

CHAMBER ACTION

1 The Committee on Commerce recommends the following:

2  
3 **Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to public records exemptions; creating s.  
7 717.1171, F.S.; exempting from public records requirements  
8 certain financial records held by the Department of  
9 Financial Services; providing exceptions; providing for  
10 future legislative review and repeal; creating s.  
11 717.12401, F.S.; exempting from public records  
12 requirements certain personal photographic information  
13 held by the department; providing exceptions; providing  
14 for future legislative review and repeal; creating s.  
15 717.12402, F.S.; exempting from public records  
16 requirements certain databases subscribed to by the  
17 department under certain circumstances; providing for  
18 future legislative review and repeal; amending s.  
19 717.1301, F.S.; exempting a list of holders under  
20 investigation or examination from public records  
21 requirements; authorizing the department to provide such  
22 information to certain agencies or organizations under  
23 certain circumstances; providing exceptions; providing for

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24 future legislative review and repeal; deleting an  
 25 exemption from certain public records requirements for  
 26 materials compiled by the department under an  
 27 investigation or examination; providing exceptions;  
 28 creating s. 717.1342, F.S.; providing criminal penalties  
 29 for disclosure of confidential records; providing findings  
 30 of public necessity; providing for future legislative  
 31 review and repeal; repealing s. 717.117(8), F.S., relating  
 32 to an exemption from certain public records requirements  
 33 for financial records held by the Department of Financial  
 34 Services; providing a contingent effective date.

35

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

37

38 Section 1. Section 717.1171, Florida Statutes, is created  
 39 to read:

40 717.1171 Public records exemption for social security  
 41 numbers, unclaimed property account dollar amounts, the number  
 42 of reported shares of stock, and financial account numbers.--

43 (1) Social security numbers, unclaimed property account  
 44 dollar amounts, the number of reported shares of stock, and  
 45 financial account numbers held by the department are  
 46 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
 47 of the State Constitution. Notwithstanding this exemption, the  
 48 last four digits of social security numbers, unclaimed property  
 49 account dollar amounts, and the number of reported shares of  
 50 stock shall be released to an attorney licensed to practice law  
 51 in this state, a licensed Florida-certified public accountant,

52 or a private investigator licensed under chapter 493, and  
 53 registered with the department under this chapter.  
 54 Notwithstanding this exemption, social security numbers,  
 55 unclaimed property account dollar amounts, the number of  
 56 reported shares of stock, and financial account numbers held by  
 57 the department may be provided to another agency in the  
 58 furtherance of that agency's duties and responsibilities, or to  
 59 an employee of such an agency. The receiving person or agency,  
 60 other than the person entitled to the unclaimed property, must  
 61 maintain the confidential and exempt status of such information.  
 62 This exemption applies to social security numbers, unclaimed  
 63 property account dollar amounts, the number of reported shares  
 64 of stock, and financial account numbers held by the department  
 65 before, on, or after October 1, 2004.

66 (2) If information made confidential and exempt under this  
 67 section is offered as evidence in any administrative, civil, or  
 68 criminal proceeding, or is otherwise subject to such a  
 69 proceeding, the presiding officer, in her or his discretion, may  
 70 prevent the disclosure of information that is confidential and  
 71 exempt pursuant to this section.

72 (3) An attorney licensed to practice law in this state, a  
 73 licensed Florida-certified public accountant, or a private  
 74 investigator licensed under chapter 493, and registered with the  
 75 department under this chapter, or an employee thereof, may  
 76 disclose in good faith the last four digits of social security  
 77 numbers, unclaimed property account dollar amounts, and the  
 78 number of reported shares of stock to a person who is believed

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79 by the attorney, accountant, or investigator, or an employee  
80 thereof, to be entitled to the unclaimed property.

81 (4) The department, or an employee of the department, may  
82 disclose in good faith the last four digits of social security  
83 numbers, unclaimed property account dollar amounts, and the  
84 number of reported shares of stock to a person who is believed  
85 by the department, or an employee of the department, to be  
86 entitled to the unclaimed property.

87 (5) This section is subject to the Open Government Sunset  
88 Review Act of 1995 in accordance with s. 119.15 and shall stand  
89 repealed on October 2, 2009, unless reviewed and saved from  
90 repeal through reenactment by the Legislature.

91 Section 2. Section 717.12401, Florida Statutes, is created  
92 to read:

93 717.12401 Public records exemption for personal  
94 photographic identification.--

95 (1) Personal photographic identification held by the  
96 department pursuant to this chapter is confidential and exempt  
97 from s. 119.07(1) and s. 24(a), Art. I of the State  
98 Constitution. This exemption applies to personal photographic  
99 identification held by the department before, on, or after  
100 October 1, 2004.

101 (2) This section does not prohibit the department from  
102 providing the personal photographic identification to any law  
103 enforcement or administrative agency or regulatory organization.  
104 The agency receiving the personal photographic identification  
105 that would be confidential and exempt pursuant to this section

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106 must maintain the confidentiality of the information so long as  
 107 the information would otherwise be confidential.

108 (3) If personal photographic identification made  
 109 confidential and exempt under this section is offered as  
 110 evidence in any administrative, civil, or criminal proceeding,  
 111 or is otherwise subject to such a proceeding, the presiding  
 112 officer, in her or his discretion, may prevent the disclosure of  
 113 information that is confidential and exempt pursuant to this  
 114 section.

115 (4) This section is subject to the Open Government Sunset  
 116 Review Act of 1995 in accordance with s. 119.15 and shall stand  
 117 repealed on October 2, 2009, unless reviewed and saved from  
 118 repeal through reenactment by the Legislature.

119 Section 3. Section 717.12402, Florida Statutes, is created  
 120 to read:

121 717.12402 Public records exemption for database  
 122 subscription required to be confidential by the database  
 123 vendor.--A database subscribed to by the department and  
 124 information derived from the database is confidential and exempt  
 125 from s. 119.07(1) and s. 24(a), Art. I of the State Constitution  
 126 if the database vendor requires confidentiality. This section is  
 127 subject to the Open Government Sunset Review Act of 1995 in  
 128 accordance with s. 119.15 and shall stand repealed on October 2,  
 129 2009, unless reviewed and saved from repeal through reenactment  
 130 by the Legislature.

131 Section 4. Subsection (5) of section 717.1301, Florida  
 132 Statutes, is amended to read:

133 717.1301 Investigations; examinations; subpoenas.--

134           (5)(a) Except as otherwise provided by this section, any  
 135 list of holders under investigation or examination or to be  
 136 investigated or examined is confidential and exempt from s.  
 137 119.07(1) and s. 24(a), Art. I of the State Constitution.

138           (b) The department may provide such confidential and  
 139 exempt information to a law enforcement agency, administrative  
 140 agency, or regulatory organization in the furtherance of its  
 141 duties and responsibilities. The law enforcement agency,  
 142 administrative agency, or regulatory organization must maintain  
 143 the confidential and exempt status of the information so long as  
 144 it would otherwise be confidential and exempt.

145           (c) If such confidential and exempt information is offered  
 146 into evidence in any administrative, civil, or criminal  
 147 proceeding, the presiding officer may, in her or his discretion,  
 148 prevent the disclosure of such information.

149           (d) Such information shall remain confidential and exempt  
 150 from s. 119.07(1) and s. 24(a), Art. I of the State Constitution  
 151 until after the department completes its investigation or  
 152 examination or the investigation or examination ceases to be  
 153 active to the extent disclosure would:

154           1. Jeopardize the integrity of another active  
 155 investigation;

156           2. Reveal the name, address, telephone number, social  
 157 security number, or any other identifying information of a  
 158 complainant, customer, or account holder, except as authorized  
 159 by s. 717.1171;

160           3. Reveal the identity of a confidential source;

161           4. Reveal investigative techniques or procedures;

162           5. Reveal a trade secret as defined in s. 688.002; or

163           6. Reveal proprietary business information obtained by the  
 164 department from any person which is only made available to the  
 165 department on a confidential or similarly restricted basis.

166  
 167 For purposes of this subsection, an investigation or examination  
 168 of a person other than a holder pursuant to s. 17.20(3) shall be  
 169 considered active so long as the department or any law  
 170 enforcement or administrative agency or regulatory organization  
 171 is proceeding with reasonable dispatch and has a reasonable  
 172 good-faith belief that the investigation or examination may lead  
 173 to the filing of an administrative, civil, or criminal  
 174 proceeding or to the denial or conditional grant of a license,  
 175 registration, or permit. This subsection does not prohibit  
 176 disclosure of information that is required by law to be filed  
 177 with the department and, but for the investigation or  
 178 examination, would be subject to s. 119.07(1).

179           (e) This exemption does not prohibit disclosure of  
 180 information that is required by law to be filed with the  
 181 department or that is otherwise subject to s. 119.07(1) and s.  
 182 24(a), Art. I of the State Constitution.

183           (f) This subsection is subject to the Open Government  
 184 Sunset Review Act of 1995 in accordance with s. 119.15, and  
 185 shall stand repealed on October 2, 2009, unless reviewed and  
 186 saved from repeal through reenactment by the Legislature. The  
 187 ~~material compiled by the department in an investigation or~~  
 188 ~~examination under this chapter is confidential until the~~  
 189 ~~investigation or examination is complete. The material compiled~~

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190 ~~by the department in an investigation or examination under this~~  
 191 ~~chapter remains confidential after the department's~~  
 192 ~~investigation or examination is complete if the department has~~  
 193 ~~submitted the material or any part of it to any law enforcement~~  
 194 ~~agency or other administrative agency for further investigation~~  
 195 ~~or for the filing of a criminal or civil prosecution and such~~  
 196 ~~investigation has not been completed or become inactive.~~

197 Section 5. Section 717.1342, Florida Statutes, is created  
 198 to read:

199 717.1342 Criminal penalties for disclosure of confidential  
 200 records.--Any person who willfully and knowingly violates s.  
 201 717.1171 or s. 717.12401 commits a felony of the third degree,  
 202 punishable as provided in s. 775.082 or s. 775.083.

203 Section 6. (1) The Legislature finds that it is a public  
 204 necessity that social security numbers and financial account  
 205 numbers of apparent owners of unclaimed property which are in  
 206 the custody of the Department of Financial Services be made  
 207 confidential and exempt in order to prevent identity theft and  
 208 related crimes. The Legislature further finds that this  
 209 exemption is a public necessity in order to prevent the use of  
 210 such information in forged documents demonstrating entitlement  
 211 to unclaimed property and thereby defrauding the rightful  
 212 property owner or the State School Fund. Additionally, the  
 213 social security number is the only nationwide, unique numeric  
 214 form of identification. Release of a person's social security  
 215 number is of concern due to the amount of information about an  
 216 individual which that number can provide. A social security  
 217 number is often the link to an individual's personal records,



218 whether such records are financial, educational, medical, or  
 219 familial in nature. Social security numbers furnished to  
 220 registered owner representatives by the Department of Financial  
 221 Services under current law have been released in solicitations  
 222 to prospective unclaimed property clients. Additionally, social  
 223 security numbers furnished to an owner's representative were  
 224 used to manufacture and submit fraudulent documents in order to  
 225 obtain unclaimed property in excess of \$350,000 from the  
 226 department. Accordingly, once the social security numbers are  
 227 released, the department has no control over what the recipients  
 228 of the social security number information do with this sensitive  
 229 information. The Legislature further finds that the continued  
 230 release of social security numbers, and this lack of control,  
 231 jeopardizes the financial security of potentially hundreds of  
 232 thousands of individuals whose social security numbers are held  
 233 by the Department of Financial Services on the unclaimed  
 234 property database. Therefore, the harm from disclosure outweighs  
 235 any public benefit obtained from the release of such  
 236 information.

237 (2) The Legislature finds that it is a public necessity  
 238 that unclaimed property account dollar amounts and the number of  
 239 reported shares of stock which are in the custody of the  
 240 Department of Financial Services be made confidential and exempt  
 241 in order to prevent unclaimed property fraud and related crimes.  
 242 The Legislature further finds that this exemption is a public  
 243 necessity in order to prevent criminal elements from using such  
 244 information to identify which accounts to claim by using forged  
 245 documents demonstrating entitlement to unclaimed property,

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246 thereby defrauding the rightful property owner or the State  
247 School Fund. Therefore, the harm from disclosure outweighs any  
248 public benefit obtained from the release of such information.  
249 The Legislature further finds that it is necessary, however, to  
250 provide access to unclaimed property account dollar amounts and  
251 the number of reported shares of stock to an attorney licensed  
252 to practice law in this state, a licensed Florida-certified  
253 public accountant, or a private investigator licensed under  
254 chapter 493, Florida Statutes, and registered with the  
255 department because they are the only persons, other than the  
256 owner or an heir of the original owner, who are authorized to  
257 file claims on behalf of owners of unclaimed property pursuant  
258 to chapter 717, Florida Statutes. Providing access to unclaimed  
259 property account dollar amounts and the number of reported  
260 shares of stock to an attorney licensed to practice law in this  
261 state, a licensed Florida-certified public accountant, or a  
262 private investigator licensed under chapter 493, Florida  
263 Statutes, and registered with the department will assist them in  
264 determining which accounts to pursue on behalf of owners.

265 (3) The Legislature finds that it is a public necessity  
266 that all personal photographic identifications that are in the  
267 custody of the Department of Financial Services be made  
268 confidential and exempt in order to prevent identity theft and  
269 related crimes. The Legislature further finds that this  
270 exemption is a public necessity in order to prevent the use of  
271 such information in forged documents demonstrating entitlement  
272 to abandoned or unclaimed property and thereby defrauding the  
273 rightful property owner or the State School Fund. Release of a

274 person's personal photographic identification is of concern due  
 275 to the ability to use personal photographic identification to  
 276 obtain access to an individual's personal records, whether such  
 277 records are financial, educational, medical, or familial in  
 278 nature. Concerns by the public over the release of personal  
 279 photographic identifications that are in the custody of the  
 280 Department of Financial Services has created a reluctance by  
 281 some members of the public to claim their unclaimed property.  
 282 Making personal photographic identification exempt from  
 283 disclosure will reduce public fears of identity theft and  
 284 promote the goal of returning unclaimed property to owners.  
 285 Therefore, the harm from disclosure outweighs any public benefit  
 286 obtained from the release of such information.

287 (4) The Legislature finds that it is a public necessity  
 288 that the Department of Financial Services use the most current  
 289 and efficient database resources in a cost-effective manner to  
 290 notify owners of unclaimed property, to verify whether claimants  
 291 are entitled to unclaimed property, and to prevent unclaimed  
 292 property fraud and related crimes. The Legislature further finds  
 293 that this exemption is a public necessity in order to help  
 294 prevent criminal elements from successfully using forged  
 295 documents or erroneous information demonstrating entitlement to  
 296 abandoned or unclaimed property, thereby defrauding the rightful  
 297 property owner or the State School Fund. Making such databases  
 298 confidential will reduce the concerns of vendors, due to federal  
 299 legislation, about the public release of such information.  
 300 Accordingly, the harm from disclosure outweighs any public  
 301 benefit obtained from the release of such information.

302       (5)(a) The Legislature finds that it is a public necessity  
 303 that information received or created during an investigation or  
 304 examination conducted by the Department of Financial Services  
 305 pursuant to chapter 717, Florida Statutes, including any  
 306 consumer complaint, be confidential and exempt from s.  
 307 119.07(1), Florida Statutes, and s. 24(a), Art. I of the State  
 308 Constitution until the investigation or examination is completed  
 309 or ceases to be active or if the department submits the  
 310 information to any law enforcement or administrative agency or  
 311 regulatory organization for further investigation and that  
 312 agency's or organization's investigation is completed or ceases  
 313 to be active, in order to protect the integrity of such  
 314 investigations or examinations. An investigation or examination  
 315 may lead to filing an administrative, civil, or criminal  
 316 proceeding or to denying or conditionally granting a license,  
 317 registration, or permit. The public necessity exists to the  
 318 extent disclosure might jeopardize the integrity of another  
 319 active investigation or examination; reveal the name, address,  
 320 telephone number, social security number, or any other  
 321 identifying information of any complainant, customer, or account  
 322 holder subject to the provisions of s. 717.1171, Florida  
 323 Statutes; disclose the identity of a confidential source;  
 324 disclose investigative techniques or procedures; reveal a trade  
 325 secret as defined in s. 688.002, Florida Statutes; or reveal  
 326 proprietary business information. The Legislature further finds  
 327 that financial incentives are adequate to ensure the expeditious  
 328 completion examination of holders pursuant to s. 17.20(3),  
 329 Florida Statutes.

330       (b) The Legislature finds that it is a public necessity  
331 that examination and investigation lists are confidential to  
332 ensure that the integrity of the process is not compromised, so  
333 that the investigation or examination may be conducted as  
334 efficiently and effectively as possible, and so that persons  
335 will not be able to target holders subject to examination or  
336 investigation for the purpose of advising holders on how to  
337 avoid reporting and remitting unclaimed property. The  
338 Legislature further finds that the harm from disclosure  
339 outweighs any public benefit obtained from the release of such  
340 information.

341       (c) Examinations and investigations by the department  
342 frequently involve the gathering of personal, sensitive  
343 information concerning individuals, such as complainants,  
344 customers, account holders, or other confidential sources. The  
345 department may not otherwise have this information in its  
346 possession but for the examination or investigation. Because of  
347 the sensitive nature of the information gathered, the  
348 information should not be made available to the public. If  
349 disclosed, this information may cause unwarranted damage to such  
350 persons by facilitating identity theft or jeopardizing the  
351 safety of such individuals.

352       (d) Revealing investigative techniques or procedures may  
353 inhibit the effective and efficient administration of the  
354 department to conduct investigations. Revelation of such  
355 techniques or procedures could allow a person to hide or conceal  
356 violations of law that would have otherwise been discovered  
357 during an examination or investigation. As such, the

358 department's ability to perform an effective investigation or  
 359 examination may be hindered.

360 (e) Review by the office of proprietary information or  
 361 trade secrets is necessary on occasion as part of an ongoing  
 362 examination or investigation. Disclosure of such information to  
 363 the public may cause injury to the affected entity in the  
 364 marketplace if revealed. Providing confidentiality will provide  
 365 the department with the necessary tool to perform its function  
 366 while maintaining adequate protection for the affected business.

367 Section 7. Subsection (8) of section 717.117, Florida  
 368 Statutes, is repealed:

369 717.117 Report of unclaimed property.--

370 ~~(8) Social security numbers and financial account numbers~~  
 371 ~~contained in reports required under this section, held by the~~  
 372 ~~department, are confidential and exempt from s. 119.07(1) and s.~~  
 373 ~~24(a), Art. I of the State Constitution. Notwithstanding this~~  
 374 ~~exemption, social security numbers shall be released, for the~~  
 375 ~~limited purpose of locating owners of abandoned or unclaimed~~  
 376 ~~property, to an attorney, Florida-certified public accountant,~~  
 377 ~~private investigator who is duly licensed in this state, or a~~  
 378 ~~private investigative agency licensed under chapter 493 and~~  
 379 ~~registered with the department under this chapter. This~~  
 380 ~~exemption applies to social security numbers and financial~~  
 381 ~~account numbers held by the department before, on, or after the~~  
 382 ~~effective date of this exemption. This subsection is subject to~~  
 383 ~~the Open Government Sunset Review Act of 1995 in accordance with~~  
 384 ~~s. 119.15, and shall stand repealed October 2, 2007, unless~~

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385 | ~~reviewed and saved from repeal through reenactment by the~~  
386 | ~~Legislature.~~

387 |       Section 8. This act shall take effect October 1, 2004, if  
388 | HB 1039 or substantially similar legislation is adopted in the  
389 | same legislative session or an extension thereof and becomes a  
390 | law.