S.

¹⁴ *Id.*

¹⁵ Section 717.124, F.S.

¹⁶ Only a Florida licensed attorney, a licensed Florida certified public accountant, a private investigator or an employee of a private investigator, or an employer of the private investigator if the employer holds a Class "A" license under ch. 493, F.S., may execute such purchase agreements. s. 717.1351, F.S. Additionally, the purchaser must be registered with DFS. DFS reports that there are currently 246 registrants under this provision. Florida Department of Financial Services, *Agency Analysis of 2016 SB 970*, p. 3 (Dec. 14, 2015) (on file with the Senate Committee on Judiciary).

disclosure statement is provided to the claimant, in the form and with the content specified in the act. The fee limitations are:

- For representatives operating under a power of attorney:¹⁷
 - 20 percent of the value of the property, not to exceed \$1,000;
 - However, the fee limitation does not apply if the representative must initiate probate proceedings for an estate that has never been probated before or if the claimant is outside of the United States.
- For purchasers obtaining rights under a purchase agreement:¹⁸
 - 20 percent discount off of the value of the property, not to exceed a discount of \$1,000;
 - However, the \$1,000 discount limitation does not apply if the representative must initiate probate proceedings for an estate that has never been probated, if the claimant is outside of the United States or is not a natural person, such as a business or similar entity.

The act also prescribes the form and content of the purchase agreement that transfers the right of the claimant to another person and the document granting the power of attorney.

The public policy of the state is to provide DFS with the first opportunity to locate the owner of the unclaimed property and for the owner to receive the full value of his or her property.¹⁹ There are limitations on claiming by others through powers of attorney and purchase agreements. Powers of attorney and purchase agreements that are executed less than 45 days after the property is received by the DFS and that relate to accounts over \$250 in value are void under the act.²⁰ The 45 day limit on the claims provides DFS the opportunity to attempt to locate the property's owner. However, placing time and value limits on claim eligibility requires DFS to track accounts and audit claims to identify the amount and timing of the claims. The DFS reports that this is inefficient and the public purpose can be served through other provisions of the act. DFS recommends repealing s. 717.1381, F.S., to eliminate administrative inefficiency.²¹

¹⁷ Section 717.135, F.S., requires the disclosure that the property is held by the DFS pursuant to the act, the mailing and Internet addresses of DFS, the person or name of the entity that held the property prior to the property becoming unclaimed, the date of the holder's last contact with the owner, if known, and the approximate value of the property, and the categories of unclaimed property the claimant's representative is seeking to recover. The categories of unclaimed property are: cash accounts; stale dated checks; life insurance or annuity contract assets; utility deposits; securities or other interests in business associations; wages; accounts receivable; and contents of safe-deposit boxes.

¹⁸ Section 717.1351, F.S. The content of the disclosure statement has the same elements as the disclosure described in s. 717.135, F.S., related to powers of attorney. However, the fee limitation does not apply if the representative must initiate probate proceedings for an estate that has never been probated, if the claimant is outside of the United States or is not a natural person, such as a business or similar entity.

¹⁹ Sections 717.118 and 717.1381, F.S.

²⁰ Section 717.1381, F.S.

²¹ Florida Department of Financial Services, *Agency Analysis of 2016 SB 970*, p. 3 (Dec. 14, 2015) and email from Elizabeth Boyd, Director of Legislative Affairs, Department of Financial Services, *Re: 45 Day Issue* (Jan. 27, 2016) (on file with the Senate Committee on Judiciary).

Unclaimed Campaign Funds

Section 106.141, F.S., requires candidates for public office to dispose of the funds in their campaign account within 90 days after the date that their candidacy ended.²² Paragraph 106.141(4)(a), F.S., specifies a variety of options for the disposal of surplus campaign funds. With certain exceptions, they may take any combination of the following actions when disposing of the surplus:

- Return, pro rata to each contributor, the funds that have not been spent or obligated;
- Donate the funds that have not been spent or obligated to a charitable organization or organizations that meet the qualifications of s. 501(c)(3) of the Internal Revenue Code;
- Give not more than \$25,000 of the funds that have not been spent or obligated to the affiliated party committee or political party of which such candidate is a member; or
- Give the funds that have not been spent or obligated:
 - In the case of a candidate for state office, to the state, to be deposited in either the Election Campaign Financing Trust Fund or the General Revenue Fund, as designated by the candidate; or
 - In the case of a candidate for an office of a political subdivision, to such political subdivision, to be deposited in the general fund thereof.

If the candidate accepted contributions under the Florida Election Campaign Financing Act, the surplus funds must be returned to the General Revenue Fund, after satisfying certain monetary obligations. If the candidate takes office, they may transfer a limited amount of the funds to his or her office account.

Violations of the campaign finance law are subject to criminal penalties, both misdemeanors and felonies. Failure to properly dispose of surplus campaign funds is a first degree misdemeanor punishable by up to a year in jail and/or a fine of \$1,000. Candidates are prohibited from accepting campaign contributions following the end of their candidacy. They are allowed to receive and deposit refund checks to be disposed of consistent with the requirements of law, as described above. However, the law does not specify how to dispose of cash (or other property), received in forms other than a check, that would otherwise go into the campaign account but comes into the possession of the former candidate after the end of his or her candidacy and the disposal of the funds in the campaign account.

III. Effect of Proposed Changes:

Section 1 revises the definitions of “business association,” “domicile,” and “insurance company” to simplify their text and improve understanding. Limited liability companies are specifically included in the definition of “business association.” A definition of “United States” is created to specify the meaning of that term, which is currently used throughout the act to determine various rights and conditions.

Section 2 of the bill provides that, if unclaimed property is owned by the campaign account of a candidate for public office, following a report of the property to the DFS, the property shall

²² The triggers for disposition are when the candidate withdraws their candidacy, becomes an unopposed candidate, is eliminated, or is elected. Section 106.141(1), F.S.

become the property of the state and the proceeds of the property shall be paid into the State School Fund.

Section 3 redefines what the value of a small estate account is. Generally, a claim for property related to the estate of a deceased person must be accompanied by an order from a probate court. However, there are exceptions for estates having an aggregate value of \$5,000 or less if no probate proceeding is pending.²³ This section amends s. 717.1243, F.S., to increase the maximum threshold value of this small estate provision to \$10,000 from \$5,000.

Section 4 amends s. 717.1262, F.S., the provisions dealing with court documents. The section currently requires that a claimant whose right to property is based on a court document file a certified copy of the relevant court document with DFS. This section expands the requirement to include all pleadings filed with the court to establish the property right which were filed within the 180 days preceding the signing of the claim form.

Section 5 amends s. 717.1333, F.S., to authorize DFS to estimate the amount of unclaimed property held and due to DFS if the holder fails to produce records following a request by DFS. Currently, the holder of unclaimed property is obligated to report the value of property to DFS. If the holder's records are insufficient to permit preparation of the required report, the value of the property may be estimated. However, there is currently no authority for DFS to estimate the value of the property when the holder fails to produce the record.

Section 6 amends s. 717.135, F.S., which requires a claimant's representative to either give notice to a property owner that unclaimed property is held by the DFS Bureau of Unclaimed Property or limit the fees that a claimant's representative earns under a power of attorney to recover unclaimed property to 20 percent of the unclaimed property, not to exceed \$1,000. The bill applies the requirements of the section to claims where probate proceedings must be initiated on behalf of a claimant for an estate that has never been probated. The bill also applies the requirements of the section to claims made by a person outside the United States.

Section 717.135, F.S., also requires a specific form be used to execute a limited power of attorney that discloses to the property owner the dollar value of the property and the percent of the property that is being paid to the property, and additional disclosures. The bill removes a provision in current law that allows the property locator that charges a flat fee to not include in the limited power of attorney form the percent of the property paid as compensation to the property locator.

Sections 6 and 7 require any authorization or agreement for the recovery or purchase of property to be personally signed and dated by the claimant. The date of the authorization or agreement cannot precede the date on the grant of limited power of attorney or purchase agreement. The effect is to have a compliant power of attorney or purchase agreement be the first agreement in the case. This facilitates getting the disclosure, if one is going to be used to remove the fee cap, in front of the claimant during the first step in the claims process. The change is meant to address the problem of claimants being presented and obligated to noncompliant authorizations or agreements, only to later execute a compliant agreement, which misrepresents the factual

²³ Section 717.1243, F.S.

circumstances of the representation and the lawfulness of the fee to DFS. The bill requires a copy of such authorizations or agreements to be filed with DFS along with the other required documents. Additionally, the bill requires DFS to deny any claim where the representative under an authorization or agreement refuses to reduce its fee to the maximum allowed by law, i.e., 20 percent of the value of the property, if the disclosure was required but not provided to the claimant timely. Taken together, the provisions of the bill creating ss. 717.135(5) and 717.1351(8), F.S., would allow the fee cap to be lifted when the specified disclosure is made at the time of the first engagement of services. Failure to do so limits fees to 20 percent of the value of the property or requires DFS' denial of the claim.

Section 7 amends s. 717.1351, F.S., which governs contracts to acquire ownership of unclaimed property from the person entitled to the unclaimed property. Current law limits the purchase price that may be offered if the purchaser does not disclose to the owner of unclaimed property that the property is being held by the Bureau of Unclaimed Property. If such notice is not provided, the purchase price may not discount the value of the unclaimed property more than 20 percent, up to a maximum discounted purchase price of \$1,000. The bill applies the requirements of the section to purchase agreements where probate proceedings must be initiated on behalf of a seller for an estate that has never been probated. The bill also applies the requirements of the section to sellers located outside the United States.

Currently, s. 717.1351, F.S., requires that purchase agreements specify the percent of the property to be paid to the purchaser on a discrete line item of the purchase agreement pursuant to the form and content requirements of the act. However, this line may be deleted if the purchaser is paid a flat fee instead of a percentage of the recovery. The bill eliminates this exception and requires every purchase agreement to include the required text regarding the percent of the property to be paid to the purchaser and the insertion of the appropriate percentage figure, which varies depending upon the amount of the flat fee and the value of the property to be recovered.

The bill also expands the time period a purchaser of unclaimed property has to remit the purchase price to the seller to 30 days from 10 days after the execution of the purchase contract. The bill expands the requirement that the purchaser file with the DFS proof that the seller received the purchase price to include all forms of payment, rather than just payment by check. The bill also provides that if proof of payment is not provided, the claim is void.

Section 8 repeals s. 717.1381, F.S. This eliminates the 45 day waiting period for claims over \$250 in value that are handled by a representative or purchaser. DFS reports that it will be able to maintain a waiting period using its authority under s. 717.117(3), F.S., and that the administrative efficiency will be improved by not having to audit claim filings for the timing of agreements and value of the claim for compliance with the repealed limitation.²⁴

Section 9 retains the portion of legislative intent in s. 717.1381, F.S., regarding the right of the claimant to recover his or her property without charge, by moving it to s. 717.139, F.S. However, it does not preserve the legislative intent statement regarding the obligation of DFS to make a meaningful attempt to locate the claimant.

²⁴ Supra note 20.

Section 10 deletes the authorization for registrants to receive social security numbers. Currently, individuals who register with DFS as potential purchasers under the act are permitted to receive the social security numbers of apparent property owners of property reported to DFS. This is in addition to other information related to the unclaimed property.

Section 11 provides an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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:

The bill allows for small estates up to \$10,000 to file an affidavit with the department for a claim made by a beneficiary.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 717.101, 717.1243, 717.1262, 717.1333, 717.135, 717.1351, 717.139 and 717.1400.

This bill creates section 717.1235 of the Florida Statutes.

This bill repeals section 717.1381 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance on February 9, 2016:

- Removes the section of the bill relating to “surplus trustees”;
- Requires each court pleading filed within 180 days prior to a claim for unclaimed property to be filed with the Department of Financial Services;
- Requires all authorizations or agreements for representation regarding a claim for unclaimed property to meet specified requirements regarding accurate and personal completion by the claimant and allows for a claim to be denied if such agreements exceed the fee cap;
- Increases the maximum number of days for a claimant to be paid following a purchase agreement from 10 days to 30 days from the date of execution and voids the claim if proof of payment is not filed with the DFS;
- Restores a statement of legislative intent found in s.717.1381, F.S.
- Removes the section of the bill that expressed intent to apply a portion of the bill retroactively;
- Removes the section of the bill that deleted the \$1,000 fee cap on agreements to recover or purchase unclaimed property that do not provide specified disclosures; and
- Removes the section of the bill requiring a registration fee for claimant representatives.

B. Amendments:

None.