

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 2440

SPONSOR: Banking and Insurance Committee and Senator Campbell

SUBJECT: Public Records (Unclaimed Property)

DATE: April 22, 2003

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Deffenbaugh/Knudson</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>CM</u>	_____
3.	_____	_____	<u>GO</u>	_____
4.	_____	_____	<u>RC</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Current law provides a public records exemption for social security numbers and financial account numbers contained in reports of unclaimed property held by the Department of Financial Services (DFS). This bill expands that exemption to also include unclaimed property account dollar amounts and the number of reported shares of stock.

This bill provides for exceptions to the exemptions. It also requires a person receiving such confidential and exempt information, to maintain the confidential and exempt status of such information. This bill makes it a third-degree felony for violating the provisions contained in the public records exemptions.

This bill provides for future review and repeal of the act on October 2, 2008. It also provides statements of public necessity for each of the types of information that the bill makes exempt from public disclosure.

This bill substantially amends section 717.117, Florida Statutes. The bill creates section 717.1171, Florida Statutes.

II. Present Situation:

Unclaimed Property Program

The Department of Financial Services (“DFS” or “department”) administers the Florida Disposition of Unclaimed Property Act.¹ The DFS is responsible for receiving unclaimed

¹ Ch. 717, F.S. On January 7, 2003, the Unclaimed Property Program of the Department of Banking and Finance was transferred to the newly created Department of Financial Services (ch. 2002-404, L.O.F). CS/CS/SB 1712 makes conforming changes to the Florida Statutes.

property, locating the rightful owner, and returning the property or its value, in cases of sold securities, to the rightful owner. Holders of unclaimed property are required to submit unclaimed property reports to DFS once the allowable time period for holding unclaimed property has expired. After receipt of a holder's report, DFS must attempt to locate the apparent owner of unclaimed property by publishing or televising notices. The general purpose of the Act is to protect the interest of missing owners of property while the state derives a benefit from the unclaimed or abandoned property until the property is claimed, if ever. There is no statute of limitations period for an owner to claim his or her property.

The department is authorized to directly contact the owner. In addition, the department may use other means of notification, including publication of the names of the owners in newspapers, on television, on the Internet, or other promotional efforts.

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.

Holders of inactive accounts (presumed unclaimed property) are required to use due diligence to locate apparent owners through at least one search for the owners within a certain time period after an account becomes inactive. Once the allowable time period for holding unclaimed property has expired, a holder is required to file a report with the DFS by May 1 for all property valued at \$50 or more and presumed unclaimed for the preceding calendar year. In lieu of forms, the holder may submit the required information via electronic medium as the department may prescribe by rule. Under the provisions of s. 717.117, F.S., the report to the DBF generally must contain the name and social security number or federal employer identification number, if known, and the last known address of the apparent owner.

After receipt of the holders' reports, the department must attempt to locate the apparent owner of property 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. Notifications that are published or televised may consist of the names of the apparent owners of unclaimed property. However, notifications provided directly to the individual, apparent owners are required to include a description of the property.

In addition to the efforts by the DBF to locate the owners of unclaimed property, private investigative agencies, certified public accountants, and attorneys assist apparent owners in recovering unclaimed property, typically for a fee. Private investigative agencies are required to be licensed by the Florida Department of State, in accordance with ch. 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. In 2001, legislation was enacted which required that agreements between an owner's representative and an owner to either disclose specified information of how the owner can obtain the property directly (at no charge), or to limit fees to 15 percent for unclaimed property with value of \$250 or more and held by the

DFS for 24 months or less, 25 percent for property held by the department for more than 24 months, and \$25 for property valued less than \$250.

In 1973, the Attorney General opined that the records maintained by the Abandoned Property (Unclaimed Property) Section of the DBF were public records and were open to public inspection.

Public Records; Exemptions

Article I, s. 24(a), Florida Constitution, provides, “*Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution.*”

Article I, s. 24(c), Florida Constitution, permits the Legislature to create exemptions from a public records law. However, the bill must contain a statement of public necessity that justifies the exemption and the exemption must be no broader than necessary to accomplish its purpose. Additionally, a bill that contains an exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, provides for the repeal and prior legislative review of any public records or public meetings exemptions that are created or substantially amended in 1996 and subsequently. The law states that an exemption may be created or expanded only if the exemption:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.

Section 119.05(3), F.S., provides that in the 5th year after enactment of a new exemption or substantial amendment of an existing exemption, the exemption shall repeal on October 2nd of the 5th year, unless the Legislature acts to reenact the exemption.

Public Records Exemption for Certain Information in Unclaimed Property Reports

Current law, revised and reenacted in 2002², provides that social security numbers and financial account numbers contained in unclaimed property reports, submitted to the department, as required under s. 717.117, F.S., are confidential and exempt from s. 119.07(1), F.S., and s. 24, Article I of the State Constitution. However, an attorney, Florida-certified public accountant, or

² Ch. 2002-64, L.O.F.

private investigator licensed in Florida under ch. 493, F.S. and registered with the department under ch. 717, F.S., have access to the social security number if the information is used for the limited purpose of locating unclaimed property or unclaimed property owners. This section remains subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15, F.S., and would stand repealed October 2, 2007, unless reviewed and saved from repeal through reenactment by the Legislature.

The 2002 act that revised and reenacted this public records exemption made a legislative finding that the exemption is a public necessity to prevent identity theft and related crimes. The exemption of the social security number and financial account numbers of apparent owners was said to be necessary to prevent such information from being used in forged documents demonstrating entitlement to abandoned or unclaimed property and thereby defrauding the rightful property owner or the State School Fund. The release of this confidential and exempt information to attorneys, Florida-certified public accountants or private investigators was said to be necessary to facilitate the return of unclaimed property to the rightful owners. The act further found that such professionals are subject to more stringent regulation and oversight than the public as a whole and are the only persons authorized to file claims on behalf of apparent owners of unclaimed property pursuant to ch. 717, F.S.

III. Effect of Proposed Changes:

This bill expands the public records exemptions applicable to records held by the Department of Financial Services that are related to unclaimed property, to include unclaimed property account dollar amounts in excess of \$150, and the number of reported shares of stock. This is in addition to social security numbers and financial account numbers held by the department, both of which would remain exempted from public disclosure under the bill. Such information may be released to qualified parties (attorneys, state-certified public accountants, licensed private investigators, and licensed private investigative agencies) for the limited purpose of locating owners of unclaimed property. The qualified party who receives such information must also keep it confidential and refrain from public disclosure. However, disclosure of confidential information may be made by a qualified party or the department if the disclosure is made in good faith to a person believed to be entitled to the unclaimed property.

Confidential information may be used, as needed, in administrative or judicial proceedings if the information is kept confidential, unless a court orders otherwise. Violation of s. 717.1171, F.S., is a third-degree felony, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S.

This bill provides a statement of public necessity and provides for future review and repeal.

Section 1 repeals s. 717.117(8), F.S., which contains a public records exemption for social security numbers and financial account numbers contained in reports and held by the Department of Banking and Finance. The subsection also contains an exemption for the information to be released to certain qualified parties (attorneys, state-certified public accountants, licensed private investigators, and licensed private investigative agencies). The provisions of s. 717.117(8), F.S., are generally retained and expanded by the creation of s. 717.1171, F.S.

Section 2 creates s. 717.1171, F.S., which expands the public records exemption for unclaimed property reports submitted to the Department of Financial Services to also include unclaimed property account dollar amounts in excess of \$150 and the number of reported shares of stock. Existing exemptions for social security numbers and financial account numbers held by the department are maintained by the bill. Such information may be released to qualified parties (attorneys, state-certified public accountants, licensed private investigators, and licensed private investigative agencies) for the limited purpose of locating owners of unclaimed property. Any person receiving such information must maintain the confidentiality of such information and refrain from public disclosure. However, disclosure of confidential information may be made by a qualified party or the department if the disclosure is made in good faith to a person whom the qualified party or the department believes is entitled to the unclaimed property.

Confidential information may be used, as needed, in administrative or judicial proceedings if the information is kept confidential, unless a court orders otherwise.

Violation of s. 717.1171, F.S., is a third-degree felony, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S.

Section 3 mandates that s. 717.1171, F.S., is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15, F.S. The bill schedules the future repeal of this exemption on October 2, 2008.

Section 4 provides statements of public necessity for making the previously discussed information confidential. Exempting social security numbers and financial account numbers is a public necessity because such information could be used to fraudulently claim entitlement to unclaimed property. Additionally, social security numbers must be kept confidential because they can be used to obtain an individual's personal records. Keeping confidential unclaimed property account dollar amounts over \$150 and the number of reported shares of stock is a public necessity in order to prevent criminal elements from identifying which unclaimed property accounts to claim via forged documents.

Providing access for qualified parties (attorneys, state certified CPAs, Florida licensed private investigators, Florida licensed private investigative agencies and their employees) to the types of information exempted in the bill is necessary to facilitate the return of unclaimed property to rightful owners. Qualified parties are subject to more stringent regulation and oversight than the general public and are the only persons authorized to file claims on behalf of apparent owners of unclaimed property under s. 717.124, F.S. It is also necessary for the department or a qualified party holding confidential information to disclose in good faith such information to a person who reasonably believed to be entitled to unclaimed property.

Section 5 provides effective date upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Article I, s. 24(c) of the Florida Constitution, provides that public records and public meetings exemptions may be created by general law. Such law must only contain public records or public meetings exemptions.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Owners of unclaimed property held by the state may be provided greater confidentiality regarding the value of the property and certain other information, which may make such persons less vulnerable to persons attempting to illegally obtain such property.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 119.05(3), F.S., provides that in the 5th year after enactment of a new exemption or substantial amendment of an existing exemption, the exemption shall repeal on October 2nd of the 5th year, unless the Legislature acts to reenact the exemption.

VIII. Amendments:

None.