

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Banking and Insurance Committee

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BILL: CS/SB 2048

INTRODUCER: Banking and Insurance Committee and Senator Lynn

SUBJECT: Escheated Property Claims/Holocaust Descendants

DATE: April 15, 2008

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Deffenbaugh	BI	<b>Fav/CS</b>
2.			JU	
3.			GA	
4.				
5.				
6.				

## I. Summary:

Senate Bill 2048 allows a Holocaust victim or the beneficiary, heir, or descendant of a Holocaust victim to make a claim for escheated property if the Holocaust victim is the lineal descendant of the great-grandfather of the decedent.

The bill makes the following changes to the property that a spouse or surviving children of a decedent have a right to:

- Household furniture and appliances – Increased to \$20,000 from \$10,000.
- Motor vehicles – Up to two which do not have a gross vehicle weight over 15,000 pounds, instead of all automobiles held in the decedent's name.
- All qualified tuition programs authorized by s. 529 of the Internal Revenue Code, rather than only Florida Prepaid College Program contracts and Florida College Savings agreements.

This bill substantially amends the following Section of the Florida Statutes: 732.103, 732.402, and 733.

## II. Present Situation:

### Escheat

Section 732.107, F.S., provides that when a person dies and leaves an estate without being survived by a person entitled to part or all of the estate, such property shall escheat to the state. When property escheats to the state it is sold pursuant to the Florida Probate Rules and the proceeds from the sale are paid to the Chief Financial Officer of the state and deposited in the State School Fund. A person claiming to be entitled to the proceeds from the sale of escheated property may reopen the administration to assert entitlement within 10 years after payment is

made to the CFO. After 10 years, however, the state's rights to the proceeds are absolute and the property has escheated to the state.<sup>1</sup>

Section 732.103, F.S., contains the intestate succession rules that are used to determine entitlement to property when a decedent dies intestate (without disposing of the property via a will). If there is no will, property descends as follows:

- Surviving spouse of the decedent as provided in s. 732.102, F.S. If none then:
- Descendants of the decedent. If none then:
- Equally to the father and mother of the decedent, or the survivor of them. If none then:
- Brothers and sisters of the decedent and the descendants of deceased brothers and sisters.
- If none of the above are entitled to the property then the estate is divided equally (half and half) between the decedents paternal and maternal kindred as follows:
  - To the grandfather and grandmother equally, or to the survivor of them. If none, then:
  - Uncles and aunts and descendants of deceased uncles and aunts of the decedent. If none, then:
  - To other kindred who survive, in the order stated above.
- If there is no kindred among the decedent's paternal and maternal line as described above, then the entire property goes to the kindred of the last deceased spouse of the decedent as if the deceased spouse had survived the decedent and then died intestate.

Subsection (6) of s. 732.103, F.S., temporarily expanded the above intestacy succession if any of the descendants of the decedent's great-grandparents were Holocaust victims as defined in s. 626.9543(3)(a), F.S. In such a circumstance, a court was required to allow any such descendant to meet a reasonable, not unduly restrictive, standard of proof to substantiate his or her lineage. Outside of this exception, the intestacy statute only looks to the grandparents of the decedent, not great-grandparents, to locate an heir. However, the expansion was only effective for proceedings filed on or before December 31, 2004.

### **Exempt Property**

Florida law provides the surviving spouse or, if there is no surviving spouse, the children of a decedent domiciled in Florida a right to a share of the decedent's estate. Such property is designated "exempt property" under the probate code and includes:

- Household furniture and appliances at the decedent's abode of up to a net value of \$10,000.
- All automobiles held in the decedent's name regularly used by the decedent or members of the decedent's immediate family as their personal automobiles.
- Stanley G. Tate Florida Prepaid College Program contracts and Florida College Savings agreements established under Part IV of ch. 1009, F.S.
- Death benefits paid to teachers and school administrators pursuant to s. 112.1915, F.S.

Exempt property is exempt from all claims against an estate except for a perfected security interest. A security interest is a form of interest in property which provides that the property may be sold on default in order to satisfy the obligation for which the security interest is given. For example, a mortgage is used to grant a security interest in real property.<sup>2</sup> A creditor with a valid

<sup>1</sup> Property held by a guardian that cannot make a distribution to a ward becomes the final property of the state 5 years after it is turned over to the CFO pursuant to s. 744.534, F.S.

<sup>2</sup> Deluxe Black's Law Dictionary 1357 (6<sup>th</sup> Ed. 1990)

lien has a perfected security interest in property. Exempt property is in addition to a protected homestead, statutory entitlements, and property that passes under the decedent's will or via intestate succession.

The changes to the exempt property statute in Section 2 of this bill have been recommended by the Real Property and Probate Section of The Florida Bar.

### **III. Effect of Proposed Changes:**

**Section 1.** Amends s. 732.103(6), F.S., granting specified Holocaust victims the ability to make a claim for escheated property. The bill reinstates a provision in subsection (6) stating that an intestate estate may pass to the descendants of the decedent's great-grandparents if any descendant of the great grandparents was a Holocaust Victim as defined in s. 626.9543(3)(a), F.S. The subsection only applies to estate property deposited with the Chief Financial Officer by escheat pursuant to s. 732.107, F.S., and is expanded to allow property to descend even if the 10-year escheatment period has run. The ability for the descendant to receive intestate property under this section is effective through December 31, 2010. Other than this exception, the intestacy rules in the Florida statutes only look to grandparents of the decedent to find an heir for an intestate estate.

**Section 2.** Amends s. 732.402, F.S., regarding property that is classified as "exempt property" under the Florida Probate Code. The bill makes the following changes to the property that a spouse or surviving children of a decedent have a right to:

- Household furniture and appliances – Increased to \$20,000 from \$10,000.
- Motor vehicles – Up to two which do not have a gross vehicle weight over 15,000 pounds, instead of all automobiles held in the decedent's name.
- All qualified tuition programs authorized by s. 529 of the Internal Revenue Code, rather than only Florida Prepaid College Program contracts and Florida College Savings agreements.

**Section 3.** Amends s. 733.602, F.S., referring to the duties a personal representative (trustee) has in administering a probate estate. The bill deletes language stating that the fiduciary standards of care a personal representative must adhere to are in part VII of ch. 736, F.S. Instead, the statute will generally require personal representative to adhere to standards of care applicable to trustees. The change is made because the standards of care are not limited to part VII of ch. 736, F.S.

**Section 4.** The act is effective July 1, 2008.

### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

**C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:**

This bill may raise concerns under Article III, Section 11, of the Florida Constitution, prohibits special laws that effectuate a change in the laws of descent. It may also raise equal protection concerns by distinguishing between persons (collateral heirs such as second cousins) whose claims for escheated property are allowed or prohibited, depending on whether they are descendants of Holocaust victims.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The bill will allow certain descendants of Holocaust victims to claim property that has already escheated to the state; current law prohibits claims by any person on property that has escheated past the statutory period for making a claim.

**C. Government Sector Impact:**

The DFS states that the amount of property that escheats to the state varies each year. For fiscal year 2008-2009, a total of \$29,308,732.76 is expected escheat to the state. Under the proposed bill, those monies will be potentially subject to claims by qualified parties. Funds that escheat to the state are deposited in the State School Trust Fund within the Department of Education, except for a \$15 million balance that is retained in the Unclaimed Property Trust Fund. The bill does not provide the funding source for payment of claims of escheated property, but such funds would presumably be appropriated from the trust State School Trust Fund.

The department also states that there are no provisions in the escheatable property statutes, case law, or existing regulations to “reverse” escheat, creating difficulty as to how to effectuate the bill’s requirements.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Banking and Insurance on April 15, 2006:**

The committee substitute places the provisions of the bill relating to claims of property by specified descendants of holocaust victims in the probate code, rather than the unclaimed property law. The CS also adds provisions amending the definition of “exempt property” under the probate code and makes a clarifying change to the duties of a personal representative under the probate code.

- B. **Amendments:**

None.