

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.)

Prepared By: Banking and Insurance Committee

BILL: CS/SB 2494

SPONSOR: Banking and Insurance Committee and Senator Clary

SUBJECT: Disposition of Unclaimed Property

DATE: April 13, 2005

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------------|--------------------|-----------|---------------|
| 1. | <u>Knudson</u> | <u>Deffenbaugh</u> | <u>BI</u> | <u>Fav/CS</u> |
| 2. | _____ | _____ | <u>JU</u> | _____ |
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I. Summary:

This bill makes the following changes to the Florida Disposition of Unclaimed Property Act:

- Reduces the period after which the Department of Financial Services (Department) must provide information contained in an unclaimed property report to a qualified party from 90 to 45 days after the report is added to the unclaimed property database.
- Simplifies the “due diligence” process required of property holders before they turn property over to the Department. The holder of an inactive account must attempt to notify the owner between 60 and 120 days before filing an unclaimed property report.
- Increases the threshold amount at which the Department must make at least one attempt to contact the owner of an unclaimed property from \$100 to \$250.
- Requires a power of attorney to be executed by the claimant in order to give a claimant’s representative the authority to recover property on his or her behalf.
- Voids a power of attorney or agreement for compensation to recover or purchase unclaimed property worth more than \$250 if entered into less than 45 days after the holder or examination report was processed and added to the unclaimed property data base.
- Caps the fees and costs that a claimant’s representative may charge on any unclaimed property account at \$1,000. The cap may only be exceeded if, as a condition of exceeding the cap, the claimant’s representative makes full disclosure as required by law.
- Mandates that the purchaser of unclaimed property cannot pay a purchase price that is over \$1,000 less than the value of the unclaimed property account, unless the required full disclosure statement is made that the property is held by the Bureau of Unclaimed Property.
- Presumes that stock, equity interests in a business, dividends, profits, or other specified sums are unclaimed after three (3) years with no contact from the owner, rather than five (5) years.

- Requires funds from the sale of unclaimed firearms be deposited in the State School Fund.
- Prohibits entering of false information on the Bureau of Unclaimed Property website.
- Permits the Department to sell certificates for unclaimed stock or other equity interests of business associations at auction for the value of the certificate (collector's value) if it cannot be placed in the Department's name or readily sold and converted to cash.
- Requires a claimant using a notarized statement to establish identity to present a U.S., state, or foreign government issued photographic identification to the notary.
- Changes the filing requirements for claims made on behalf of a corporation.
- Clarifies the rules the Department applies when it receives multiple claims for the same unclaimed property account. Contains a series of tiebreakers that apply when the bureau receives multiple property claims on the same day.
- Makes clear that an unclaimed property buyer's sole remedy for damages is against the claimant's representative, seller (owner of property), or both.
- Requires an estate or estate heir to pay the Department's costs and attorney's fees in opposing a probate court order directing payment of property to a specified party, if the department is the prevailing party.
- Permits the Department to require any information necessary to make a determination of entitlement to property when an estate beneficiary uses an affidavit to make a claim for unclaimed property. Permits the Department to take live testimony in lieu of the affidavit.
- States that if any person files a petition for writ of garnishment seeking to obtain property, the petitioner must pay the Department's costs and attorney's fees if it opposes, appeals, or collaterally attacks the petition or writ if the Department is the prevailing party.
- Clarifies that claimants' representatives and the buyers of unclaimed property must maintain records for three years following each power of attorney or agreement between the property owner and the claimant's representative or buyer.
- Allows a court to impose a fine on a person the Department finds has committed a violation.
- Provides for civil enforcement of the chapter's provisions in a court with jurisdiction.
- States that a license as a claimant's representative may be suspended for up to 5 years, and that a license that is revoked must be revoked for a minimum of 5 years.
- Requires a valid written agreement between a holder of property and the owner of property for any person to receive a fee from an unclaimed property owner for locating property that has not been reported to the Department but is subject to a running dormancy period.
- Prohibits a person from offering or contracting to buy unclaimed property that has not been reported to the Department but is subject to a running dormancy period.
- Permits the Department to estimate the amount of unclaimed property due and owing by a holder if the records of a property holder are insufficient make a clear determination.
- Mandates that the purchaser of unclaimed property cannot pay a purchase price that is over \$1,000 less than the value of the unclaimed property account, unless the required full disclosure statement is made that the property is held by the Bureau of Unclaimed Property.

This bill substantially amends the following sections of the Florida Statutes: 717.106, 717.1101, 717.117, 717.118, 717.119, 717.122, 717.124, 717.12404, 717.1241, 717.1242, 717.1243, 717.1315, 717.132, 717.1322, 717.1331, 717.1333, 717.135, 717.1351, and 717.1400

This bill creates the following sections of the Florida Statutes: 717.12405, 717.1245, 717.1323, 717.1381

This bill repeals the following subsection of the Florida Statutes: 717.1311(3)

II. Present Situation:

Unclaimed Property

The Florida Disposition of Unclaimed Property Act (ch. 717, F.S.) provides the statutory procedure for the escheat (reversion) and disposition of presumed abandoned property to the state. Generally, all property, real and personal, and every right of property of any nature are subject to escheat to the state. The reversion of such property is based on the presumption that there is no heir to assume the property upon the death of the owner. Escheat of abandoned 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*, 268 U.S. 258 (1925). 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 and abandoned property until the property is claimed, if ever, (s. 717.139, F.S.)

The Department of Financial Services (Department) administers the Act, through its Bureau of Unclaimed Property. Section 717.118, F.S., places an obligation on the state to notify owners of unclaimed property accounts valued at over \$100, in a cost-effective manner, including through attempts to directly contact the owner. Representatives from the Department indicate that the means used to find lost property owners include social security numbers, direct mailing, Department of Motor Vehicle files and state payroll records, newspaper advertisements, and a state website, www.fltreasurehunt.org, where unclaimed property can be found. 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, (s. 717.130, F.S.). Once a claim is made through filing a form with the Department, the Department has 90 days to determine the claim, (s. 717.124, F.S.).

Unclaimed property consists of any funds or other property, tangible or intangible that has remained unclaimed by the owner for a certain period of time, (s. 717.102, F.S.; s. 717.1035, F.S.) 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 are all potentially unclaimed property, (717.104 through s. 717.116, F.S.). Holders of unclaimed property, which typically include banks and insurance companies, are required to submit unclaimed property to the Department, (s. 717.119, F.S.). If the property remains unclaimed, all proceeds from abandoned property are then deposited by the Department into the Department of Education School Trust Fund (State School Fund), except for an \$15 million balance that is retained in a separate account (the Unclaimed Property Trust Fund) for the prompt payment of verified claims, (*see; generally*, s. 717.123, F.S.).

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 180 days after an

account becomes inactive (two years), (s. 171.117(4), F.S.). Once the allowable time period for holding unclaimed property has expired, a holder is required to file a report with the Department 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 provide by rule, (s. 717.117, F.S.). Under the provisions of s. 717.117(1)(a), F.S., the report to the Department 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.

III. Effect of Proposed Changes:

Section 1. Amends s. 717.106, F.S. Currently, a bank account or deposit held by a financial institution is considered unclaimed unless within the past 5 years the property owner has made a deposit or withdrawal, or communicated with the bank in writing or by phone. The section requires the phone call to be documented in order to be a qualified communication under this section.

Section 2. Amends s. 717.1101, F.S., to state that stock or other equity interests in a business is presumed unclaimed after three (3) years. The current statutory period is five (5) years. Adds a new subsection (4) stating that any dividend, profit, distribution, interest redemption, payment on principal, or other sum held or owing by a business association to a shareholder, certificate holder, member, bondholder, or other security holder is presumed unclaimed if the property owner has not claimed the property or corresponded in writing with the business association concerning the property within three (3) years after the prescribed date for payment or delivery.

Section 3. Amends s. 717.117, F.S. Currently, the Department must provide non-confidential information contained in an unclaimed property report to any party requesting the information within 90 days after the report has been processed and added to the unclaimed property database. This section reduces the time period from 90 to 45 days.

Current law also requires the holder of an inactive account to conduct at least one search for the apparent owner, usually involving sending written notice to the apparent owner's last known address. This section of the bill simplifies the notification process for such accounts and makes them more consistent with those of other states. The bill's requirement is that the holder of an inactive account must attempt to notify the owner between 60 and 120 days before filing an unclaimed property report with the Department.

Section 4. Amends s. 717.118(1), F.S. Currently, the Department must make at least one attempt to contact the owner of an unclaimed property account valued at over \$100. The bill would increase the threshold to \$250. The Department asserts that it will still have the authority to contact the holders of accounts valued at less than \$250 at its discretion, but there is no specific statutory language authorizing it to do so.

Section 5. Amends s. 717.119(5), F.S. Florida law requires that firearms or ammunition found in an unclaimed safe deposit box be delivered to a law enforcement agency either for disposal or

sale by the Department, if the weapon has historical value. This section requires that funds from the sale of a firearm be deposited into the State School Fund.

Section 6. Amends s. 717.122, F.S. When the Department receives securities that are unclaimed, it attempts to put the securities in its name and sell such securities at the current prices available on the exchange, with the proceeds going to the owner once the security is claimed. However, sometimes securities cannot be sold for a variety of reasons (the security cannot be placed in the Department's name, the company is defunct, the stock is worthless, or there are too few shares to sell). This section would permit the Department to sell certificates for unclaimed stock or other equity interests of business associations at auction for the value of the certificate (likely to collectors) if the unclaimed stock cannot be placed in the Department's name or readily sold and converted to cash.

Section 7. Amends s. 717.124, F.S. In order to claim property held by the Department, the claimant must provide photographic identification issued by U.S. Federal Government or a state, or a notarized sworn statement which affirms the claimant's identity and contact information. This section will require a claimant to produce photographic identification issued by a federal, state, or foreign government to the notary and include the notary's full address on the sworn statement. The provisions are intended as a fraud prevention measure. The section also contains a technical change adding a reference to a power of attorney.

Section 8. Amends s. 717.12404, F.S. Claims of property made on behalf of a corporation must be accompanied by a copy of the company records that are on file with the Department of State if the most recent annual report of the company is not available via the internet. If the corporation never filed with the Department of State, an authenticated copy of the last corporate filing identifying the officers and directors from the state of incorporation must be provided. This section requires the claim to include the Internet site operated by the state of incorporation that provides access to the last corporate filing, and (if available) a printout of the officers and directors. If an internet site cannot be used to access the corporate filing, then the authenticated copy must be used. The section also requires the claimant to produce photographic identification issued by the U.S. Government, a state, or foreign government to the notary when using a notarized sworn statement instead of providing a copy of the photographic identification to the Department (similar to provision in section 7 of the bill).

Section 9. Creates s. 717.12405, F.S. The new section provides definitions to assist the Department in interpreting security codes on stocks and dividends. The codes express who is entitled to the security.

Section 10. Amends s. 717.1241, F.S. The bill clarifies the criteria the Department applies when it receives multiple claims for the same unclaimed property account. The overarching principle is that the Department will remit the property to the person submitting the first completed claim received by the bureau of unclaimed property. The bill also contains a series of tiebreakers that apply when the bureau receives multiple property claims on the same day. They are as follows:

- Claimant's claim vs. claimant's representative claim: property goes to claimant;
- Buyer's claim vs. claimant or claimant's representative claim: property goes to buyer;

- Between two or more claimant's representatives: to the representative charging the lowest fee (if fee is equal, then fee is divided equally between the claimant's representatives);
- Between two or more buyer's claims: to the buyer offering the highest purchase price (if the purchase price is equal, then property is divided equally among such buyers).

The section also makes clear that a buyer's sole remedy for damages is against the claimant's representative, seller (owner of property), or both. This does not preclude a person from challenging the Department's determination of completeness of the claim under ss. 120.59 and 120.57, F.S. A scenario leading to damages could occur when a person buys the rights to the unclaimed property from the owner or claimant's representative, and then the seller of the property puts in a claim with the bureau in order to obtain the property and defraud the buyer.

Section 11. Amends s. 717.1242, F.S. This section of the bill requires an estate or heir of an estate to pay the Department's reasonable costs and attorney's fees in defending a probate court order directing payment of property to a certain party if the department prevails in court. Currently, the statutes state that the Department *may* be able to recover costs and attorney's fees.

Section 12. Amends s. 717.1243, F.S. The amended section will permit the Department to require any information necessary on an estate affidavit in order to make a determination of entitlement to property when a beneficiary of an estate makes a claim for unclaimed property. This method can only be used if all property held by the Department on the owner's behalf has an aggregate value of \$5,000 or less. The bill also permits the Department to use live testimony in lieu of the affidavit to establish entitlement.

Section 13. Creates s. 717.1245, F.S. The new section states that if any person files a petition for writ of garnishment seeking to obtain property held by the Department, the petitioner must pay the Department's costs and attorney's fees if it opposes, appeals, or collaterally attacks the petition or writ, if the Department prevails in court.

Section 14. Repeals s. 717.1311, F.S. The requirements of this section are amended and moved by this bill to s. 717.1333(2), F.S., (section 19 of SB 2494).

Section 15. Amends s. 717.1315, F.S. Current law requires claimants' representatives to keep records of their business under the unclaimed property laws for three years. The bill clarifies that claimants' representatives and the buyers of unclaimed property must maintain the records for three years following each power of attorney or agreement between the property owner and the claimant's representative or buyer.

Section 16. Amends s. 717.132, F.S. The statutes currently permit the Department to impose an administrative fine on a party that violates ch. 717, F.S. However, sometimes courts will modify the fine the Department has adopted. This section of the bill allows a court of competent jurisdiction to impose a fine. Thus the Department could ask a court to determine the fine amount without having to decide the issue itself and then have a court revisit the issue and modify the fine amount.

Section 17. Amends s. 717.1322, F.S. Currently, violations of chapter 717, F.S., constitute grounds for administrative enforcement action under ch. 120, F.S. The bill provides for civil enforcement of the chapter's provisions in a court of competent jurisdiction.

The section also broadens an existing provision that prohibits persons other than Florida attorneys, Florida licensed CPAs, or Florida licensed private investigators (claimants' representatives) from requesting or receiving compensation from unclaimed property owners for services rendered. Currently, a party has to be qualified as a claimants' representative in order to make a claim for unclaimed property owned by another person. The amendment also prohibits making a contract or agreement to purchase unclaimed property.

The section also states that a license as a claimant's representative may be suspended for up to 5 years, and that a license that is revoked must be revoked for a minimum of 5 years. During the time of suspension or revocation of license, the registrant cannot reapply for registration. The section provides for civil enforcement of discipline in a court with jurisdiction as well as the administrative actions detailed in s. 7171.1322(2), F.S.

Section 18. Creates s. 717.1323, F.S., which prohibits a person from knowingly entering false information onto the website of the bureau of unclaimed property.

Section 19. Amends s. 717.1331, F.S. The amended section will allow the Department to initiate an action to enforce a subpoena against a holder of unclaimed property.

Section 20. Amends s. 717.1333, F.S. This section takes language from s. 717.1311(3), F.S., amends it, and places it here. The amended section states that if the records of a property holder are insufficient to prepare a report of unclaimed property due and owing by a holder (likely to determine the value of property held) then the Department may make a reasonable estimation of the amount.

Section 21. Amends s. 717.135(1), F.S. This section governs the making of an agreement between a claimant and a claimant's representative to recover reported property held by the Department. The bill requires a power of attorney to be executed by the claimant, giving the claimant's representative the authority to recover property on his or her behalf. Currently, an agreement must be signed by the two parties giving this authority, but under the power of attorney, only the claimant/owner would have to sign the document.

The bill also places a cap on fees and costs of \$1,000 that may be charged by the claimant's representative on any unclaimed property account. This is in addition to the requirement that fees and costs cannot exceed 20 percent of the value of a cash account, safe deposit box, or current purchase price of securities or interest. The caps on fees may be exceeded if the claimant's representative fully discloses to the claimant that the property is being held by the Bureau of Unclaimed Property and other specified information. The bill adds to this requirement that the claimant's representative must also disclose the Internet address of the Bureau of Unclaimed Property, as well as the bureau's mailing address. Inclusion of the bureau's web address should discourage attempts to exceed the fee caps contained in this section. The bill also replaces the mandated recovery agreement forms, with language that must be included in the power of attorney document. The bill also specifies that the statutory full disclosure requirements for

exceeding the statutory fee caps for finding unclaimed property do not apply if the unclaimed property is being claimed by a person outside the United States.

Section 22. Amends s. 717.1351, F.S. This section governs the purchase of unclaimed property. The bill mandates that the purchaser of unclaimed property cannot pay a purchase price that is over \$1,000 less than the value of the unclaimed property account, unless the required full disclosure statement is made that the property is held by the Bureau of Unclaimed Property. The minimum purchase amount is not applicable if probate proceedings must be initiated on behalf of the seller for an estate that has never been probated, or if the seller of the unclaimed property is not a natural person or is located outside the United States.

The bill also replaces the full disclosure form for purchase of unclaimed property with new language that must be included in the purchase agreement if the minimum purchase amount is lower than the mandated amount. The section also requires that the claimant's government issued photographic identification or other required information be shown to the notary who notarizes a sworn statement filed in lieu of the photographic identification.

The bill also replaces the current purchase agreement forms contained in statute with new language that must be included in a purchase agreement that does not violate the statutory purchase amount limits.

Section 23. Creates s. 717.1381, F.S. The new section states that a power of attorney for compensation to recover unclaimed property worth more than \$250, or a purchase agreement to buy such property, is void if entered into less than 45 days after the holder or examination report was processed and added to the unclaimed property data base, subsequent to a determination that the report is accurate. The purpose of this section is to allow the Department to attempt to notify owners of unclaimed property so they have an opportunity to recover their property without paying fees to professional locators.

Section 24. Amends s. 717.1400, F.S. The bill clarifies that the Department may revoke or deny a claimant's representative's registration if the name of the representative's firm or agency employer might lead someone to believe the firm is, or is affiliated with, a government agency.

The bill also clarifies that the requirements to obtain a registration as a claimant's representative must be maintained as a condition of remaining registered with the Department.

Section 25. The act is effective upon becoming law.

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:

Owners of unclaimed property accounts valued above \$100 and below \$250 may have greater difficulty in recovering their property without charge from the Bureau of Unclaimed Property, due to the deletion of the requirement that the Department make at least one attempt to contact the owners of such property.

The fee limitations (\$1,000) imposed on claimant's representatives and buyers of unclaimed property will decrease the fees paid by some consumers. However, the bill allows current fee limits to be exceeded if full disclosure is provided to the owner in the manner provided by statute.

C. Government Sector Impact:

The Department of Financial Services reports that increasing the mandatory notification amount to \$250 will result in a savings being realized based on the number of accounts reported by holders in the future. Also, allowing the Department to sell stock certificates will increase unclaimed property revenues.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Language in section 3 of SB 2494 requires the Department to attempt to notify the owners of unclaimed property accounts in its possession that have a value of over \$250. The Legislature may want to consider an amendment that clarifies that the Department may attempt to contact the owner of any account in its possession.

Sections 10 and 12 of SB 2494 may raise an issue regarding the right of access to courts, by permitting the Department to recover the costs and attorney's fees it incurs in:

- Defending against a circuit court/probate order to deliver property held by the Department to a certain person (section 10 of bill) or
- Defending against a petition for writ of garnishment seeking to obtain property held by the Department.

The attorney's fees provisions are generally only provided when the Legislature is attempting to remedy a potential disparity in power between the parties of certain types of lawsuits (for instance, small businesses that prevail in court when challenging state agency action taken against them may recover costs and attorney's fees under s. 57.111, F.S., and an insurer must pay the attorney's fees of its insureds if it loses in court to the insured or a beneficiary under an insurance policy or contract under s. 627.428, F.S.).

VIII. Summary of Amendments:

None.