

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 832

SPONSOR: Banking and Insurance Committee and Senator Horne

SUBJECT: Unclaimed Property

DATE: February 8, 2000 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>FR</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The committee substitute makes the following changes related to ch. 717, F.S., “The Florida Disposition of Unclaimed Property Act,” which is administered by the Department of Banking and Finance:

1. The bill revises disclosure requirements and requires all agreements between an apparent owner and an owner's representative to *either* disclose certain information to the apparent owner *or* limit the fees for such recovery services provided to the apparent owner. If an owner's representative opts for meeting the disclosure requirement, such agreements must state: 1) that the property is being held by a governmental entity, 2) the type entity which held the property last, 3) the date of the holder's last contact with the owner, and 4) the approximate value and type of property the owner's representative is seeking to recover.

In lieu of providing the above disclosure to an apparent owner, an owner's representative may opt for complying with the following limitation on fees, based on the dollar value of the recovered property: 1) less than \$500, no fee limitations apply; 2) for \$500-\$4,999, 20 percent; 3) for \$5000-\$49,999, 12 percent; and 4) for \$50,000-\$99,999, 10 percent; and 5) for all properties valued at \$100,000 or more, 7 percent. These disclosure and fee caps are not applicable to contracts made in connection with guardianship proceedings, the probate of an estate, or corporations. If an owner's representative enters into such an agreement, pursuant to the fee limitation, the agreement must disclose the gross amount of the claim and the percentage fee to be paid to the owner's representative. All such agreements between owners and their representatives to pay compensation are required to be signed by the owner of the property and filed by the owner's representative with the claim form and remitted to the department. Such agreements must include the name, address, and telephone number of the owner and the license number of the owner's representative.

2. The bill would allow the department to make more than one attempt to notify apparent owners of unclaimed property by changing the notification requirement from a *single* attempt to *at least one*.
3. The bill allows the department to provide payments directly to the apparent owner after deducting fees authorized in the written contract for the owner's representative. The department is required to forward the payment of fees to the designated attorney, certified public accountant, or private investigative agency of the apparent owner.
4. The bill places an affirmative duty on the part of a holder (one in possession of property belonging to another, a trustee, or one indebted to another) to use "due diligence" and reasonable and prudent methods to locate apparent owners. The holder is required to make at least one search for the owner within 180 days after an account becomes inactive. An account is "inactive" if 2 years have transpired after the last owner-initiated account activity, the expiration date on the instrument or contract, or first-class mail has been returned as undeliverable.
5. The bill revises the department's responsibilities in the event of a dispute or conflicting claims by authorizing the department 1) to remit the property to the owner's representative or claimant who first filed a claim with the department (in the case of a dispute between the owner and the representative) 2) to remit to the owner, in the event an owner's claim and owner's representative claim are received by the department on the same day, or 3) to remit to the owner's representative who first signed a contract with the property owner, in the event two or more owner's representatives claims are received by the department on the same day.
6. Certified public accountants licensed pursuant to chapter 473, F.S., and engaged in the recovery of unclaimed property and the location of apparent owners of such property, pursuant to chapter 717, F.S., are exempt from the private investigative agency provisions of chapter 493, F.S.
7. The bill provides that all claims made by heirs of an unclaimed property owner for which there is no probate court order, whether the owner dies testate or intestate, must be accompanied by an affidavit stipulating that all funeral expenses, expenses of the last illness, and all other just claims, have been paid. Currently, it is adequate to stipulate that there were sufficient assets in the estate of the owner to cover expenses. In addition, the maximum aggregate amount of the unclaimed property covered by this provision is increased from \$1,000 to \$5,000.

This bill substantially amends the following sections of the Florida Statutes: 717.101, 717.102, 717.103, 717.1035, 717.104, 717.105, 717.106, 717.107, 717.108, 717.109, 717.1101, 717.111, 717.112, 717.113, 717.115, 717.116, 717.117, 717.118, 717.119, 717.1201, 717.122, 717.123, 717.124, 717.1241, 717.1243, 717.125, 717.129, 717.132, 717.135, 732.107, and 493.6102. The bill repeals section 717.137, Florida Statutes.

II. Present Situation:

In Florida, reversion of property to the State is based on the presumption that there is no heir to assume the property upon the death of the owner. The State has jurisdiction to take charge of unclaimed property, and it is within the power of the Legislature to establish a reasonable time period for succession and to determine what will become of unclaimed property and the conditions upon which it will pass to the State. Escheat of unclaimed property to the State under appropriate statutes does not constitute a taking of property without due process of law in violation of the Federal Constitution as established in Cockrill v. California (1925) 268 US 258, 69 L Ed 944, 45 S Ct 490. Generally, all property, real and personal, and every right of property of any nature is subject to escheat to the State.

The Florida Disposition of Unclaimed Property Act (Chapter 717, F.S.), provides the obligations of the “holder” of property presumed abandoned and a mechanism for the disposition of such property. Section 717.139, F.S., provides that the “. . . chapter shall be applied as to effectuate its general purpose of protecting the interest of missing owners of property, while providing that the benefit of unclaimed and abandoned property shall go to all of the people of the state . . .” The Department of Banking and Finance is responsible for administering the provisions of ch. 717, F.S. Under the Act, the department is responsible for receiving property, locating the rightful owners, and returning the property (or its value, in cases of sold securities) to them.

Section 717.118, F.S., directs the department to use cost-effective means to make a single attempt to notify owners of unclaimed property. The section authorizes the department to utilize post, print, visual, telecommunications, or electronic media as the means to provide the one-time notification. Notification via publishing the names on the Internet is specifically considered as not being an attempt to notify owners under the provisions of this section. There is no fee charged to owners for the department’s notification or recovery of the property.

Unclaimed property constitutes any funds or other property, tangible or intangible, that has remained unclaimed by the owner for a certain number of 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. Holders of unclaimed property, which typically include banks and insurance companies are required to submit unclaimed property to the department. A check, draft, bank deposit, stock, as well as other intangible property, is “presumed abandoned” if unclaimed for a period of 5 years. Notable exceptions to the 5-year period include contents in safe deposit boxes (3 years), money orders (7 years), and travelers' checks (15 years).

Prior to 1996, the department was required to publish at least once the names of owners of unclaimed property of all accounts valued at more than \$50 in their respective local newspapers. In 1996 the law was amended to permit the department to use alternative means (i.e., direct mailing and electronic media) for owner notification. In addition, the 1996 law increased the minimum value of owner accounts requiring notice and publication from \$50 to \$100 and imposed a single-attempt notification limitation on the department. In general, once the allowable time period for holding unclaimed property has expired, a holder is required to file a verified report with the Department of Banking and Finance by May 1 for all property presumed abandoned for

the preceding fiscal-year. Within 120 days prior to the filing, a holder must mail a written notice to the apparent owner of such property (valued at \$50 or more).

Within 13 months after receipt of the holders' reports, the department must attempt to locate the apparent owner of property valued at or above \$100 by publishing or televising a notice in the county in which the last known address of the apparent owner is located or, if the address is unknown, in the county in which a holder has a principal place of business. If the property remains unclaimed, all proceeds from abandoned property are then deposited by the department into the State School Trust Fund, except for a \$3 million balance which is retained in a separate account (the Unclaimed Property Trust Fund) for the prompt payment of verified claims. According to the department, biweekly requests to transfer funds from the Department of Education School Trust Fund to the Unclaimed Property Trust Fund are sometimes necessary to ensure the adequate payment of claims.

According to the department, for fiscal year 1998-99, \$115 million in unclaimed property was received by the department and \$47 million in claims was paid out to apparent owners. Also, approximately \$71 million was transferred to the State School Fund during that time.

In addition to the efforts by the department to locate the owners of unclaimed property, private investigative agencies and attorneys assist apparent owners in recovering unclaimed property. Private investigative agencies are required to be licensed by the Florida Department of State, in accordance with chapter 493, F.S. Typically, an owner's representative will contact apparent owners of unclaimed property and offer to complete and file the necessary forms with the department for a fee.

Under the provisions of s. 717.135, F.S., agreements to pay compensation to owners' representatives are unenforceable, if the agreement is made within 90 days after attempted notification by the department or within 12 months after such property is reported to the department. In addition, owners' representatives are required to disclose these provisions in their agreements to ensure owners are apprised of their rights.

In a report (99-13) dated November 1999, the Office of Program Policy Analysis and Government Accountability noted that since the department is not a party to the agreement between an owner's representative and an owner of unclaimed property, it is unable to enforce the statutory time period restrictions. The report also concluded that since there is no statutory requirement that owners' representatives include in the agreement the date the owner's property was reported to the department, it is unlikely that an owner would know if the contract was unenforceable. The report recommended that, in order "to protect owners of unclaimed property from paying unnecessary fees for heir finder agreements, the Legislature amend s. 717.135, F.S., to provide that owner's representative agreements are void, rather than unenforceable, if the agreements do not include the required disclosures or if they violate the required time periods . . ."

According to the department, s. 717.135, F.S., does not prevent owners' representatives from contacting and contracting with apparent owners. Since the department is not a party to the contract, the department's enforcement of this section is limited to requiring the disclosure to appear on the contract. The department also noted that the downside to this disclosure ". . . is that

the owner does not know when or if the department may have attempted notice and does not know when the property was reported to the department.” Therefore, the substitution of the word, “void,” for the word, “unenforceable,” does not resolve the problem with the notice. The department also suggested that “. . .without further disclosure the owner may not understand the issue and not be in a position to enforce any rights available.”

III. Effect of Proposed Changes:

Section 1. Amends s. 717.101, F.S., to add a definition of “due diligence” as it relates to efforts holders of property must take to locate owners of unclaimed property (See section 17). The section also amends the definition of “last known address” to include any partial description of the location of the apparent owner sufficient to establish that the owner was a resident of Florida.

Sections 2 through 6. Amends ss. 717.102, 717.103, 717.1035, 717.104, and 717.105, F.S., to substitute the word “unclaimed” for “abandoned” property and makes other technical changes.

Section 7. Amends s. 717.106, F.S., to substitute the word “unclaimed” for “abandoned” property, to make other technical changes, and to add that first class mail sent to the apparent owner, which is not returned as undeliverable, is considered as an indication of an active account in a banking or financial organization so that the account would not be presumed unclaimed.

Sections 8 and 9. Amends ss. 717.107 and 717.108, F.S., to substitute the word “unclaimed” for “abandoned” property and makes other technical changes.

Section 10. Amends s. 717.109, F.S., to substitute the word “unclaimed” for “abandoned” property and makes other technical changes.

Section 11. Amends s. 717.1101, F.S., to clarify, in the case of an owner of stock or other security of a business association, who has failed to claim a dividend or distribution for 5 years, that the stock will not be considered abandoned until five *consecutive* dividends have not been claimed by the owner after the 5-year presumptive period. This section also makes substitutions for the word “unclaimed” for “abandoned” property and makes other technical changes.

Section 12. Amends s. 717.111, F.S., to substitute the word “unclaimed” for “abandoned” property and makes other technical changes.

Section 13. Amends s. 717.112, F.S., to provide that intangible property issued by a governmental subdivision and held in an agency capacity for the governmental subdivision, is presumed unclaimed after 1 year, unless the owner has, within 1 year after such property has become payable, communicated concerning the property, or otherwise indicated an interest in the property. Current law does not expressly address this type of property for purposes of determining whether it is presumed unclaimed. This section also substitutes the word “unclaimed” for “abandoned” property and makes other technical changes.

Sections 14 through 16. Amends s. 717.113, s. 717.115, and s. 717.116, F.S., to substitute the word “unclaimed” for “abandoned” property and makes other technical changes.

Section 17. Amends s. 717.117, F.S., to remove the requirement that reports of unclaimed property filed with the department be verified by representatives of the respective private corporation or unincorporated association submitting the report. This section also requires insurance companies to include the date of birth of the insured or annuitant to assist in proper identification of the individual.

This section places an affirmative duty on the part of a holder (one in possession of property belonging to another, a trustee, or one indebted to another) to use “due diligence” (defined in section 1) and reasonable and prudent methods to locate apparent owners. The holder is required to make at least one search for the owner within 180 days after an account becomes inactive. An account is “inactive” if two years have transpired after the last owner-initiated account activity, the expiration date on the instrument or contract, or first-class mail has been returned as undeliverable. This section also substitutes the word “unclaimed” for “abandoned” property and makes other technical changes.

Section 18. Amends s. 717.118, F.S., to differentiate between attempts by the department to contact owners of property which are “active” (direct contact) and those attempts which are “passive” (publication in newspapers, posting on the Internet, or television advertisements), and places an affirmative duty on the department to make *at least one* attempt to notify owners of unclaimed property. This section also makes substitutions for the word “unclaimed” for “abandoned” property and makes other technical changes.

Section 19. Amends s. 717.119, F.S., to authorize unclaimed property holders to remit funds through electronic funds transfer. Cash and coin items identified as having numismatic value are required to be remitted to the department in their original form. Instead of remitting the proceeds of the sale of stocks, holders would be required to remit the stocks to the department. This section requires that any extension of time that is authorized by the department for the remittance of the property must be in writing. This section also makes substitutions for the word “unclaimed” for “abandoned” property and makes other technical changes.

Section 20. Amends s. 717.1201, F.S., to substitute the word “unclaimed” for “abandoned” property and makes other technical changes.

Section 21. Amends s. 717.122, F.S., to clarify that if, at a public sale of unclaimed property, the department determines that the cost of the sale would probably exceed the value of the property, and the department decides not to sell the property at that time, that the department may dispose of the property as it deems appropriate. In addition, this section specifies that if unclaimed securities are sold at the request of the owner, the owner’s account will not be reimbursed from the State School Fund for the amount of the brokerage fees.

This section also substitutes the word “unclaimed” for “abandoned” property and makes other technical changes.

Section 22. Amends s. 717.123, F.S., to increase the balance from \$3 million to \$8 million of the trust fund the department retains for the payment of unclaimed property claims and administrative costs. This section eliminates the reference to “a separate account” for the retention of funds to pay claims and costs of the program, and specifically designates the Unclaimed Property Trust

Fund as the depository for all funds received under this chapter. After the \$8 million balance is met (as currently provided when the \$3 million balance is met), additional proceeds are to be deposited into the State School Fund. This section also substitutes the word “unclaimed” for “abandoned” property and makes other technical changes.

Section 23. Amends s. 717.124, F.S., to expressly stipulate that a power of attorney relationship would be established when an apparent owner of unclaimed property executes a written contract for services with a duly-licensed private investigative (owner’s representative) agency to file a claim with the department on behalf of the owner, rather than executing a simple assignment of rights. The department is authorized to make distributions in accordance with such power of attorney. However, the department is also authorized to make payments directly to the owner after deducting any fees as authorized in the written contract. The department would make a separate payment of fees to the designated attorney or owner’s representative. This section also substitutes the word “unclaimed” for “abandoned” property and makes other technical changes.

Section 24. Amends s. 717.1241, F.S., to revise the department’s responsibilities in the event of a dispute or conflicting claims by authorizing the department 1) to remit the property to the owner’s representative or claimant who first filed a claim with the department (in the case of a dispute between the owner and the representative) 2) to remit to the owner, in the event an owner’s claim and owner’s representative claim are received by the department on the same day, or 3) to remit to the owner’s representative who first signed a contract with the property owner, in the event two or more owner’s representatives claims are received by the department on the same day.

Section 25. Amends s. 717.1243, F.S., to require that all claims made by heirs of an unclaimed property owner, for which there is no probate court order, whether the owner dies testate or intestate, must be accompanied by an affidavit stipulating that all funeral expenses, expenses of the last illness, and all other just claims, have been paid. Currently, it is adequate to stipulate that there were sufficient assets in the estate of the owner to cover expenses. Also, the bill eliminates the current requirement for an affidavit stating that no probate proceedings have been instituted. In addition, the maximum aggregate amount of the unclaimed property covered by this section is increased from \$1,000 to \$5,000.

Sections 26 and 27. Amends ss. 717.125, and 717.129, F.S., to substitute the word “unclaimed” for “abandoned” property and makes other technical changes.

Sections 28. Amends s. 717.132 F.S., to specify that all administrative fines collected by the department will be deposited into the Unclaimed Property Trust Fund. Section 717.123, F.S., presently requires that all funds received under this chapter be deposited into the State School Fund. However, a spokesperson for the department states that fines are deposited into the Department of Banking and Finance Regulatory Trust Fund.

Section 29. Amends s. 717.135, F.S., to revise disclosure requirements and to require all agreements between an apparent owner and an owner’s representative to *either* disclose certain information to the apparent owner *or* limit the fees for recovery services provided to the apparent owner. If an owner’s representative opts for meeting the disclosure requirement, such agreements must state: 1) that the property is being held by a governmental entity, 2) the type entity which

held the property last, 3) the date of the holder's last contact with the owner, and 4) the approximate value and type of property the owner's representative is seeking to recover.

In lieu of providing the above disclosure to an apparent owner, an owner's representative may opt for complying with the following percentage caps on fees, based on the dollar value of the recovered property, that may be charged: 1) less than \$500, no fee limitations apply; 2) for \$500-\$4,999, 20 percent; 3) for \$5000-\$49,999, 12 percent; and 4) for \$50,000-\$99,999, 10 percent; and 5) for all properties valued at \$100,000 or more, 7 percent. In addition, these disclosure and fee caps are not applicable to contracts entered into between an owner's representative agency and a corporation.

If an owner's representative enters into an agreement, pursuant to the fee limitation, the agreement must disclose the gross amount of the claim and the percentage fee to be paid to the owner's representative. All such agreements between owners and their representatives to pay compensation are required to be signed by the owner of the property and filed by the owner's representative with the claim form to the department and include the name, address and telephone number of the owner and the license number of the owner's representative.

This section also removes language stating that the contracts will be unenforceable if the agreement is made within 90 days after attempted notification by the department or within 12 months after such property is reported to the department, whichever occurs later.

Section 30. Amends s. 732.107, F.S., to specify that the ten-year statute of limitations for a person claiming to be entitled to the estate of a decedent for property escheated to the state begins to run at the time the state receives the property. In addition, this section eliminates the requirement that interest be added to an amount which is paid to a claimant as a result of the claimant's successful action asserting rights to escheated property.

Section 31. This section repeals s. 717.137, F.S., relating to outdated reporting requirements.

Section 32. Amends s. 493.6102, F.S., to exempt certified public accountants licensed pursuant to chapter 473, F.S., who are engaged in the recovery of unclaimed property and the location of apparent owners of such property, pursuant to chapter 717, F.S., from the private investigative agency provisions of chapter 493, F.S.

Section 33. Provides an effective date of October 1, 2000.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill provides owners' representatives with the *option* of disclosing information regarding the holder and location of abandoned property *or* the fees for the recovery of such property to the apparent owner. Even though neither of these requirements are in the current law, the bill may not provide consumers with adequate information to make a comprehensive evaluation of the cost and benefits of using such recovery services.

Contingent upon the fees presently charged by owners' representatives, some owners' representatives may find it necessary to adjust their fees to compete, as well as comply with the statutory caps. According to the department, some indeterminate portion of the amount previously paid to owners' representatives in Florida would, instead, be returned to the apparent owners (excluding corporate claims or claims involving heirs or guardians) as a result of the implementation of the new disclosure requirements and the fee limitations.

If an apparent owner of unclaimed securities requests that the securities be sold, the owner will now have to incur the broker fees associated with the sale.

A claimant would no longer be entitled to payment of interest by the state as a result of the claimant's successful action asserting rights to the estate of a decedent for property escheated to the state. According to the department, \$8,900 was paid in interest for fiscal year 1998-99 and \$32,600 was paid in interest for fiscal year 1997-98.

C. Government Sector Impact:

The department estimates it will be able to increase the total amount of funds transferred to the State School Fund by \$27,000 per year by requiring claimants to incur the brokerage fees, if they request the sale of the stocks or bonds. (This estimate is based on 1,800 claims with an average brokerage fee of \$15.00 per claim)

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 23 of the bill provides that “. . . payments of approved claims for unclaimed cash accounts *may* be made to the owner after deducting any fees. . .” If direct payments by the department are discretionary, this may be an unlawful delegation of legislative authority.

Advocates for the owners’ representatives have expressed concern regarding the substitution of the term, “unclaimed” property for “abandoned” property, because it may adversely impact case law precedent applying to abandoned property.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
