

By the Committees on Judiciary; Banking and Insurance; and
 Senator Clary

308-2395-04

1 A bill to be entitled
 2 An act relating to public records exemptions;
 3 repealing s. 717.117(8), F.S.; deleting an
 4 exemption from certain public records
 5 requirements for financial records held by the
 6 Department of Financial Services; creating s.
 7 717.1171, F.S.; exempting from public records
 8 requirements certain financial records held by
 9 the Department of Financial Services; providing
 10 exceptions; creating s. 717.12401, F.S.;
 11 exempting from public records requirements
 12 certain personal photographic information held
 13 by the department; providing exceptions;
 14 creating s. 717.12402, F.S.; exempting from
 15 public records requirements certain databases
 16 subscribed to by the department under certain
 17 circumstances; amending s. 717.1301, F.S.;
 18 creating an exemption from public records
 19 requirements for documents produced during an
 20 investigation or examination conducted by the
 21 Department of Financial Services; providing for
 22 future legislative review and repeal; creating
 23 s. 717.1342, F.S.; providing criminal penalties
 24 for disclosure of confidential records;
 25 providing findings of public necessity;
 26 providing for future legislative review and
 27 repeal; providing a contingent effective date.

28
 29 Be It Enacted by the Legislature of the State of Florida:
 30
 31

1 Section 1. Subsection (8) of section 717.117, Florida
2 Statutes, is repealed.

3 Section 2. Section 717.1171, Florida Statutes, is
4 created to read:

5 717.1171 Public records exemption for social security
6 numbers, unclaimed property account dollar amounts, the number
7 of reported shares of stock, and financial account numbers.--

8 (1) Social security numbers, unclaimed property
9 account dollar amounts, the number of reported shares of
10 stock, and financial account numbers held by the department
11 are confidential and exempt from s. 119.07(1) and s. 24(a),
12 Art. I of the State Constitution. Notwithstanding this
13 exemption, the last four digits of social security numbers,
14 unclaimed property account dollar amounts, and the number of
15 reported shares of stock shall be released to an attorney
16 licensed to practice law in this state, a licensed
17 Florida-certified public accountant, or a private investigator
18 licensed under chapter 493, and registered with the department
19 under this chapter. Notwithstanding this exemption, social
20 security numbers, unclaimed property account dollar amounts,
21 the number of reported shares of stock, and financial account
22 numbers held by the department may be provided to another
23 agency in the furtherance of that agency's duties and
24 responsibilities, or to an employee of such an agency. The
25 receiving person or agency, other than the person entitled to
26 the unclaimed property, must maintain the confidential and
27 exempt status of such information. This exemption applies to
28 social security numbers, unclaimed property account dollar
29 amounts, the number of reported shares of stock, and financial
30 account numbers held by the department before, on, or after
31 October 1, 2004.

1 (2) If information made confidential and exempt under
2 this section is offered as evidence in any administrative,
3 civil, or criminal proceeding, or is otherwise subject to such
4 a proceeding, the presiding officer, in her or his discretion,
5 may prevent the disclosure of information that is confidential
6 and exempt pursuant to this section.

7 (3) An attorney licensed to practice law in this
8 state, a licensed Florida-certified public accountant, or a
9 private investigator licensed under chapter 493, and
10 registered with the department under this chapter, or an
11 employee thereof, may disclose in good faith the last four
12 digits of social security numbers, unclaimed property account
13 dollar amounts, and the number of reported shares of stock to
14 a person who is believed by the attorney, accountant, or
15 investigator, or an employee thereof, to be entitled to the
16 unclaimed property.

17 (4) The department, or an employee of the department,
18 may disclose in good faith the last four digits of social
19 security numbers, unclaimed property account dollar amounts,
20 and the number of reported shares of stock to a person who is
21 believed by the department, or an employee of the department,
22 to be entitled to the unclaimed property.

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

27 Section 3. Section 717.12401, Florida Statutes, is
28 created to read:

29 717.12401 Public records exemption for personal
30 photographic identification.--

31

1 (1) Personal photographic identification held by the
2 department pursuant to this chapter is confidential and exempt
3 from s. 119.07(1) and s. 24(a), Art. I of the State
4 Constitution. This exemption applies to personal photographic
5 identification held by the department before, on, or after
6 October 1, 2004.

7 (2) This section does not prohibit the department from
8 providing the personal photographic identification to any law
9 enforcement or administrative agency or regulatory
10 organization. The agency receiving the personal photographic
11 identification that would be confidential and exempt pursuant
12 to this section must maintain the confidentiality of the
13 information so long as the information would otherwise be
14 confidential.

15 (3) If personal photographic identification made
16 confidential and exempt under this section is offered as
17 evidence in any administrative, civil, or criminal proceeding,
18 or is otherwise subject to such a proceeding, the presiding
19 officer, in her or his discretion, may prevent the disclosure
20 of information that is confidential and exempt pursuant to
21 this section.

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

26 Section 4. Section 717.12402, Florida Statutes, is
27 created to read:

28 717.12402 Public records exemption for database
29 subscription required to be confidential by the database
30 vendor.--A database subscribed to by the department and
31 information derived from the database is confidential and

1 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
2 Constitution if the database vendor requires confidentiality.
3 This section is subject to the Open Government Sunset Review
4 Act of 1995 in accordance with s. 119.15 and shall stand
5 repealed on October 2, 2009, unless reviewed and saved from
6 repeal through reenactment by the Legislature.

7 Section 5. Subsection (5) of section 717.1301, Florida
8 Statutes, is amended to read:

9 717.1301 Investigations; examinations; subpoenas.--

10 (5)(a) Except as otherwise provided by this section,
11 any list of holders under investigation or examination or to
12 be investigated or examined, and information received or
13 created during an investigation or examination by the
14 Department of Financial Services under this chapter, including
15 any consumer complaint, are confidential and exempt from s.
16 119.07(1) and s. 24(a), Art. I of the State Constitution until
17 the investigation or examination is completed or ceases to be
18 active.

19 (b) The department may provide such confidential and
20 exempt information to a law enforcement agency, administrative
21 agency, or regulatory organization in the furtherance of its
22 duties and responsibilities. The law enforcement agency,
23 administrative agency, or regulatory organization must
24 maintain the confidential and exempt status of the information
25 so long as it would otherwise be confidential and exempt.

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

30 (d) Such information shall remain confidential and
31 exempt from s. 119.07(1) and s. 24(a), Art. I of the State

1 Constitution until after the department completes its
2 investigation or examination or the investigation or
3 examination ceases to be active to the extent disclosure
4 would:
5 1. Jeopardize the integrity of another active
6 investigation.
7 2. Reveal the name, address, telephone number, social
8 security number, or any other identifying information of a
9 complainant, customer, or account holder, except as authorized
10 by s. 717.1171.
11 3. Reveal the identity of a confidential source.
12 4. Reveal investigative techniques or procedures.
13 5. Reveal a trade secret as defined in s. 688.002.
14 6. Reveal proprietary business information obtained by
15 the department from any person which is only made available to
16 the department on a confidential or similarly restricted
17 basis.
18
19 For purposes of this subsection, an investigation or
20 examination of a person other than a holder under s. 17.20(3)
21 shall be considered "active" so long as the department or any
22 law enforcement or administrative agency or regulatory
23 organization is proceeding with reasonable dispatch and has a
24 reasonable good faith belief that the investigation or
25 examination may lead to the filing of an administrative,
26 civil, or criminal proceeding or to the denial or conditional
27 grant of a license, registration, or permit. This subsection
28 does not prohibit disclosure of information that is required
29 by law to be filed with the department and, but for the
30 investigation or examination, would be subject to s.
31 119.07(1).

1 (e) This exemption does not prohibit disclosure of
2 information that is required by law to be filed with the
3 department or that is otherwise subject to s. 119.07(1) and s.
4 24(a), Art. I of the State Constitution.

5 (f) This subsection is subject to the Open Government
6 Sunset Review Act of 1995 in accordance with s. 119.15, and
7 shall stand repealed on October 2, 2009, unless reviewed and
8 saved from repeal through reenactment by the Legislature. The
9 ~~material compiled by the department in an investigation or~~
10 ~~examination under this chapter is confidential until the~~
11 ~~investigation or examination is complete. The material~~
12 ~~compiled by the department in an investigation or examination~~
13 ~~under this chapter remains confidential after the department's~~
14 ~~investigation or examination is complete if the department has~~
15 ~~submitted the material or any part of it to any law~~
16 ~~enforcement agency or other administrative agency for further~~
17 ~~investigation or for the filing of a criminal or civil~~
18 ~~prosecution and such investigation has not been completed or~~
19 ~~become inactive.~~

20 Section 6. Section 717.1342, Florida Statutes, is
21 created to read:

22 717.1342 Criminal penalties for disclosure of
23 confidential records.--Any person who willfully and knowingly
24 violates s. 717.1171 or s. 717.12401 commits a felony of the
25 third degree, punishable as provided in s. 775.082 or s.
26 775.083.

27 Section 7. (1) The Legislature finds that it is a
28 public necessity that social security numbers and financial
29 account numbers of apparent owners of unclaimed property which
30 are in the custody of the Department of Financial Services be
31 made confidential and exempt in order to prevent identity

1 theft and related crimes. The Legislature further finds that
2 this exemption is a public necessity in order to prevent the
3 use of such information in forged documents demonstrating
4 entitlement to unclaimed property and thereby defrauding the
5 rightful property owner or the State School Fund.
6 Additionally, the social security number is the only
7 nationwide, unique numeric form of identification. Release of
8 a person's social security number is of concern due to the
9 amount of information about an individual which that number
10 can provide. A social security number is often the link to an
11 individual's personal records, whether such records are
12 financial, educational, medical, or familial in nature.
13 Social security numbers furnished to registered owner
14 representatives by the Department of Financial Services under
15 current law have been released in solicitations to prospective
16 unclaimed property clients. Additionally, social security
17 numbers furnished to an owner's representative were used to
18 manufacture and submit fraudulent documents in order to obtain
19 unclaimed property in excess of \$350,000 from the department.
20 Accordingly, once the social security numbers are released,
21 the department has no control over what the recipients of the
22 social security number information do with this sensitive
23 information. The Legislature further finds that the continued
24 release of social security numbers, and this lack of control,
25 jeopardizes the financial security of potentially hundreds of
26 thousands of individuals whose social security numbers are
27 held by the Department of Financial Services on the unclaimed
28 property database. Therefore, the harm from disclosure
29 outweighs any public benefit obtained from the release of such
30 information.
31

1 (2) The Legislature finds that it is a public
2 necessity that unclaimed property account dollar amounts and
3 the number of reported shares of stock which are in the
4 custody of the Department of Financial Services be made
5 confidential and exempt in order to prevent unclaimed property
6 fraud and related crimes. The Legislature further finds that
7 this exemption is a public necessity in order to prevent
8 criminal elements from using such information to identify
9 which accounts to claim by using forged documents
10 demonstrating entitlement to unclaimed property, thereby
11 defrauding the rightful property owner or the State School
12 Fund. Therefore, the harm from disclosure outweighs any public
13 benefit obtained from the release of such information. The
14 Legislature further finds that it is necessary, however, to
15 provide access to unclaimed property account dollar amounts
16 and the number of reported shares of stock to an attorney
17 licensed to practice law in this state, a licensed
18 Florida-certified public accountant, or a private investigator
19 licensed under chapter 493, Florida Statutes, and registered
20 with the department, because they are the only persons, other
21 than the owner or an heir of the original owner, who are
22 authorized to file claims on behalf of owners of unclaimed
23 property pursuant to chapter 717, Florida Statutes. Providing
24 access to unclaimed property account dollar amounts and the
25 number of reported shares of stock to an attorney licensed to
26 practice law in this state, a licensed Florida-certified
27 public accountant, or a private investigator licensed under
28 chapter 493, Florida Statutes, and registered with the
29 department, will assist them in determining which accounts to
30 pursue on behalf of owners.
31

1 (3) The Legislature finds that it is a public
2 necessity that all personal photographic identifications that
3 are in the custody of the Department of Financial Services be
4 made confidential and exempt in order to prevent identity
5 theft and related crimes. The Legislature further finds that
6 this exemption is a public necessity in order to prevent the
7 use of such information in forged documents demonstrating
8 entitlement to abandoned or unclaimed property and thereby
9 defrauding the rightful property owner or the State School
10 Fund. Release of a person's personal photographic
11 identification is of concern due to the ability to use
12 personal photographic identification to obtain access to an
13 individual's personal records, whether such records are
14 financial, educational, medical, or familial in nature.
15 Concerns by the public over the release of personal
16 photographic identifications that are in the custody of the
17 Department of Financial Services has created a reluctance by
18 some members of the public to claim their unclaimed property.
19 Making personal photographic identification exempt from
20 disclosure will reduce public fears of identity theft and
21 promote the goal of returning unclaimed property to owners.
22 Therefore, the harm from disclosure outweighs any public
23 benefit obtained from the release of such information.

24 (4) The Legislature finds that it is a public
25 necessity that the Department of Financial Services use the
26 most current and efficient database resources in a
27 cost-effective manner to notify owners of unclaimed property,
28 to verify whether claimants are entitled to unclaimed
29 property, and in order to prevent unclaimed property fraud and
30 related crimes. The Legislature further finds that this
31 exemption is a public necessity in order to help prevent

1 criminal elements from successfully using forged documents or
2 erroneous information demonstrating entitlement to abandoned
3 or unclaimed property, thereby defrauding the rightful
4 property owner or the State School Fund. Making such databases
5 confidential will reduce the concerns of vendors, due to
6 federal legislation, about the public release of such
7 information. Accordingly, the harm from disclosure outweighs
8 any public benefit obtained from the release of such
9 information.

10 (5)(a) The Legislature finds that it is a public
11 necessity that information received or created during an
12 investigation or examination conducted by the Department of
13 Financial Services pursuant to chapter 717, Florida Statutes,
14 including any consumer complaint, be confidential and exempt
15 from section 119.07(1), Florida Statutes, and Section 24(a),
16 Article I of the State Constitution until the investigation or
17 examination is completed or ceases to be active or if the
18 department submits the information to any law enforcement or
19 administrative agency or regulatory organization for further
20 investigation and that agency's or organization's
21 investigation is completed or ceases to be active, in order to
22 protect the integrity of such investigations or examinations.
23 An investigation or examination may lead to filing an
24 administrative, civil, or criminal proceeding or to denying or
25 conditionally granting a license, registration, or permit. The
26 public necessity exists to the extent disclosure might
27 jeopardize the integrity of another active investigation or
28 examination; reveal the name, address, telephone number,
29 social security number, or any other identifying information
30 of any complainant, customer, or account holder subject to the
31 provisions of section 717.1171, Florida Statutes; disclose the

1 identity of a confidential source; disclose investigative
2 techniques or procedures; reveal a trade secret as defined in
3 section 688.002, Florida Statutes; or reveal proprietary
4 business information. The Legislature further finds that
5 financial incentives are adequate to ensure the expeditious
6 completion of examination of holders under section 17.20(3),
7 Florida Statutes.

8 (b) The Legislature finds that it is a public
9 necessity that examination and investigation lists be
10 confidential to ensure that the integrity of the process is
11 not compromised so that the investigation or examination may
12 be conducted as efficiently and effectively as possible and so
13 that persons will not be able to target holders subject to
14 examination or investigation for the purpose of advising
15 holders on how to avoid reporting and remitting unclaimed
16 property. The Legislature further finds that the harm from
17 disclosure outweighs any public benefit obtained from the
18 release of such information.

19 (c) Examinations and investigations by the department
20 frequently involve the gathering of personal, sensitive
21 information concerning individuals, such as complainants,
22 customers, account holders, or other confidential sources. The
23 department may not otherwise have this information in its
24 possession but for the examination or investigation. Because
25 of the sensitive nature of the information gathered, the
26 information should not be made available to the public. If
27 disclosed, this information may cause unwarranted damage to
28 such persons by facilitating identity theft or jeopardizing
29 the safety of such individuals.

30 (d) Revealing investigative techniques or procedures
31 may inhibit the effective and efficient administration of the

1 department to conduct investigations. Revelation of such
2 techniques or procedures could allow a person to hide or
3 conceal violations of law that would have otherwise been
4 discovered during and examination or investigation. As such,
5 the department's ability to perform an effective investigation
6 or examination may be hindered.

7 (e) Proprietary information or trade secrets are on
8 occasion necessary for the office to review as part of an
9 ongoing examination or investigation. Disclosure of such
10 information to the public may cause injury to the affected
11 entity in the marketplace if revealed. Providing the
12 confidentiality will provide the department with the necessary
13 tool to perform its function while maintaining adequate
14 protection for the affected business.

15 Section 8. This act shall take effect October 1, 2004,
16 if CS for CS for SB 2288, or substantially similar
17 legislation, is adopted in the same legislative session or an
18 extension thereof and becomes law.

19
20 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
21 COMMITTEE SUBSTITUTE FOR
22 CS Senate Bill 2290

23
24 Provides that:

- 25 - Lists of holders under investigation or examination are
26 confidential and exempt from public records.
27
28 - Only an investigation or an examination of a person other
29 than a holder can be considered active, for purposes of
30 determining when the exemption ceases.
31
32 - Legislative intent indicating public necessity includes
making examination and investigation lists confidential
to ensure integrity of the process, maximize efficiency
and effectiveness, and to prevent persons from contacting
holders subject to examination and investigation to
advise them on avoiding reporting and remittance of
unclaimed property.