

By Representative Brutus

1 A bill to be entitled
 2 An act relating to heir finders; creating ss.
 3 717.151, 717.152, 717.153, 717.154, 717.155,
 4 and 717.156, F.S.; providing definitions;
 5 requiring registration of heir finders and heir
 6 finder businesses; providing requirements;
 7 specifying qualifications; requiring
 8 examinations; requiring record maintenance;
 9 requiring a bond; providing for license renewal
 10 and reactivation; providing for fees; providing
 11 for local licensing requirements; providing for
 12 licensing of nonresidents; specifying
 13 prohibited acts; providing penalties; providing
 14 a felony penalty for certain activities;
 15 providing for admitting certain documents into
 16 evidence in certain hearings; amending s.
 17 717.123, F.S.; providing for deposit of certain
 18 additional revenues into the Unclaimed Property
 19 Trust Fund; amending s. 717.124, F.S.;
 20 including heir finders within provisions for
 21 distributions of certain property or money by
 22 the department; providing an effective date.

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 24 Be It Enacted by the Legislature of the State of Florida:

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 26 Section 1. Sections 717.151, 717.152, 717.153,
 27 717.154, 717.155, and 717.156, Florida Statutes, are created
 28 to read:

29 717.151 Definitions.--For purposes of this section and
 30 ss. 717.152-717.156:

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1 (1) "Act as an heir finder" means, for compensation or
2 gain, or in the expectation of compensation or gain, either
3 directly or indirectly, locating or offering to locate
4 unclaimed property for an owner or for an apparent owner,
5 filing or offering to file a claim for unclaimed property for
6 an owner or for an apparent owner, purchasing or offering to
7 purchase the right to claim unclaimed property from an owner
8 or from an apparent owner, or receiving or soliciting the
9 receipt of an assignment of unclaimed property from an owner
10 or from an apparent owner.

11 (2) "Heir finder" means an attorney, Florida-certified
12 public accountant, or private investigator who is licensed to
13 do business in this state and registered as an heir finder.

14 717.152 Heir finder registration.--

15 (1) Each natural person who acts as an heir finder
16 shall be registered pursuant to this section.

17 (2) Each application for an heir finder registration
18 shall be in the form prescribed by rule of the department. The
19 department may require each applicant to provide any
20 information reasonably necessary to make a determination of
21 the applicant's eligibility for registration. The department
22 shall issue a registration to any natural person who:

23 (a) Has submitted to the department a completed
24 application and a nonrefundable fee of \$50.

25 (b) Is an attorney, Florida-certified public
26 accountant, or private investigator licensed to do business in
27 this state.

28 (c) Obtains a surety bond as required by s. 717.153.

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30 The department may waive the registration fee and surety bond
31 requirement for good cause shown.

1 (3) Registration as an heir finder is valid for the
2 remainder of the biennium in which the registration is issued.

3 (4) Registration as an heir finder may be canceled if
4 the registration was issued through mistake or inadvertence of
5 the department. A notice of cancellation shall be issued by
6 the department within 90 days after the issuance of the
7 registration. A notice of cancellation shall be effective upon
8 receipt. The notice of cancellation shall provide the
9 registrant with notification of the right to request a hearing
10 within 21 days after the registrant's receipt of the notice of
11 cancellation. A registration shall be reinstated if the
12 applicant can demonstrate that the requirements for obtaining
13 the registration pursuant to this section have been satisfied.

14 (5) If an heir finder registration has been issued but
15 the check upon which the registration is based is returned due
16 to insufficient funds, the registration shall be deemed
17 canceled. A registration deemed canceled pursuant to this
18 subsection shall be reinstated if the department receives a
19 certified check for the appropriate amount within 30 days
20 after the date the check was returned due to insufficient
21 funds.

22 717.153 Surety bond required.--

23 (1) Unless waived by the department, no registration
24 as an heir finder shall be issued unless the applicant first
25 provides evidence to the department that the applicant has
26 been issued a current and valid surety bond in a form
27 acceptable to the department and in an amount not to exceed
28 \$100,000. The evidence shall include:

29 (a) A copy of the surety bond.
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1 (b) A statement from the surety that the premium for
2 the period of registration for the bond has been paid in full
3 by the applicant.

4 (2) The surety bond shall be issued for the use and
5 benefit of the department or any person who suffers or
6 sustains any loss or damage by reason of any violation of the
7 provisions of this chapter or misappropriation or mishandling
8 of funds or property by the licensee or its agents or
9 employees. The bond shall be maintained in full force and
10 effect while the applicant is licensed pursuant to s. 717.152.
11 A person shall not conduct business as an heir finder without
12 having a bond in effect.

13 (3) The liability of the surety under any bond issued
14 pursuant to the requirements of this section shall not exceed
15 in the aggregate the amount of the bond, regardless of the
16 number or amount of any claims filed or which might be
17 asserted against the surety on such bond.

18 (4)(a) If multiple claims are filed against the surety
19 on any such bond in excess of the amount of the bond, the
20 surety may pay the full amount of the bond to the department
21 and shall not be further liable under the bond. At the time
22 the amount of the bond is paid to the department, the surety
23 shall provide the department with all notices of claim on the
24 bond that the surety has received. Upon the transfer of the
25 proceeds from the bond to the department, all pending suits
26 for recovery on the bond shall be stayed.

27 (b) The department shall hold the proceeds from the
28 bond for distribution to claimants. Within 90 days after
29 receipt of the proceeds from the bond and the notices of claim
30 from the surety, the department shall notice its intent to
31 approve or deny all pending claims for the proceeds of the

1 bond. Claims for payment pending before the department shall
2 be limited to quantifiable damages that are actual or
3 compensatory and shall not include costs or attorney's fees.
4 If the total claims of approved claims exceed the aggregate
5 amount of the bond, the department shall prorate the payment
6 based upon the ratio that the person's claim bears to the
7 total claims filed and approved.

8 (c) The department shall publish notice of its intent
9 to render a decision in the Florida Administrative Weekly.
10 Within 21 days after publication of the notice, any person who
11 has filed, or who intends to file, a claim on the bond may
12 request a hearing. Failure to request a hearing within 21
13 days after notice constitutes a waiver of any right to a
14 hearing. A hearing, if requested, shall be governed by
15 chapter 120.

16 717.154 Recordkeeping.--Each heir finder shall
17 maintain, at the principal place of business designated on the
18 registration, all books, accounts, records, and documents
19 necessary to determine the registrant's compliance with ss.
20 717.151-717.156.

21 (1) The department may authorize maintenance of
22 records at a location other than a principal place of
23 business. The department may require books, accounts, and
24 records to be produced and available at a reasonable and
25 convenient location in this state.

26 (2) All books, accounts, records, documents, and
27 receipts for expenses paid by the owner's representative on
28 behalf of the owner, including each contract signed by an
29 owner, shall be preserved and kept available for examination
30 by the department for at least 3 years after the date of
31 original entry.

1 (3) The department may prescribe by rule the minimum
2 information to be shown in the books, accounts, records, and
3 documents of registrants so that such records will enable the
4 department to determine the registrant's compliance with this
5 act.

6 717.155 Grounds for disciplinary action.--

7 (1) The following acts are violations of ss. 717.152,
8 717.153, and 717.154 and constitute grounds for the
9 disciplinary actions specified in subsection (2):

10 (a) Failure to comply with any provision of ss.
11 717.152, 717.153, and 717.154, any rule or order adopted
12 pursuant to such sections, or any written agreement entered
13 into with the department;

14 (b) Fraud, misrepresentation, deceit, or gross
15 negligence in any unclaimed property transaction;

16 (c) Fraudulent misrepresentation, circumvention, or
17 concealment of any matter required to be stated or furnished
18 to an owner or apparent owner pursuant to such sections,
19 regardless of reliance by or damage to the owner or apparent
20 owner;

21 (d) Willful imposition of illegal or excessive charges
22 in any unclaimed property transaction;

23 (e) False, deceptive, or misleading advertising;

24 (f) Failure to maintain, preserve, and keep available
25 for examination all books, accounts, or other documents
26 required by such sections, by any rule or order adopted
27 pursuant to such sections, or by any agreement entered into
28 with the department;

29 (g) Refusal to permit inspection of books and records
30 in an investigation or examination by the department or
31 refusal to comply with a subpoena issued by the department;

- 1 (h) Criminal conduct in the course of a person's
2 business; or
- 3 (i) Failure to timely pay any fee, charge, or fine
4 imposed or assessed pursuant to such sections or any rule
5 adopted under such sections.
- 6 (2) Upon a finding by the department that any person
7 has committed any of the acts set forth in subsection (1), the
8 department may enter an order taking one or more of the
9 following actions:
- 10 (a) Denying a registration pursuant to s. 717.152;
11 (b) Revoking or suspending a registration previously
12 granted pursuant to s. 717.152;
- 13 (c) Placing a registrant or an applicant for a
14 registration on probation for a period of time and subject to
15 such conditions as the department may specify;
- 16 (d) Placing permanent restrictions or conditions upon
17 issuance or maintenance of a registration pursuant to s.
18 717.152;
- 19 (e) Issuing a reprimand; or
20 (f) Imposing an administrative fine not to exceed
21 \$2,000 for each such act.
- 22 (3) In addition to the acts specified in subsection
23 (1), the following shall be grounds for denial of a
24 registration pursuant to such sections, or for revocation,
25 suspension, or restriction of a registration previously
26 granted:
- 27 (a) A material misstatement of fact in an application
28 for a registration;
- 29 (b) Having a license, a registration, or the
30 equivalent to practice any profession or occupation denied,
31 suspended, revoked, or otherwise acted against by a licensing

1 authority in any jurisdiction for fraud, dishonest dealing, or
2 any act of moral turpitude;

3 (c) Pleading nolo contendere to, or having been
4 convicted or found guilty of, a crime involving fraud,
5 dishonest dealing, or any act of moral turpitude, regardless
6 of whether adjudication is withheld; or

7 (d) Being insolvent or having a demonstrated lack of
8 honesty or financial responsibility.

9 717.156 Evidence; examiner's worksheets, investigative
10 reports, other related documents.--In any hearing in which a
11 financial examiner or investigator acting under authority of
12 this chapter is available for cross-examination, any official
13 written report, worksheet, or other related paper, or a
14 certified copy of such report, worksheet, or related paper,
15 compiled, prepared, drafted, or otherwise made or received by
16 the financial examiner or investigator, after being
17 authenticated by the examiner or investigator, may be admitted
18 as competent evidence upon the oath of the examiner or
19 investigator that the report, worksheet, or related paper was
20 prepared or received as a result of an examination or
21 investigation, conducted pursuant to the authority of this
22 chapter, of the books and records of a registered heir finder
23 or other person acting as an heir finder.

24 Section 2. Subsection (1) of section 717.123, Florida
25 Statutes, is amended to read:

26 717.123 Deposit of funds.--

27 (1) All funds received under this chapter, including
28 fees, charges, and fines and the proceeds from the sale of
29 unclaimed property under s. 717.122, shall forthwith be
30 deposited by the department in the Unclaimed Property Trust
31 Fund. The department shall retain, from funds received under

1 this chapter, an amount not exceeding \$8 million from which
2 the department shall make prompt payment of claims allowed by
3 the department and shall pay the costs incurred by the
4 department in administering and enforcing this chapter. All
5 remaining funds received by the department under this chapter
6 shall be deposited by the department into the State School
7 Fund.

8 Section 3. Paragraphs (a), (b), and (c) of subsection
9 (5) of section 717.124, Florida Statutes, are amended to read:

10 717.124 Filing of claim with department.--

11 (5)(a) If an owner authorizes an attorney,
12 Florida-certified public accountant, or heir finder ~~private~~
13 ~~investigative agency~~ which is duly licensed to do business in
14 this state to claim the unclaimed property on the owner's
15 behalf, the department is authorized to make distribution of
16 the property or money in accordance with such power of
17 attorney.

18 (b)1. Payments of approved claims for unclaimed cash
19 accounts shall be made to the owner after deducting any fees
20 authorized pursuant to a written power of attorney.

21 2. Payments of fees authorized pursuant to a written
22 power of attorney for approved cash claims shall be forwarded
23 to the designated attorney, Florida-certified public
24 accountant, or heir finder ~~private investigative agency~~. Such
25 payments may be made by electronic funds transfer and may be
26 made on such periodic schedule as the department may define by
27 rule, provided the payment intervals do not exceed 31 days.

28 3. Payments of approved claims for unclaimed
29 securities and other intangible ownership interests made to an
30 attorney, Florida-certified public accountant, or heir finder
31 ~~private investigative agency~~ shall be promptly deposited into

1 a trust or escrow account which is regularly maintained by the
2 attorney, Florida-certified public accountant, or heir finder
3 ~~the private investigative agency~~ in a financial institution
4 authorized to accept such deposits and located in this state.

5 (c) Distribution of unclaimed property by the
6 attorney, Florida-certified public accountant, or heir finder
7 ~~private investigative agency~~ to the claimant shall be made
8 within 10 days following final credit of the deposit into the
9 trust or escrow account at the financial institution, unless a
10 party to the agreement protests in writing such distribution
11 before it is made.

12 Section 4. This act shall take effect October 1, 2002.

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14 HOUSE SUMMARY

15
16 Requires registration of heir finders and heir finder
17 businesses. Specifies requirements, qualifications,
18 examinations, record maintenance, bond, license renewal
19 and reactivation procedures, fees, local licensing
20 requirements, licensing of nonresidents, prohibited acts,
21 and penalties. Provides for deposit of fees, charges, and
22 fines relating regulation of heir finders into the
23 Unclaimed Property Trust Fund for distribution prior to
24 transfer to the State School Fund. Includes heir finders
25 within provisions for distributions of unclaimed property
26 or money by the department. See bill for details.
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